

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**T.W. o/b/o E.D.,  
Petitioner**

**v**

**Detroit Public Schools Community District,  
Respondent**

**Docket No.: 18-002551**

**Case No.: 18-00016**

**Agency: Education**

**Case Type: ED Sp Ed Regular**

**Filing Type: Appeal**

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**Issued and entered  
this 20<sup>th</sup> day of April, 2018  
by: Kandra Robbins  
Administrative Law Judge**

**DECISION AND ORDER**

**PROCEDURAL HISTORY**

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 et seq. On February 6, 2018, Petitioner filed a due process request/complaint with the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System for hearing. It was assigned to Administrative Law Judge (ALJ) Kandra Robbins.

On February 9, 2018, an Order Scheduling a Prehearing Conference for February 22, 2018 was issued. On February 22, 2018, the Prehearing Conference was held during which the dates for the hearing were selected as well as the deadlines for the exchange of witness and exhibit lists.

On April 16, 2018, the hearing was convened as scheduled. Petitioner T.W. appeared on her own behalf. Attorney Marquita Sylvia appeared on behalf of Respondents.

The Petitioner did not offer any exhibits.

The following exhibit was offered by Respondent and admitted into evidence:

1. Respondent Exhibit A is an Individualized Education Program Report, dated March 13, 2018.

The Petitioner T.W. was the only individual to testify in this matter.

### **ISSUE and APPLICABLE LAW**

During the Prehearing Conference, the following issue was identified for the hearing:

Is the Student in the appropriate educational placement?

The Petitioner, as the party challenging the District's determination or implementation of special education and related services, has the burden of proof by a preponderance of the evidence for all claims raised in this matter. *Schaffer v Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005); *Doe v Defendant I*, 898 F2d 1186 (CA 6, 1990).

The Code of Federal Regulations, 34 CFR 300.39 defines "special education" as follows:

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including— (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (ii) Instruction in physical education.  
34 CFR 300.39

Michigan Administrative Rule for Special Education, R 340.1701c(c) defines "special education" as follows:

"Special education" means specially designed instruction, at no cost to the parents, to meet the unique educational needs of the student with a disability and to develop the student's maximum potential. Special education includes instructional services defined in R 340.1701b (a) and related services.

The Federal Regulations define "specially designed instruction" as follows:

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR 300.39(b)(3)

Students protected by the provisions of IDEA are entitled to be appropriately identified, evaluated, placed, and provided a free appropriate public education (FAPE) that includes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC 1400(d); 34 CFR 300.1.

Under 20 USC 1415(f)(3)(E), it may be found that FAPE has been denied to a disabled student based on either substantive or procedural violations of the Individuals with Disabilities Education Act (IDEA or Act). Regarding procedural violations, Congress specifically provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on procedural inadequacies, the procedural violation must have impeded the student's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student or caused a deprivation of educational benefits. 20 USC 1415(f) (3) (E) (ii), see *Deal, supra*. Therefore, to find a denial of FAPE based on procedural violations of the Act, it must also be found that the procedural violation impeded the student's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to their child or caused a deprivation of educational benefits.

In *Board of Education of Hendrick Hudson Central School District v Rowley*, 458 US 176, 102 S Ct 3034, 73 L Ed 2d 690 (1982), the U.S. Supreme Court articulated the two bases for assessing the provision of FAPE. The first was whether the school district had complied with the procedural requirements of the Act, and the second was whether the student's Individualized Educational Program (IEP) was "reasonably calculated" to enable the student to receive educational benefits. *Id.*, at 206-07. This standard has been further clarified in *Endrew F.* where the U.S. Supreme Court stated that a student's "educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Endrew F v Douglas County School District* 137 S.Ct. 988 (2017)

In determining whether the District provided a free appropriate public education in the least restrictive environment for the student in this case, it must first be asked whether the District has complied with the procedures set forth in the IDEA in developing the IEP, and second, whether the IEP developed through those procedures was reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. *Endrew F.* 137 S. Ct. 988.

Additionally, the Code of Federal Regulations provides for determining educational placement as:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-

(a) The placement decision-

- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement-

- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116

**FINDINGS OF FACT**

Based on the entire record in this matter, including the testimony and admitted exhibit, the following findings of fact are established:

1. Student is 15 years old.
2. Student is eligible for special education services under MARSE Rule 340.1715 Autism Spectrum Disorder. [Resp. Exh. A]
3. The most recent Review of Existing Evaluation Data occurred on May 16, 2017. The most recent Multi-Disciplinary Evaluation Team report occurred on September 22, 2017. [Resp. Exh. A]
4. On March 9, 2018, Jessie Jennings, Special Education Provider for the District, sent an Individualized Education Program (IEP) Team meeting to Petitioner for an IEP Team meeting to be held on March 13, 2018. [Resp. Exh. A]
5. On March 12, 2018, Ms. Jennings contacted Petitioner via telephone to remind her of the IEP Team meeting scheduled for March 13, 2018. [Resp. Exh. A]
6. On March 13, 2018, the IEP Team met. The Team consisted of Ramona Vincent, District Representative; Jessie Jennings, Special Education Provider/MET representative; Petitioner; Kinzie Sloan, Speech and Language Pathologist; Michelle DeJaeger, District Representative; and Spring Hardy, School Social Worker. [Resp. Exh. A]
7. The IEP Team was not able to complete the process. The meeting was adjourned until March 19, 2018. [Resp. Exh. A]
8. The IEP Team noted that Student's current assessments indicate his level of ability is within the Cognitively Impaired-Severe range. In addition, he exhibits qualitative impairments in all areas under the ASD eligibility criteria. [Resp. Exh. A]
9. The IEP Team noted that Student's Present Level of Academic Achievement and Functional Performance is significantly low in reading and math. [Resp. Exh. A]
10. Student continues to display impaired receptive and expressive language skills, negatively impacting his functional and social communication skills within the classroom. [Resp. Exh. A]

11. Student's disability has impacted his ability to interact with peers and adults in an educational setting requiring assistance to engage in both individual and group tasks. [Resp. Exh. A]
12. The IEP consists of six annual goals with fourteen short-term objectives. [Resp. Exh. A]
13. The first goal is a Pre-Vocational/Vocational Skills goal. The goal is that by March 2019, Student will perform assembly and packing skills supervised, with hand over hand assistance, until independent without support. This annual goal is supported by two objectives. The first is that by March 2019, Student will perform assembly and packing skills supervised with hand over hand assistance until independent without support three out of five trials. The second is that by March 2019, Student will perform basic cleaning skills supervised with hand over hand assistance until independent without support three out of five trials. [Resp. Exh. A]
14. The second goal is also a Pre-Vocational/Vocational Skills goal. The second goal is that by March 2019, Student will independently clean his personal learning space as demonstrated by storing his academic tools and wiping off his work station at the end of each school day, three out of five trials. This goal is supported by two objectives. The first is that by March 2019, Student will independently clean his personal learning space, as demonstrated by storing his academic tools, at the end of each school day, three out of five trials. The second objective is that by March 2019, Student will independently wipe of his work station, as demonstrated by storing his academic tools, at the end of each school day, three out of five trials. [Resp. Exh. A]
15. The third goal is an Affective/Interaction goal. The goal is that by March 2019, Student will independently initiate social interactions with peers and adults on three consecutive occasions as observed by school social worker when approached by a peer or adult, three out of five trials. This goal is supported by two objectives. The first objective is that by March 2019, Student will demonstrate attending skills (eye contact, follow direction, complete an assigned task) with 2-3 prompts, three out of five trials. The second objective is that by March 2019, Student will greet others by the waving of his hand and direct eye contact simultaneously with 2-3 prompts, three out of five trials. [Resp. Exh. A]
16. The fourth goal is a Communication Skills/Language goal. The annual goal is that by March 2019, Student will improve his pragmatic and functional communication skills by completing tasks that will allow him to maintain and improve his emergent language skills with 50% accuracy when provided with moderate cues and prompts from the clinician, documented by systematic

observation and quarterly SLP logs. This goal is supported by four objectives. The first is that by March 2019, Student will demonstrate appropriate functional pragmatic and social skills by established and maintaining eye contact while using and responding to social routines such as greetings, polite forms, and introduction with 50% accuracy when provided with moderate to maximum cues and prompts by the clinician. The second objective is that by March 2019, Student will improve his social development skills by participation in joint attention/turn taking activities when presented with stimuli with 50% accuracy when provided with moderate to maximum cues and prompts by the clinician. The third objective is that by March 2019, Student will imitate and/or initiate vocalizations and/or words with 50% accuracy when provided with moderate to maximum cues and prompts by the clinician to improve his functional communication skills. The final objective is that by March 2019, Student will use his AAC technology and/or sign language to communicate his basic needs, wants, and feelings with 50% accuracy when provided with moderate to maximum cues and prompts by the clinician. [Resp. Exh. A]

17. The fifth goal is an English Language Arts Essential Elements: Language - Knowledge of Language goal. The goal is that by March 2019, Student will be able to hold a large pencil/crayon correctly and trace/print first letter of his name when provided a handwriting worksheet, with hand over hand assistance until independent/without support with 0% accuracy and documented quarterly. This goal is supported by two objectives. The first objective is that by March 2019, Student will hold a large pencil correctly when provided a handwriting worksheet with hand over hand assistance until independent/without support with 50% accuracy documented quarterly. The second goal is that by March 2019, Student will be able to hold a large crayon and draw a line between two dots, provided a handwriting worksheet, with hand over hand assistance until independent/without support with 50% accuracy and documented quarterly. [Resp. Exh. A]

18. The sixth goal is a Mathematics Essential Elements: The Complex Number System- Perform Arithmetic Operations with Complex Numbers goal. The goal is that by March 2019, Student will be able to use manipulatives to count/identify name number 1 to 10 with hand over hand support/without support with 50% accuracy documented quarterly. This goal is supported with two objectives. The first is that by March 2019, Student will be able to utilize one to one correspondence, object to object, with hand over hand support/without support with 50% accuracy documented quarterly. The final objective is that by March 2019, student will be able to identify/name numerals 1 to 5 with hand over hand support/without support with 50% accuracy and documented quarterly. [Resp. Exh. A]

19. The IEP developed a transition plan for Student. The Team determined that Student's course of study would be vocational training, functional academics and daily living. Student would take courses related to the Common Core Essential Elements for English/Language Arts and Math. [Resp. Exh. A]
20. The IEP team determined that Student would be placed in an Autistic Impairment classroom for 30 hours per week. In addition, he would receive speech and language services 30 minutes three times a month and school social worker services for 30 minutes two times a month. [Resp. Exh. A]
21. At the time of the March 2018 IEP, the Team had not decided Extended School Year (ESY) Services. The IEP noted that the Team would reconvene by May 1, 2018 to determine ESY. [Resp. Exh. A]
22. The IEP indicated that it would be implemented on March 26, 2018. [Resp. Exh. A]
23. A Notice for Provision of Programs and Services Individualized Education Program or an offer of FAPE was authorized by Ramona Vincent, District Representative, and given to Petitioner. [Resp. Exh. A]

## **DISCUSSION**

Petitioner in her Due Process Hearing Request alleged that the District changed Student's eligibility to Autism Spectrum Disorder and did not place him in the appropriate classroom. She stated that she had requested for the IEP team to reconvene in December 2017. She also requested that Student be placed in an Autism classroom.

The only IEP offered into evidence was the one developed in March 2018. This IEP placed Student in an Autism classroom.

Petitioner failed to produce any evidence to support her contentions. The evidence presented demonstrates that an IEP meeting was convened in March 2018 and Student was placed in an Autism classroom.

Petitioner has not established any procedural errors in the development of the March 2018 IEP. Petitioner received notice of the IEP meetings. She participated in the IEP meeting. The IEP team determined goals that appear to be appropriate on their face. No testimony was presented regarding the goals or the objectives. The IEP team determined an educational placement as well as supports and services. The placement is the preferred placement of Petitioner as indicated in her Due Process Hearing Request.



Although Petitioner testified that the IEP meeting was held on March 9 and March 12, 2018, the document contradicts this claim. The notice of the meeting was given to Petitioner on March 9, 2018 and again on March 12, 2018. Petitioner is misreading the IEP document. Petitioner has not established any procedural or substantive errors.

**CONCLUSIONS OF LAW**

I find based on a preponderance of the evidence, that Petitioner has failed to establish that Student's placement is not appropriate.

**ORDER**

**IT IS ORDERED:**

1. Petitioners' complaint is **DENIED**.
2. Any claims or defenses not specifically addressed herein are dismissed with prejudice.

A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.

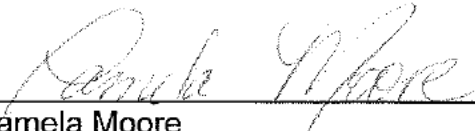


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**Kandra Robbins**  
**Administrative Law Judge**

**PROOF OF SERVICE**

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 20th day of April, 2018.

  
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Pamela Moore  
Michigan Administrative Hearing System

Detroit Public Schools Community District  
Dr. Nikolai Vitti, General Superintendent  
3011 West Grand Blvd., 14th Floor  
Detroit, MI 48202

Marquita Sylvia  
Office of the General Counsel  
3011 W. Grand Blvd., Suite 1002  
Fisher Building, 10th Floor  
Detroit, MI 48202

Ruth Oda  
Office of Special Education  
PO Box 30008  
Lansing, MI 48933

