

BEFORE THE IOWA DEPARTMENT OF EDUCATION
(Cite as 29 D.o.E. App. Dec. 093)

In re [REDACTED], a child:)	
)	
[REDACTED] AND)	Dept. Ed. Docket No. SE-487
[REDACTED])	DIA No. 19DOESE0008
)	
Complainants,)	
)	
v.)	
)	
ESTHERVILLE LINCOLN CENTRAL)	
COMMUNITY SCHOOL DISTRICT AND)	
PRAIRIE LAKES AREA EDUCATION)	
AGENCY,)	
)	DECISION
Respondents.)	

This matter came on for a hearing before Administrative Law Judge David Lindgren in Estherville, Iowa, at the Iowa Lakes Community College campus on March 11 and 12, 2019. Complainants [REDACTED] and [REDACTED] were present for the hearing along with their attorney Bonnie Heggen. Respondents' counsel Carrie Weber, and Respondents' representatives [REDACTED], [REDACTED] and [REDACTED] all were present for the hearing. The child, [REDACTED], was present for a brief period on Day 2 of the hearing.

The matter was reported by court reporter Theresa Kenkel. The following people testified at the hearing: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

The parties stipulated as to the admission of all exhibits, including Complainants' Exhibits 1-13 and Respondents' Exhibits 1-21.

Following the hearing, a briefing schedule was set. Both Complainants and Respondents filed their initial briefs on April 18. Respondents filed a reply brief on April 24 while Complainants did not file a reply brief. After Respondents' final brief was received, the matter was considered to be fully submitted and it was taken under advisement. The undersigned now issues the following decision.

Due to the confidential nature of this decision, the parties and other participants will not be referred to by their proper names. Instead, they will be referred to by their title or

position, such as the “child,” or the “Complainants,” or the “special education teacher.” This will aid in the redaction of this decision for later public disclosure.

FINDINGS OF FACT

The Child

By all accounts, including from her mother, her teachers, her school administrators, and by firsthand observation of the undersigned at the hearing, the child in question here is charming and energetic, and she easily endears herself to those she is around, including both adults and her peers. She has a huge smile, loves to help others, and is socially engaged with peers. Part of her personal story, however, is also painted by her multiple diagnoses, which include ADHD, autism, dystonic cerebral palsy, expressive language disorder, and intellectual disability. Many of these issues were caused after she was born at 32 weeks gestation when the mother’s placenta disintegrated. She is currently eligible for assistance under the brain injury waiver and SSL. The child was born in 2011 and was seven years old at the time of this hearing.

From the age of one through the age of three, the child received various services, including speech therapy, in the home. After turning three she was placed on an individualized education plan (IEP) by the School. At the time of this hearing, she was attending first grade at Demoney Elementary School in the Estherville Community School District. She is and has been eligible for special education and has received specially designed instruction (SDI) and related services through an IEP since she started school.

Paraprofessional Request

During her pre-kindergarten year, the child’s teacher observed that she had not responded well to a para/aide in that Pre-K room. Despite this, prior to the child’s kindergarten year, her mother requested that the school provide a 1:1 paraprofessional (“para”) while the child is in the general education setting and that such be added to her IEP. At the time, the child’s IEP provided for SDI in the area of reading for 45 minutes per day in the special education classroom; SDI in math for 45 minutes per day in the special education classroom; and occupational therapy for visual and motor skills in the special education classroom.

A school psychologist with the Prairie Lakes Area Education Agency and a team of other interested individuals began working with the child in the fall of 2017 after the mother’s first request for a para. Importantly, a para is not trained to teach students; a paraprofessional is merely present to redirect students, much like what a peer would do. They might help getting to the bathroom, or to the office, for example. A 1:1 para would reflect a more “restrictive” educational setting than just being in the general education classroom.

On September 14, 2017, the IEP team met to address the parents’ request for a 1:1 para. As part of its analysis, the team discussed and rated the child on a document called the

“Rubric to Determine Need for Paraprofessional Support.” This rubric, which was the result of a year’s worth of research and which is similar to other such tools used across the nation, required the team to essentially rate the child, on a scale of 1 to 4, in four categories: health/personal care, behavior, instruction, and inclusion.

Generally speaking, a high number on this rubric might indicate a need for a paraprofessional, while a low number would not. Specifically, a 3 or 4 in each column would constitute a “red flag” causing the team to go further into the analysis of whether a paraprofessional was needed. Based on the observations of the teachers, the team assessed the child to score two points on health/personal care; one point on behavior; two points on instruction; and two points on inclusion. None of these raised to the level of being a red flag indicative of a need for a para, according to the Estherville Superintendent, who also concurrently serves as its director of special education.

The language associated with the ratings assessed on those four categories are as follows:

Health/Personal Care: Chronic health issues, generic care procedures. Takes medication. Health care intervention for 10-15 minutes daily (diet, blood sugar, medications). Requires reminders and additional prompts or limited hands on assistance for washing hands, using bathroom, wiping mouth, shoes, buttons, zippers, etc. Occasional toileting accidents.

Behavior: Has adult direction, but occasionally requires additional encouragement and prompts. Occasional difficulty with peers or adults. Does not always seek out friends but plays if invited.

Instruction: Cannot always participate in whole class instruction. Requires smaller groups and frequent verbal prompts, cues or reinforcement. On task about 50% of the time with support. Requires more verbal prompts to follow directions. Requires signing 50-79% of the time.

Inclusion: Participates with visual supervision and occasional verbal prompts. Requires visual shadowing to get to class. Needs modifications and accommodations to benefit from class activities. Regular socialization may require adult facilitation.

As a result of this assessment, the IEP team issued a Prior Written Notice (PWN) on October 11, 2017, indicating why the team had refused the request for a paraprofessional. The notice reported that the request was denied because:

The team met 9/14/2-17 and increased her SDI time to help support a higher rate of progress. Academic data accumulated in the classroom and special education setting shows an increase in reading and math skills.

The Rubric to Determine Need for Paraprofessional Support was completed by the IEP team on 9/14/17 . . . [The AEA school psychologist]

read the descriptions in each box on the rubric and the IEP team determined where [the child's] skills fell within the rubric. The rubric assesses the student's needs in the areas of Health/Personal Care, Behavior, Instruction, and Inclusion. If a student obtains a score of 3 or 4 in any one area other than the Checklist of Existing Environmental Supports, Paraprofessional Needs Matrix, and Summary sheet forms are completed The Rubric to Determine Need for Paraprofessional showed no need at this time for a para to support for [the child]. Team input and observations indicate that [the child] is able to transition to the restroom and return on her own in all environments in the school setting.

Data was accumulated for redirects in comparison to the average peer. This data shows an average of 42% more redirects than peers. Even with needing more redirects, [the child] was able to make growth in all academic areas. Attendance shows [the child] has missed 7/34 days missing 21% of core instruction and she still made growth in all areas.

The Child's Teachers

The teachers the child has had since kindergarten have much to be commended. They all seem to have taken a special and keen interest in the child's learning and progress. They are dedicated to her specifically and to the art of teaching in general. They are knowledgeable about the child and knowledgeable about best practices and techniques for teaching children with special need. And, they have been provided much in terms of support from the district. During the course of this hearing, they provided their observations of and thoughts about the child.

The child's special education teacher has worked with her for the past two years. She recalled her experience with the child, describing her "amazing progress" from the start to the end of her kindergarten year. She observed that the child caught on to skills very quickly and had no problem keeping on task. Her occasional anxiety was able to be overcome through such techniques as modeling and through keeping her on a routine. According to this teacher, as of the date of the hearing, the child was very good at asking for help and she had made huge progress in the area.; she had improved in waiting her turn; and she was better at staying engaged on assigned tasks. Then, in her first grade year, she had much better social interactions with other students, often asking them to play with her and taking turns better.

Significantly, this teacher recounted a transition meeting that occurred between the child's pre-kindergarten and kindergarten years. During that meeting, the Pre-K teacher recalled that while in her class, the child had not responded well to a para in the classroom.

The child's kindergarten teacher found her to be very happy, one who loves everybody, and a child who can be easy-going. However, she did also recall some off-task behaviors and frustrations as well. Behaviorally, she saw no troubles with peers and nothing out of the ordinary. The child was "very easy to please" and only occasionally needed

behavioral prompts. Instructionally, this teacher found that although occasionally the child could get off task or distracted, she could usually be prompted back to what the group was doing.

While in the general education setting, the kindergarten grade teacher gave the child supports such as visual cues and labels as reminders for her. She allowed the child to be a “hand helper” where she would hold the teacher’s hand when she wanted to. The child would have prompts at her desk. During her general education reading class, the child would be placed in a small groups with others who read at her level. They were provided targeted instruction to their needs, known as “scaffolding.” Her instruction was thereby differentiated to where she was taught at level appropriate to her abilities.

According to this teacher, over her kindergarten year, the child made “good progress” in most subjects. In addition, if the child appeared to be having difficulty understanding something, the teacher would “peer her up” with another student who did understand the concept. This reportedly worked great with her. This teacher would also meet with the child’s special education teacher every Friday at lunch to discuss her and her data. This allowed them to “pre-teach” to the child.

This kindergarten teacher also recalled an occasion when a para, who had been assigned to another student, came into their classroom. The child did not want any help at all from this person and did not have a positive reaction to attention to another adult. In fact, she was defiant toward this aide and she preferred to get her instruction and help directly from her regular teacher.

The child’s first grade teacher had similar experiences with her. She recalled no behavior problems in the general education setting and she observed that the child is easily directed with minimal refusals. She participates with her peers, integrates well into the classroom, and does not need interventions. During this year, the child received guided reading instruction in smaller groups of four children who were reading at a similar level to her. This again allowed their instruction to be scaffolded to their respective level.

This teacher strongly believes that the child does not require a para in order for her to meaningfully access the core curriculum. She currently sees the child making great gains, and she fears that a para would harm her independence and confidence, and that she might rely on the para too much to do the work for her. According to the teacher, the child completes her general education time independently and without concern.

During her kindergarten school year, the child’s general education and special education teacher collaborated and communicated extensively about the child, meeting daily for up to one-half hour. As a result of this collaboration, the special education teacher might pre-teach some of the concepts that the first grade teacher was going to be teaching in order to give the child a head start into the concepts. The teachers met weekly with the parents and listened to their concerns. The teachers also filled out a daily Google doc that the parents had access to. The purpose of this document was to report on any successes or struggles that the child might have had during that particular

day. Emails shared between the parents and the teachers were also placed in this document.

The child has also worked with the same school guidance counselor since kindergarten, focusing largely on social skills. Like all others, the counselor noted the child to be happy, willing to work, and a good listener. She has never seen the child act out, and she has noticed no difference in her speech and behavior between small and large group classrooms. She and the child meet in a “friendship group” with three other peers, during which the child “gets” the concepts they are working on.

Accommodations

During all times relevant to this question, the child has received a variety of accommodations while in the general education classroom. Many of those were noted in the previous section of this decision. As noted there, in the general education classroom, the curriculum is “scaffolded” to a level appropriate for her. In some classes, in order to accomplish this, she is grouped with other children of similar abilities. Her teachers frequently check in with her to see what she is understanding and they might assign her a peer to assist with this. This differentiation in teaching is at her level but also exposes her to the core curriculum as with the rest of the classroom. These parallel work opportunities represent similar activities but at different levels.

Because she is routine driven, the child’s teachers also warn her if there will be some change to that routine. The child thrives on routines and her teachers try to ensure she has no surprises. She is allowed to sit in close proximity to her teacher so that it is easier for the teacher to check her progress and understanding. Her classrooms contain many visual cues for core understanding. She is allowed to line up in the first half of the lines and she can hold a hand when desired. She receives short directions from her teachers and is frequently prompted with “first-then” opportunities (such as “first you must finish this project, then you can move on to the next activity.”). She has available to her headphones and various fidget tools if she needs them.

Functional Behavior Analysis

On October 26, 2017, Mother consented to a re-evaluation of the child in order to conduct a Functional Behavior Analysis (FBA). This assessment was conducted on November 9, 2017 by the AEA psychologist and the child’s general education teacher. They identified various concerning behaviors, including that the child blurts out comments, talks to peers, wants to be the teacher’s helper, needs directions repeated, and refuses to put away preferred objects. However, they also concluded that her behavior is comparable to her peers, there being only a 7% discrepancy between her off task behavior and that of those peers. In particular, they noted that the child has underdeveloped skills with respect to waiting for reinforcement, social interactions, recognizing the need for help, ignoring peers, working independently, and others.

The psychologist and the teacher recommended that the IEP team may want to put an adaptive behavior goal for these skills in the IEP if they found it necessary. But, at that

point, they did not find the child needed a Behavior Intervention Plan (BIP) for any off-task behavior. As the school psychologist explained it, a BIP is generally only adopted for those children who show signs of aggression, such as hitting, pulling hair, and throwing chairs. Because this was not the case for the child, no BIP was recommended.

December 2017 IEP Meeting

The IEP team then met in December of 2017 to discuss and review the FBA data. Following that meeting a PWN was issued refusing the mother's request for a para in the general education classroom. The notice stated that "the action is being refused because [the child] is comparable to her peers in regards to following directions, being engaged in the classroom, instruction and activities, making transitions, and positive interactions with adults and peers."

The PWN also observed that "[mother] also asked for observations to be repeated in the spring of 2018 and again in the fall of 2018 and receive graphs from those observations and the team agreed." There is no evidence in this record that the school or the AEA agreed to conduct another FBA, and the school psychologist explained that there would have to be a significant change in a child's behavior in order to justify another FBA within the same school year. In this case, there was no significant change in the child's behavior.

Seasons Center Psychological Evaluation

In December of 2017, the child submitted to a psychological evaluation that was administered by licensed clinical psychologist Natalie Sandbulte at the Seasons Center for Behavioral Health. The Mother had requested this evaluation in order to clarify diagnoses, identify strengths and weaknesses, and formulate an appropriate treatment plan.

As part of this evaluation, the child was administered the Weschler Preschool and Primary Scale of Intelligence-4th Edition, with her overall intelligence scoring in the impaired range. More specifically, she performed in the impaired range on tasks requiring verbal comprehension, visual spatial abilities, and nonverbal abstract reasoning. In addition, her memory scored in the low-average range and language testing placed her in the low average range for receptive language abilities while her expressive language abilities were in the borderline range. Testing also showed "nice emerging communication skills," but that the child had poor annunciation and fluency problems.

The evaluator set forth a number of recommendations for the child. In particular, she recommended continuing therapy for her anxiety and ADHD, opportunities for the child to interact with same-age peers outside the home or school setting, certain behavioral modification strategies, using firm rules and consequences, summarizing information, frequent checking of understanding, taking frequent breaks, and alternative testing locations. Of particular importance to this Due Process Complaint, the evaluator also recommended that the child "may benefit from one-on-one assistance in the classroom

in order to help her complete tasks, understand instructions, and assist when she is feeling overwhelmed.”

January 2018 IEP Meeting

Another IEP Meeting Notice was sent in early January of 2018. The purpose of this meeting was to determine whether to add an adaptive behavior to goal to the child’s IEP. The resulting January 31, 2018, IEP noted that although the FBA did show some “underdeveloped skills,” those issues would be addressed in an adaptive behavior goal rather than a BIP. This goal (Goal No. 5) recognized that the child struggled with recognizing need for help, asking for help, waiting for reinforcement, engaging in appropriate interactions with peers, staying engaged in assigned tasks, and using visual supports. As a goal, the child was to be successful in these tasks while in the general education setting 85% of the time for three consecutive weeks.

The team specifically discussed whether to add a para to the IEP, and concluded that the data did not support such a need. The following statement was added to the PWN with regard to this decision:

This will continue to be closely monitored. If the team begins to see changes in the acquisitions of academic skills and/or behavior concerns the team will consider adding a paraprofessional to [the child’s] IEP.

The resulting IEP provided for 45 minutes per day of specially designed instruction (SDI) for reading skills, 45 minutes per day for math, and 15 minutes per day working on adaptive behavior and social skills all in the special education classroom. She was also to be provided 40 minutes per month working with the occupational therapist and 180 minutes per month with the speech-language pathologist.

The IEP also provided for various supports and accommodations, including the use of visual cues and prompts, allowing the child to line up in the first half of the line, holding her hand, and providing short/simple directions. And, the IEP called for consultation between the child’s various teachers, including between her general education and her special education teachers for at least 15 minutes per week to discuss her.

Kindergarten Year IEP

The IEP in place during the child’s kindergarten year included graphs representing her achievement on her various goals. With regard to her reading goal, data was taken every two weeks during the school year and the graph trended decidedly upward, indicating that she was meeting her reading goals. According to her special education teacher, the child caught on to these skills very quickly, had no problem keeping on task, and only occasionally exhibited any anxiety, which was able to be overcome through modeling.

With regard to her math goal, the graph again reflected an upward trend, but also showed that she struggled more with math than reading, especially with regard to consistency issues. At the end of the year, the child’s achievement was slightly below the

“aim line.” As will be seen later, this level of progress would result in an increase in the child’s math SDI. With regard to her third goal, communication, the child’s trend line was steeply upwards, well above the aim line. Her first adaptive behavior goal (goal #4) again showed generally good upward progress, but toward the end of the year, she flattened out and ended up below the aim line.

Goal #5, a second adaptive behavior goal, was that while in the general education setting the child will recognize the need for help, ask for help, wait for reinforcement, engage in age appropriate interactions, stay engaged in assigned tasks, and use visual supports 85% of the time for three consecutive weeks. This goal had only been added in January of 2018, and therefore contained about 4 months of data. Initially, she showed progress, but the graph reflects a dip around March 2018. Her special education teacher speculated that this dip coincided with a time when the child was no longer taking her ADHD medications

Two subsequent meetings were held in April and May to discuss the request for a para and to talk about adding more minutes for math SDI. It does not appear that any behavior concerns were raised at these meetings. The result of these meetings was a May 17, 2018, PWN in which it was determined that specialized math instruction would be increased from 45 to 60 minutes per day and that headphones would be made available as an accommodation.

First Grade IEP

The IEP that was in place for the child’s first grade year also contains graphs showing the results of her various goals through February of 2019. Goals 1 through 5 all point distinctly upwards, indicating the child’s progress. In reading (Goal #1), she showed “amazing” progress and movement since kindergarten. But, although she was progressing, she was still not where her peers should be. In her second reading goal (Goal #2), she showed steady progress, ending up above the aim line. For her math goal (Goal #3), although she was up and down, the child did in fact trend up and was above the aim line. For her first adaptive behavior goal (Goal #4), the child did show slower progress, but she still trended upward. Given her cognitive and developmental level, this slower progress is not surprising.

According to her special education teacher, the child greatly improved in most areas in first grade as opposed to her kindergarten year. At the time of the hearing, she described the child’s progress in this area as “huge” and found that she was by then very good at asking for help. She had also improved in waiting her turn and was showing much better social interactions with other students, including asking them to play with her. Finally, she was increasingly able to utilize visual supports such as modeling.

Due Process Complaint

On October 16, 2018, the child’s parents filed a Due Process Complaint against the Estherville Community School District and the Prairie Lakes Area Education Agency on behalf of their daughter. In it, they allege generally that the child has not been provided

sufficient accommodations and supports in the general education setting in order to ensure that she is receiving a free and appropriate public education (FAPE). Specifically, they seek “a paraprofessional to assist [child] when in the General Education setting to ensure FAPE is being provided and she is able to access the Core curriculum” and they note that “behaviorally and academically she needs appropriate modeling, pre-teaching, and re-teaching at teachable moment throughout the school day.”

University of Iowa Evaluation

The child subsequently underwent an evaluation at the University of Iowa Hospitals and Clinics in January of 2019 by Lisa Henry Vasquez. This evaluation took place after the Due Process Complaint had been filed.

The Weschler Individual Achievement Test – Third Edition (WIAT-III), which was administered, yielded results that placed the child in the low range for total reading, the below average range for basic reading, and the low range for mathematics. The Young Children’s Achievement Test (YCAT 2000) showed the child to be in the 9th percentile for reading, the 7th percentile for mathematics, and the 7th percentile for writing. The evaluator diagnosed the child with (1) learning difficulty, secondary to mild intellectual disability, and (2) performance concerns related to cognitive limitations, language deficits, learning difficulties, and inattention.

Among other things, the evaluator provided the following *suggestion* for the school setting: “Given [child’s] academic skill level, coupled with her previously identified cognitive impairments and language deficits, consider providing her with additional adult assistance in the general education setting for a portion of the day.” In addition, the evaluator recommended that she continue to be provided SDI in the general education setting, that she be given extended school year services (ESY), that she intensive instructional interventions for reading skills, and that she be given access to learning through technology. In addition, the evaluator recommended that teachers give her mini-teaching lessons, model for her, use visual props, and that steps be carefully described and explained. She also recommended the use of multi-sensory teaching, picture schedules, and teaching in small increments to match the child’s attention span deficits.

Mother’s Observations

At the Due Process Hearing, the child’s mother testified extensively about her daughter. In particular, she explained that at home, the child can be mean to her two siblings—kicking, hitting, and biting them. She believes her daughter needs a routine, or she may act out with screams. She sees problems when the child is redirected. The mother believes these actions must occur at school as well, although the child’s teachers have never observed this type of aggressive behavior in school. However, as noted previously, these concerns have not been noted by the child’s teachers.

Mother does not want her child to be out of the general education classroom any more than she is now; rather she wants her daughter to have a para with her in the general education classroom in order to act appropriately, get more enjoyment, and to meaningfully access the curriculum. According to her understanding, the child receives modeling, demonstrations, immediate reinforcement, and prompts in the special education classroom, and she believes that a para can likewise provide these concepts in the general education setting. She also thinks the child needs one-on-one help for things she cannot understand and that she cannot otherwise function for herself in that setting.

Paraprofessionals

A para holds no teaching certification and cannot teach. It is the teacher who does differentiated instruction, not the para. While certainly a para can be an effective resource for certain students if used properly and they can also assist in the inclusion of students with disabilities, there also can be many potential detrimental effects from their use. For instance, paras can foster an unnecessary dependence on adults, they can cause separation from classmates, and they can interfere with peer interactions and with creativity. Use of a para may also result in a feeling of stigmatization and a loss of personal control. The goal is always to get the student off the para, and to work toward independence.

CONCLUSIONS OF LAW

The IDEA requires that states receiving federal funds for educating children with disabilities “must provide a free appropriate education --- a FAPE, for short --- to all eligible children.” *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 993 (2017). Free appropriate public education, as defined by the IDEA, means special education and related services that:

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. § 1401(9). Special education is defined as specially designed instruction to meet the unique needs of a child with a disability across a range of settings, including in the classroom, in the home, in hospitals and institutions, and in other settings. 20 U.S.C. § 1401(28).

The individualized education program, or “IEP,” is the “centerpiece of the statute’s education delivery system for disabled children.” *Honig v. Doe*, 484 U.S. 305, 311 (1988). “The IEP is the means by which special education and related services are tailored to the unique needs of a particular child.” *Endrew F.*, 137 S.Ct. at 994 (internal quotations omitted).

When educators and parents disagree about what a child’s IEP should contain, the “parents may turn to dispute resolution procedures established by the IDEA.” *Id.* Under the IDEA, a parent or public agency may file a due process complaint relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child. 34 C.F.R. § 300.507(a); 281 Iowa Administrative Code (IAC) 41.507(1). The burden of proof in an administrative hearing challenging an IEP is on the party seeking relief. *Sneitzer v. Iowa Dep’t of Educ.*, 796 F.3d 942, 948 (2015) (citing *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 61-62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005)). “At the conclusion of the administrative process, the losing party may seek redress in state or federal court.” *Id.* (citing 20 U.S.C. § 1415(i)(2)(A).)

In deciding whether the challenged IEP satisfies the requirements of the IDEA, two issues are relevant: (1) whether the state complied with the procedural requirements of the statute, and (2) whether the challenged IEP was “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 206–07, 102 S.Ct. 3034. In this case, Complainants do not allege a failure to comply with IDEA’s procedural requirements. Rather, they challenge the IEP on the substantive grounds that it did not offer the child meaningful access to the curriculum due to its failure to assign her a paraprofessional or aide.

“To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.* at 999. The IEP must establish an “educational program [that is] appropriately ambitious in light of [the child’s] circumstances,” and should give the child “the chance to meet challenging objectives.” *Id.* at 1000. In the task to analyze this, the undersigned’s “review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Endrew F.*, 137 S.Ct. at 999 (emphasis in original). The school is not required to provide an optimal experience for a student with a disability, but instead must simply provide the student with a FAPE consistent with the IEP. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 198–200, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).

Overall, the IEP “must be responsive to the student’s specific disabilities, whether academic or behavioral,” *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003). It must be “reasonably calculated to enable” the child to make academic progress. *See Endrew F.* at 997.

ANALYSIS

In post-hearing briefing, Complainants now set forth two primary issues. First, they assert that “without more individualized support to meet this student’s needs to learn, the general education setting is actually more restrictive [than her not being assigned a para in that setting].” Second, they argue that there has been a substantive violation in that the district has not provided her “meaningful” access to her curriculum, and that they are merely *exposing* her to it by not assigning her a para in the general education setting.

Least Restrictive Environment Issue

Complainants pose this argument as follows:

Complainants have no wish to change [child’s] placement to a more restrictive environment. Complainants believe, based upon their knowledge of their daughter’s disabilities, the independent evaluation reports of disability expert providers, their familiarity with her performance at school and at home in a variety of intellectual and social settings, that the general education classroom can and should be beneficial for her. However, without more individualized support to meet this student’s needs to learn, the general education setting is actually more restrictive

Stated otherwise, Complainants’ position seems to be that the general education setting is actually more restrictive than a setting in which the child is assigned a para within that general education classroom. According to this argument, the more restrictive general education classroom is inappropriate, and she must be provided a para.

This position appears to be a fundamental misunderstanding of what the concept of least restrictive environment means and entails. In particular, the IDEA establishes a strong preference for educating children the least restrictive environment, requiring children with disabilities to be placed in a regular educational environment to the greatest extent possible. 20 U.S.C. § 1412(a)(5)(A). Further, “special classes, separate schooling, or other removal of children with disabilities from the regular educational environment” should be utilized “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.* The Eighth Circuit has acknowledged that “the IDEA expresses a strong preference in favor of disabled children attending regular classes with children who are not disabled.” *CJN v. Minneapolis Public Schools*, 323 F.3d 630, 641 (8th Cir. 2003).

Pursuant to this concept, the public agencies must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 CFR 300.115. The continuum, in general, ranges from the least restrictive to the most restrictive. On that continuum, the least restrictive environment would be placement in the general education classroom *with no* supplementary aids or services. Further along that continuum, in a more restrictive setting, would be the general education classroom *with* supplementary aids and

services. Conceptually, placement in the general education classroom with a 1:1 paraprofessional assigned to a student is further along the continuum toward a more restrictive environment.

Accordingly, because a student who is assigned a para in the general education setting is, conceptually speaking, in a more restrictive environment than a student with no assigned para, then it cannot be said that the district violated her right to be educated in the least restrictive environment. What the complainants seek—for a para to accompany the child while in the general education environment—is actually more restrictive than what the IEP currently offers. This argument seems to stand on its own head and is not grounds for the relief sought.

Is a Para Required in Order to Provide FAPE?

Complainants' overarching and central argument in this case is that without a 1:1 paraprofessional, the child is merely receiving *exposure*, but not *meaningful access* to the general education curriculum. They believe that due to the child's "lack of cognitive and developmental skills" she cannot reasonably be expected to meaningfully participate with other children who are two to three years ahead of her in these areas. They also believe that due to her ability level, it is not possible to "scaffold" or differentiate her instruction in the general education setting such that she would receive any benefit from it. Complainants therefore request that such a para be added to the child's IEP.

Respondents resist this request, arguing that the child, although behind some of her peers academically, is able to meaningfully participate and gain benefit from the general education setting without the assistance of a para. They believe that scaffolding of her general education and other accommodations have in fact worked for her. And, they point out the child's negative history of interactions with paras in the classroom as evidence that one would not be beneficial, and indeed potentially detrimental to her.

Complainants rely greatly on the two evaluations conducted on the child, one at Seasons Center and the other at the University of Iowa. They assert that these experts should be given great weight in their assessment of the child and her needs. On this question, I ultimately place more credence and credibility in the assessments, observations, and opinions of school and district personnel than I do the persons who conducted the child's two evaluations. Those evaluations were merely snapshots of the child's abilities and needs taken at the time of the evaluation and they do not purport to measure the child's academic progress over time. These observations also came in a sterile testing environment, and not have the benefit of interacting with the child in her daily environment.

The Seasons Center evaluator stated that the child "may benefit from one-on-one assistance in the classroom" while the University of Iowa evaluator *suggested* that the school "consider providing her with additional adult assistance in the general education setting for a portion of the day." These suggestions and recommendations do not carry the day. Conversely, the district's reasoned conclusion on this question was based on

months-worth of assessments and data, long term observation by trained educators, and consideration of a logical and structured rubric for determining the need for a para. Whether the child needs a para to receive FAPE is more accurately informed by those school and AEA personnel with whom she has much greater daily and long term interactions.

That data and the observations from school staff are quite instructive, and clearly indicate a para is not necessary to provide the child FAPE. In almost all important respects, the child's trend lines in the IEP goal data are trending upwards, thus indicating she is making progress toward her goals. This data also supports that she is increasing in her skills and that she is retaining knowledge. The assessments on which data was taken generally occurred every two weeks, and are thus reliable indicators of both present levels of achievement and or her progress over time. The most recent data available for her indicates she was presently above the aim line for Goals 1, 2, 3, and 5. And, while Goal #4, one of her adaptive behavior goals, ended up slightly below the aim line, she still was making discernable progress.

This upward data trend was also noted more informally in the personal observations of the child's teachers, who of course saw and interacted with her daily. And, again, their observations do not support the need for para support in the general education classroom. Importantly, both her kindergarten and first grade teachers observed the child functioning well in the general education classroom. And, her special education teacher noted her amazing progress in kindergarten, which included being able to catch onto and maintain new skills. By the end of kindergarten, the child had exceeded her goal in reading and was able to make some more modest progress in math. Because of this gap, her SDI math minutes were increased for first grade. In the first grade, the child went up in sight words, was able to better sound out and read words, was doing very well in writing numbers, and was successful in addition/subtraction facts using touch points.

One specific argument made by Complainants in favor of a para is that in order for the child to understand and learn in the general education classroom, she needs "re-teaching, consistent checking for understanding [and] making sure she was tracking with what was being taught." This argument misunderstands the nature and role of a para in the classroom. As noted earlier, the para is not a credentialed teacher and therefore cannot teach. They are merely present to redirect students, much like what a peer would do, by helping in such activities as getting to the bathroom or to the office. They do not "re-teach" and do not decide how to scaffold or differentiate for a particular child.

The many and varied accommodations that the child currently receives in the general education have been quite effective, and helped her to progress in many areas. One of the child's evaluators recommended that she continue to be provided SDI in the general education setting, that she be given extended school year services (ESY), that she receive intensive instructional interventions for reading skills, and that she be given access to learning through technology. In addition, the evaluator recommended that teachers give her mini-teaching lessons, model for her, use visual props, and that steps be

carefully described and explained. She also recommended the use of multi-sensory teaching, picture schedules, and teaching in small increments to match the child's attention span deficits. Many, if not all of these suggestions, are already being employed via the child's IEP or through the everyday instruction of her teachers. They have been provided, and have in fact proven effective, without the necessity of a para. These accommodations and supports in the general education classroom will continue.

The entire IEP team participated in considering the Rubric to Determine Need for Paraprofessional Support, a tool that attempts to discern a student's need for a para and that has broad support and use across the nation. This document and its findings are persuasive evidence for the decision to not assign the child a para. For example, the team, all of whom were intimately and regularly involved with the child's education, noted only mild behavioral concerns. They did note some more elevated concerns with regard to health, instruction, and inclusion, but nothing they would consider to be a "red flag" or something indicative of a need for a para.

The child's previous experience with paras in the classroom also argues against the request for a para, and tends to suggest that not only would one not prove beneficial, but also that it could be deleterious to her. As noted previously, while in kindergarten another student in the child's classroom was assigned a para. The child did not want any help at all from this person and did not have a positive reaction to attention to another adult. In fact, she was defiant toward this aide and she preferred to get her instruction and help directly from her regular teacher. Overall, this was not a positive experience for the child. Similarly, while in pre-kindergarten the child had not responded well to a para in the classroom. Based on this experience, a para is not indicated.

General considerations about the nature of and reaction to paras also lend support to the decision not to assign the child a para in the general education setting. For example, paras can foster an unnecessary dependence on adults, they can cause separation from classmates, and they can interfere with peer interactions and with creativity. Use of a para may also result in a feeling of stigmatization and a loss of personal control. These are real concerns with regard to this child. Because, the goal is always to get the student off the para and to work toward independence, a para is not a preferred option.

CONCLUSION

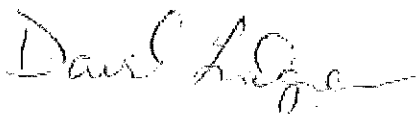
The preponderance of the evidence in the instant case indicates the child does not require full time one-to-one paraprofessional assistance to receive a FAPE. The quantitative, qualitative, and anecdotal evidence in the record demonstrates the child is making meaningful educational progress via SDI in the special education setting and through a variety of accommodations and supports within the general education classroom.

The child is able to meaningfully participate and gain benefit from the general education setting without a para and her IEP is appropriately ambitious. She has in fact made great academic progress and has been able to participate in the first grade consistent

with and in light of her circumstances. The Complainants' personal preference for a para is perhaps understandable, but it is simply not supported by this record. This decision is consistent with the IDEA' preference for mainstreaming where possible and for providing students with an education in the least restrictive environment.

To the extent any arguments made by Complainants have not been specifically addressed in this decision, they have been considered and deemed without merit. Complainants' requested relief is therefore denied and the due process complaint is dismissed.

Dated this 6th day of June, 2019.

A handwritten signature in cursive script, appearing to read "David Lindgren".

David Lindgren
Administrative Law Judge

cc: Carrie Weber (via mail and email)
Cheryl Smith – DOE (via email)
Bonnie Heggen (via mail and email)

