

HEARING DECISION




CHILD:	C.G.
PARENT:	
PETITIONER'S ATTORNEY:	Pro Se
LOCAL EDUCATION AGENCY:	T.C.B.O.E.
RESPONDENT'S ATTORNEY:	Honorable Erika Perrone Tatum 
HEARING DATE:	April 17, 2018
DATE OF DECISION	May 9, 2018
HEARING OFFICER:	P. Michael Cole, Esq. 

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I. PROCEDURAL HISTORY

This due process hearing was conducted under the authorization of the Individuals with Disabilities Education Improvement Act (IDEA), 2004 Reauthorization, 20 U.S.C. § 1400, *et seq.*, implementing federal regulations at 34 C.F.R. Part 300, and implementing State regulations, the Rules of the Alabama State Board of Education, Chapter 290-8-9, *et seq.*

On or about February 23, 2018, the Parent filed a due process concerning the IEP Team's decision to change the Child's Least Restrictive Environment (LRE) to a homebound placement. The undersigned Hearing Officer was appointed by the State Superintendent of Education to hear this matter.

The due process hearing was conducted on April 17, 2018 at the office of the T.C.B.O.E. At the hearing, the Parent appeared Pro Se. The District was represented by the Honorable Erika Perrone Tatum.

Prior to commencement of the hearing, a determination was made by this Hearing Officer that the District had complied with all aspects of procedural safeguards necessary to have a fair due process hearing. The Parent was advised of the right to have the hearing open or closed and advised that she desired a closed hearing. The Parent also waived the Child's presence at the hearing.

II. EXHIBITS ADMITTED INTO EVIDENCE

At the hearing, exhibits were submitted by the parties and accepted into evidence by the Hearing Officer. The exhibits have been examined by the Hearing Officer subject to the issues heard at the due process hearing and in light of the testimony

presented at said hearing. The documents and materials have been in the constant possession of the Hearing Officer until the rendering of this decision. Hereafter, they will be delivered to the State of Alabama Department of Education.

This Hearing Officer placed no weight on the fact that any particular matter was offered by either party since the purpose was to get all of the appropriate documents produced for consideration by this Hearing Officer, so long as they were not prejudicial to the other parties participating in the due process hearing based upon objection. The Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter.

A. Petitioner's Exhibits

1. E-mail from the Parent to [REDACTED] and [REDACTED] re: [REDACTED] 2018 IEP meeting ([REDACTED])

B. Respondent's Exhibits

1. Petitioner's Request for Due Process Hearing (2/23/18)
2. District's Response to Request for Due Process Hearing (2/23/18)
3. IEP ([REDACTED]18)
4. Conference Notes ([REDACTED]18)
5. Special Education Rights ([REDACTED]/18)
6. Notice of Proposal or Refusal to Take Action ([REDACTED]18)
7. IEP ([REDACTED]18)
8. Notice of Proposal or Refusal to Take Action ([REDACTED]18)
9. Conference Notes ([REDACTED]18)

10. Behavior Intervention Plan (██████/17)
11. E-mail from ██████ to the Parent (██████/17)
12. Text Messages from ██████ to the Parent
13. Daily Notes Home

III. WITNESSES

Both parties were permitted to offer testimony by way of witnesses sworn under oath. The testimony from these witnesses has been examined by the Hearing Officer subject to the issues heard at the due process hearing and in light of the testimony presented at said hearing. The testimony has been recorded and transcripts have been delivered to the State of Alabama Department of Education.

This Hearing Officer placed no weight on the fact that any particular testimony was offered by either party since the purpose was to get all of the appropriate testimony produced for consideration by this Hearing Officer, so long as they were not prejudicial to the other parties participating in the due process hearing based upon objection. The witnesses were examined and the weight given to each was based upon based upon the substantive nature contained therein for the purpose of making a decision in this matter.

A. Petitioner's Witnesses

1. ██████
2. ██████ (telephonically)
3. ██████
4. ██████
5. ██████

6. [REDACTED]
7. [REDACTED]
8. [REDACTED]

IV. BURDEN OF PROOF

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-9.08(9)(c). The standard of proof is by a preponderance of the evidence.

V. SUMMARY OF THE TESTIMONY AND EVIDENCE

This section is a summary of some of the pertinent facts presented to this Hearing Officer. These facts are not necessarily the only facts considered by this Hearing Officer in making this decision. This Hearing Officer has heard all the testimony and has reviewed the transcript of said testimony. This decision is based on all testimony presented at the hearing as well as exhibits admitted into evidence during the hearing.

By way of introduction, the Child is an [REDACTED] year old student in the District. The Child has a diagnosis of [REDACTED] and there is presently no dispute that the Child is a student with a disability who is eligible for Special Education services under the IDEA.

A. [REDACTED]

[REDACTED] has been the Child's one-on-one paraprofessional aide for the past three years. He has a bachelor's degree and is presently working toward a master's degree in Special Education.

The Child spends most of [REDACTED] time at school accompanied by [REDACTED] [REDACTED] testified that the Child can be pleasant, sociable, friendly, and creative, but there are also times

when [REDACTED] behavior can be very difficult to manage. On occasions when the Child has become upset, [REDACTED] and [REDACTED]. The Child has made [REDACTED] to other students. [REDACTED] described an incident where the Child made [REDACTED] towards another student, saying [REDACTED]. [REDACTED] testified that the Child's behavioral incidents have been communicated to the Child's mother and [REDACTED].

[REDACTED] has received behavior interventional training from the school's principal, [REDACTED] (who is a trained behavior specialist), and was part of the IEP team that developed the Child's Behavior Intervention Plan (BIP). Pursuant to the BIP, [REDACTED] uses a neutral tone when speaking with the Child. Additionally, [REDACTED] will praise the Child for even the smallest victories – for example, transitioning from room to room, or throwing away a piece of paper. At the beginning of each day, [REDACTED] reviews expectations for the day. For a reward system, [REDACTED] uses foods allowed by the Child's mother and free laptop time.

[REDACTED] testified that the Child has a tendency to elope from [REDACTED] assigned area at school. When the Child attempts to elope, [REDACTED] attempts to stay close to [REDACTED] and prompts [REDACTED] to return to [REDACTED] assigned area, but there are extreme occasions when the Child is unwilling to comply. As a recent example, the Child became upset at the [REDACTED] and [REDACTED] of the classroom. [REDACTED] followed the Child [REDACTED] at which point the Child [REDACTED]. [REDACTED] called the school's principal and the Child's collaborative teacher for assistance. According to [REDACTED] the entire ordeal lasted [REDACTED] until about [REDACTED].

B. [REDACTED]

[REDACTED] is a Board Certified Behavioral Analyst (BCBA). She has a master's degree in Psychology, with a concentration in Applied Behavior Analysis/Developmental Disabilities. [REDACTED] has worked as a BCBA for six years in clinic, home, and school settings. She is not an employee of the District but works as an outside consultant.

[REDACTED] conducted the Child's Functional Behavior Assessment, developed [REDACTED] BIP, and provided training to [REDACTED] teachers on how to implement the BIP. [REDACTED] testified that the Child's BIP provides a reward system to reinforce positive behaviors. [REDACTED] had no objection to the Child being allowed to watch [REDACTED] as [REDACTED] highly-preferred reward of choice.

While [REDACTED] was present, she observed the Child's BIP being implemented to fidelity. Additionally, [REDACTED] testified that the Child's teacher has collected data using the prescribed method, and the data was gathered consistently, providing further indication that the BIP was implemented to fidelity.

[REDACTED] testified that she has observed at least one elopement incident by the Child. [REDACTED] defines an "elopement" as being outside of [REDACTED] assigned area and more than 10 feet away from an assigned adult. On the occasion observed by [REDACTED], the Child ran around the school campus and [REDACTED]. The entire incident lasted approximately [REDACTED]. After witnessing this episode, [REDACTED] provided additional recommendations, to which the District was receptive.

██████████ participated in the Child's IEP meetings and testified that the IEP team generally considered the Parents concerns regarding the Child. ██████████ participated in the IEP team's decision to change the Child's LRE to homebound.

C. ██████████

██████████ has been the Child's Special Education teacher for ██████████ years. She has a bachelor's degree and master's degree in Collaborative Education; she is a certified for K-12 in Special Education, and is also certified in Elementary Education. She has worked in the District for 11 years, and previously taught collaborative education in another school system.

██████████ testified that the Child had fewer negative behaviors during ██████████ and ██████████ years, but ██████████ behavior became more difficult this year. ██████████ testified that both she and the Child's collaborative teacher, ██████████, have informed the Parent of the behavioral problems via notes and e-mails. The Child's ██████████ was verbally informed of incidents when he picked the Child up from school. The IEP team met with the Parent frequently during the year to address her concerns. Occasionally, the Parent has contacted ██████████ for help in dealing with the Child at home, including with incidents of elopement from ██████████.

██████████ testified that most of the Child's behavioral incidents have occurred while ██████████ was in the classroom of ██████████. On one occasion in ██████████'s classroom, the Child called another student a ██████████ and ██████████ told the Parent about the incident on the same day it happened. ██████████ testified that the Child has experienced ongoing difficulties with the other student. Per the Parent's request, the Child's schedule has been adjusted so that ██████████

and the other student will not be in [REDACTED]'s classroom at the same time. However, the Child sometimes leaves [REDACTED] assigned area and goes to [REDACTED]'s classroom, despite attempts by [REDACTED] aide and other teacher to redirect [REDACTED]. When [REDACTED] inevitably sees the other student in [REDACTED]'s classroom, [REDACTED] becomes very upset and angry.

[REDACTED] also testified that she is aware of an incident when the Child [REDACTED] [REDACTED] and [REDACTED]

According to [REDACTED], the Parent was aware of this incident because the school principal had the Parent on speakerphone while the incident was occurring. In addition to the incident in [REDACTED]'s classroom, the Child made similar [REDACTED] while in [REDACTED]'s classroom.

The Parent questioned [REDACTED] as to why the Child had not received disciplinary action as a result of [REDACTED] behavioral incidents. Consistent with the requirements of the IDEA, [REDACTED] explained that the District has not imposed disciplinary action for behaviors that are deemed to be a manifestation of the Child's disability.

[REDACTED] testified that the Child has a tendency to [REDACTED]. [REDACTED] testified to an incident where the Child was talking to the aide of another student and the aide told the Child, [REDACTED]

[REDACTED] According to [REDACTED], the aide was not aggressive toward the Child, but the Child became upset. As a result of this incident, the aide was instructed not have any further communication with the Child. Later, when the aide would not speak to the Child, the Child became upset and felt ignored.

[REDACTED] acknowledged that the Child is permitted to watch [REDACTED] as a reward during [REDACTED] free laptop time. [REDACTED] testified that the school has internet filters that block

inappropriate content, and the Child also has a one-on-one aide who monitors what [REDACTED] watches. Pursuant to the Parent's request, the Child is being weaned away from [REDACTED]

[REDACTED] The Behavior Specialist recommended that the Child's access to [REDACTED] be reduced gradually to avoid causing a disruption. Therefore, the Child has continued having some access to [REDACTED] but the amount of time is being reduced, and the reduction is being documented by the Child's teachers.

D. [REDACTED]

[REDACTED] is the District's Special Education Director. She has a master's degree and bachelor's degree, an EdS, and an EdD in Administrative Leadership. She previously worked as a teacher and administrator in another school system.

[REDACTED] testified that, on [REDACTED], 2018, the IEP team held a meeting and decided to change the Child's LRE to a homebound placement. According to the meeting notes, the meeting began at [REDACTED] p.m. The Parent attended the IEP meeting and was accompanied by an advocate from the [REDACTED]

A draft IEP was prepared on the morning of the meeting. Due to the late preparation of the draft, the IEP team did not have a copy available for the Parent to review but instead read the items aloud to the Parent for her consideration.

According to the notes from the IEP meeting, the school's principal, [REDACTED] raised concerns regarding the Child's safety and [REDACTED] along with [REDACTED] and [REDACTED]. Based on those issues, [REDACTED] recommended that the Child's LRE be changed to homebound. Following the recommendation, a discussion was held, during

which the Parent voiced her opposition to the homebound placement. Other members of the IEP team voiced support for the recommendation, particularly due to concerns over the Child's safety and the inability to modify [REDACTED] behavior, despite implementation of the BIP.

At approximately [REDACTED] p.m., after voicing her opposition to the proposed homebound placement, the Parent decided to leave the meeting but gave permission to the [REDACTED] advocate to continue in her absence. According to [REDACTED] everyone who remained at the meeting, including the Child's [REDACTED] advocate, collectively agreed to change the Child's placement to homebound.

On [REDACTED], 2018, the IEP Team issued a notice of proposed action reflecting the change of the Child's placement to homebound. For the proposed homebound placement, the Child will receive [REDACTED] of services per week, with a paraprofessional available to assist. The notice stated that the IEP team had considered retaining the Child in the classroom setting. Nevertheless, this option was rejected "because of [the Child's] [REDACTED] to others, in order to ensure [REDACTED] safety and the safety of others, continuing elopement events [REDACTED] and in [REDACTED] that put [REDACTED] in danger, and continuing failure to comply with adult directives during elopement events."

On February 23, 2018, the Parent submitted a Request for Impartial Due Process hearing, challenging the homebound placement.

On [REDACTED], 2018, the IEP team held a meeting which also served as a resolution session regarding the Parent's request for a due process hearing. The Parent participated in this meeting via telephone. During the meeting, the Parent proposed that homebound

services could be provided at the Child's home; however, this option was rejected by the District due to safety concerns. The District proposed alternative locations including (1) the Central Office, (2) the local Public Library, (3) the local City Police Station; (4) the local County Courthouse; (5) the local Sportsplex; (6) the local Mental Health Office; (7) C.H.C.H.C.; and (8) the Alternative School.

According to [REDACTED] the Child has previously received homebound services at the public library, but the Parent did not feel that the library was an appropriate location. Ultimately, all of the District's proposed locations were rejected by the Parent. Similarly, the District rejected the Child's home as a possible location.

On [REDACTED] 2018, the IEP team held a meeting and recommended that the Child receive an [REDACTED] evaluation. This recommendation was made in response to information provided by the Parent regarding her concern that the Child would experience emotional distress if required to receive homebound services at the Central Office.

The Parent did not attend the [REDACTED] 2018 IEP meeting. [REDACTED] testified that, prior to holding the meeting, the District issued two meeting notices to the Parent but did not receive a response. Although not required to do so, the District also issued a third meeting notice, in response to which the Parent sent an e-mail, on [REDACTED] 2018, stating "Parent is unavailable for the scheduled [REDACTED]/2018 meeting." As an attachment to the e-mail, the Parent returned a copy of the Notice and selected an option on the form, stating "I will NOT be able to meet on the scheduled date and time, but would like to reschedule, please contact me at *via e-mail*." [REDACTED] testified that she received the Parent's

e-mail requesting that the [REDACTED] 2018 IEP meeting to be rescheduled but the District did not reschedule the meeting because it already issued two meeting notices.

[REDACTED] testified that the Parent has refused to provide consent for the [REDACTED] evaluation recommended at the [REDACTED], 2018 IEP meeting. Therefore, the District has filed a Motion asking the Hearing Officer to compel the evaluation without the Parent's consent.

E. [REDACTED]

[REDACTED] is the Child's Parent. The Parent is aware that the Child's [REDACTED] advocate agreed with the IEP team's decision to change the Child's LRE to homebound. Nevertheless, the Parent is concerned about the District's proposed locations for homebound services. Her concern about the local public library is that the exits lead to unsafe locations, including a road. At the Sportsplex, four of five exits lead to a pool, and the Child cannot swim. She believes that the Child would experience fear and anxiety at other locations such as the local City Police Department. She testified that changing the Child's environment creates frustration and exacerbates [REDACTED] behavioral problems. Recently, the Child has been confused and dismayed about [REDACTED] inability to return to school.

The Parent testified that she believes her home is the only appropriate location for homebound services. The home has only one exit, and the Child is comfortable there. The Parent proposes that she would be willing to have security cameras installed to address the District's safety concerns. Nevertheless, the Parent acknowledges that the Child has previously eloped from home, even under her own supervision.

The Parent expressed concern about the free laptop time provided to the Child as reward under the BIP. In particular, the Parent is concerned about the Child's exposure to content such as [REDACTED] and [REDACTED] without the proper context and explanation. The Parent testified that the Child has no internet access at home, and, [REDACTED] access to the internet at school makes [REDACTED] resistant toward going home at the end of the day. For example, the Parent recounted an incident when the Child had difficulty leaving school because [REDACTED] had not yet exhausted [REDACTED] free laptop time for the day.

Regarding the [REDACTED], 2018 IEP meeting, the Parent testified that she was unable to attend the meeting due to [REDACTED] problems. When she sent an e-mail that she was unable to attend, she assumed the meeting would be rescheduled.

The Parent contends that the school did not inform her about all the Child's behaviors prior to the [REDACTED] 2018 IEP meeting. For example, [REDACTED] asserts that the school never informed her about an incident where the Child eloped to the [REDACTED] [REDACTED]. However, [REDACTED] admits that the Child's collaborative teacher, [REDACTED] has reported behavioral issues by phone and e-mail.

Examples of e-mails sent to [REDACTED] were admitted at the hearing. In a [REDACTED] 2017 e-mail, [REDACTED] reported that the child had become [REDACTED] and began a [REDACTED] [REDACTED]. In a [REDACTED], 2018 e-mail, [REDACTED] reported that the Child had had trouble transitioning to [REDACTED] after school, despite using the recommended BIP strategies. [REDACTED] also informed the Parent about an incident where the Child [REDACTED].

Concerning elopement, the Parent testified that [REDACTED] called her and reported that the Child had walked out of the classroom and to the end of the hall. The Parent also acknowledged being aware of an incident where the Child eloped to [REDACTED]. Nevertheless, the Parent contends that she was unaware of all of the behaviors that formed the basis of the [REDACTED], 2018 IEP meeting.

F. [REDACTED]

[REDACTED] is the Child's collaborative teacher. Although [REDACTED] is the Child's classroom teacher, the Parent requested that [REDACTED] help with the Child this year due to [REDACTED] behavioral issues. [REDACTED] had worked with the Child previously and developed a good rapport with [REDACTED]. [REDACTED] testified that the BIP was implemented with 100% fidelity throughout the time she worked with the Child.

[REDACTED] testified that she would send daily notes home to the Child's mother. The subject of those notes were generally positive because they could be read and understood by the Child. The notes were meant to be a positive reinforcer to the Child.

[REDACTED] testified that there have been many days when the Child did not want to go to the [REDACTED]. On those occasions, the Child would begin [REDACTED]

[REDACTED]. Typically, an elopement episode would begin with a [REDACTED] event. This often occurred at the end of the school day.

[REDACTED] testified that the IEP team did not predetermine the Child's homebound placement. [REDACTED] testified that the IEP team went to great lengths to try to keep the Child in school. They addressed behaviors through the BIP and provided the Parent with

documentation of how [REDACTED] was doing in class. According to [REDACTED], the team was in constant communication with the Parent.

[REDACTED] testified that the District made three attempts to notify the Parent of the [REDACTED] 2018 IEP meeting. The third notice was sent via certified mail with the Child's [REDACTED]. [REDACTED] testified that the District does not request an explanation if a parent indicates that he or she is unavailable to attend an IEP meeting.

[REDACTED] is the teacher assigned to provide homebound services for the Child. [REDACTED] testified that she has concerns about providing homebound services at the Child's [REDACTED]. In particular, [REDACTED] is concerned that she will be unable to control the Child in [REDACTED] home environment. According to [REDACTED], the Child sometimes experiences [REDACTED], during which [REDACTED]. These incidents sometime evolve into [REDACTED]. [REDACTED] testified that the Parent once called her after an incident where the [REDACTED] after the Child [REDACTED].

In a different location, [REDACTED] believes that the Child would not have access to objects, such as [REDACTED] that [REDACTED] could use to [REDACTED]. She also believes that the Child would be more likely to moderate [REDACTED] behavior in a public environment. Finally, [REDACTED] does not believe she would be able to prevent the Child from eloping from his home, and she is not familiar with the area surrounding [REDACTED] home in the event [REDACTED] does so.

G. [REDACTED]

[REDACTED] is the school psychometrist and was part of the Child's IEP team at the [REDACTED] 2018 IEP meeting. [REDACTED] was unaware that the Parent had sent an e-mail asserting that

she was unable to attend the [REDACTED], 2018 IEP meeting. [REDACTED] testified that the school is only required to make two attempts to notify the Parent of the IEP meeting.

H. [REDACTED]

[REDACTED] is the principal of the Child's school. He has a bachelor's degree and master's degree in Special Education. He served as a behavior specialist in another school district, before serving as assistant principal and principal of the Child's school. He is in his [REDACTED] year as principal.

[REDACTED] testified that, over the course of the school year, he has met with the Parent on more than a [REDACTED] occasions and has spoken with her at least as many times on the telephone. [REDACTED] testified that he recommended a homebound LRE because he was concerned about the safety of the Child. According to [REDACTED], the Child's elopement behavior presents a dangerous situation for both the Child and school personnel. For example, [REDACTED] explained the Child eloped into the [REDACTED] [REDACTED] in an area where [REDACTED] have been present.

[REDACTED] testified that the District made a third attempt to notify the Parent of the [REDACTED] [REDACTED] 2018 IEP meeting by sending the notice with the Child's [REDACTED] [REDACTED] informed the IEP team that he had received an e-mail from the Parent stating that she was unable to attend the meeting. [REDACTED] was not aware of the Parent's [REDACTED] [REDACTED] and was not aware of the reason she was unable to attend the meeting.

VI. ISSUES PRESENTED

- A. Whether the IEP team properly determined that homebound placement is appropriate for the Child, and, if so, where should the homebound services be provided.
- B. Whether the Hearing Officer should grant the District's Motion to Compel a [REDACTED] evaluation of the Child without the consent of the Parent.

VII. DISCUSSION OF THE ISSUES

A. Homebound Placement and Location

To ensure that students with disabilities receive educational services necessary to provide such an education, Congress has mandated the creation of individualized education programs (IEPs) for students who are protected by the IDEA. *Jefferson Cty. Bd. of Educ. v. Bryan M.*, 706 F. App'x 510, 512 (11th Cir. 2017) citing 20 U.S.C. § 1412(a)(4). The IDEA requires school districts to include a student's parents in the IEP team, 20 U.S.C. 1414(d)(1)(B), and treat them as equal partners, *see M.M. ex rel. C.M. v. Sch. Bd.*, 437 F.3d 1085, 1095 (11th Cir. 2006) ("During the IEP development process, parental involvement is critical; indeed, full parental involvement is the purpose of many of the IDEA's procedural requirements."). To meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

As part of the IDEA, the school district must provide the services recommended by the IEP in the "least restrictive environment" possible. *Jefferson Cnty.*, 706 F. App'x

at 512 citing 20 U.S.C. § 1412(a)(5). For that reason, the IEP must identify a student's least restrictive environment (LRE). *Id.* citing 20 U.S.C. § 1436(d)(5). If a student parents believes the IEP has incorrectly identified that environment, they can challenge the IEP's designation. *Id.* Under the IDEA, the Parent has a substantive right to challenge both the placement and the particular site where the IEP is to be implemented. *See R.L. v. Miami-Dade Cty. Sch. Bd.*, No. 07-20321-CIV, 2008 WL 3833414, at *30 (S.D. Fla. Aug. 12, 2008), *aff'd*, 757 F.3d 1173 (11th Cir. 2014).

The Eleventh Circuit Court of Appeals has applied a two-part test for determining whether a school district has complied with the LRE requirement of the IDEA. *See S.M. v. Gwinnett Cty. Sch. Dist.*, 646 F. App'x 763, 764 (11th Cir. 2016); *Greer v. Rome City Sch. Dist.*, 950 F.2d 688 (11th Cir. 1991). First, it asks whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily. *Id.* If it cannot and the school intends to provide Special Education or to remove the child from regular education, the court inquires as to whether the school has mainstreamed the child to the maximum extent appropriate. *Id.*

An IEP may provide homebound instruction to a student if the IEP team determines that the student cannot receive an educational benefit in a less restrictive setting. *See* 34 C.F.R 300.115 (b)(1) (requiring districts to make available a continuum of educational placements that includes "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions"). For example, in *Mt. Zion Unit School District No. 3*, 111 LRP 51317 (SEA IL 04/04/11), homebound instruction was deemed to be an appropriate LRE for a teenager with post-

concussion syndrome because the school district had no way to limit exposure to dangerous levels of stimuli.

In this case, the Parent, as the petitioner, has the burden to demonstrate the Child's homebound placement is not the appropriate LRE. As explained below, the Hearing Officer finds insufficient evidence to meet that burden.

First, pursuant to the Eleventh Circuit's two-part test, the Hearing Officer inquires into whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily. Here, the District has presented credible evidence that classroom placement for the Child cannot be satisfactorily achieved due to ■■■ behavior and elopement tendencies. There is also evidence that the District has attempted to implement appropriate supplemental aids and services, including providing the Child with a classroom teacher, collaborative teacher, one-on-one aide, and a Behavioral Intervention Plan, which the undisputed evidence indicates has been implemented to fidelity. Notwithstanding these efforts, the Child's behavior and elopement tendencies have continued to interfere with ■■■ ability to receive services in a classroom environment.

Additionally, while the Parent generally asserts that she does not believe the District has done "enough" to try to keep the Child in the classroom, she has not identified any specific aids or supports that, if provided, would enable ■■■ to remain there. Therefore, the Hearing Officer finds that the Parent has failed to meet her burden under the first prong to demonstrate that education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily.

Turning to the second prong of the Eleventh Circuit's test, the Hearing Officer inquires as to whether the Board has mainstreamed the Child to the maximum extent appropriate. In other words, has the Parent demonstrated that there is an environment less restrictive than homebound placement that would be appropriate for the Child? Under present facts, the Hearing Officer finds that the Parent has failed to demonstrate that a less restrictive environment is appropriate. Significantly, the Hearing Officer notes that, in addition to the other members of the IEP team, the Child's [REDACTED] advocate agreed with the decision to change the Child's LRE to homebound. Additionally, the Parent has not provided any evidence that homebound placement is inappropriate for the Child. Instead, the Parent has requested that the Board provide the homebound services in her home, as opposed to a different location. Therefore, the Hearing Officer finds a lack of evidence to demonstrate that homebound placement is inappropriate under the second prong of the test.

As to the location for providing homebound services for the Child, the Hearing Officer finds that the Child's home is not an appropriate location for safety reasons. The necessity of the Child's homebound placement relates to [REDACTED] behavioral outbursts, which are sometimes extreme, as well as elopement tendencies, which are difficult to control. The Child's homebound teacher, [REDACTED], expressed legitimate concerns about her ability to contain and control the Child while alone in his home. *See Chris D. v. Montgomery County Bd. of Educ.*, 743 F. Supp. 1524 (M.D. Ala. 1990) (finding that the student's home was not an appropriate location where there was evidence that the school did not have personnel capable of managing an emotional and disturbed child in that location).

Indeed, there is evidence that the Child has been able to elope from [REDACTED] home, even under the supervision of the Parent. Therefore, while the Hearing Officer finds that homebound services are appropriate, it does not appear that the Child's home is the appropriate location for those services.

Additionally, the Hearing Officer finds that the Parent's concerns regarding the Sportsplex and the public library are well taken. The Parent has provided credible testimony that those locations pose safety issues for the Child. Therefore, the Hearing Officer excludes those locations.

As to the local Mental Health Office and the C.H.C.H.C., there is evidence that those locations were suggested by the District, but there appears to be an unresolved question as to whether those locations are actually available.

Therefore, the Hearing Officer orders that the IEP team reconvene and that the IEP team shall choose from the following locations for the provision of homebound services to this Child: (1) the Central Office; (2) the Alternative School; (3) the local City Police Station; or (4) the local County Courthouse. Based upon the concerns of the Parent, the Hearing Officer would suggest that preference be given to the Central Office or the Alternative School. Nevertheless, the IEP team, with the participation of the Parent, shall determine which of these four locations is most appropriate for the Child. If the Parent will not consent to any of the locations, the remainder of the IEP team is authorized to choose the appropriate location from one of these four options.

B. Motion to Compel Evaluation.

In addition to the foregoing, the District has filed a Motion with the Hearing Officer to compel an [REDACTED] evaluation of the Child based upon a decision made at an [REDACTED], 2018 IEP meeting. The Parent has refused to provide consent for the evaluation and contends that the District failed to comply with the IDEA in carrying out the [REDACTED], 2018 IEP meeting. For the reasons explained below, the Hearing Officer denies the District's Motion.

Ala. Admin. Code 290-8-9-.05(5) states in pertinent part:

- a) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including the provision of a written notification of the IEP meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place.
- d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of reasonable efforts (at least two attempts) to arrange a mutually agreed on time and place such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

Construing these provisions together, the District is required to take reasonable steps to ensure that the Parent is present and thereby afforded an opportunity to participate in IEP meetings. However, the District may proceed with an IEP meeting without the Parent if it has made at least two attempts to arrange a mutually agreed upon time and place.

In this case, it is undisputed that the District issued two meeting notices to the Parent and received no immediate response. At that point, had it done nothing else, it seems fairly clear that the District could have proceeded with the planned IEP meeting in the Parent's absence. However, that is not what transpired. Instead, although not necessarily required to do so, the District opted to send a third notice. Each notice contained an option for the Parent to request that the meeting be rescheduled. Petitioner's Exhibit "1" shows that the Petitioner checked the block which reads: "I will NOT be able to meet on the scheduled date and time, but would like to reschedule, please contact me at (and the Parent wrote "via e-mail").

██████ testified that the District received the Parent's request to reschedule the meeting but did not attempt to do so because it had already issued two meeting notices.

██████ testified that sometimes the District sends out three or four notices as to an IEP meeting and has on occasion called the Parent during the IEP meeting when the Parent did not appear. The evidence is undisputed that the District did not reschedule the meeting nor did it advise the Parent that the District was not willing to reschedule the meeting. As stated above, each public agency must take steps to ensure that one or both of the Parents of a Child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including the provision of a written notification of the IEP meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. The parent is an important member of every IEP Team. The District's requirement to work with the

Parent to find a mutually agreeable time to conduct an IEP meeting is a crucial part of the IDEA law.

The District's decision to move forward with the IEP meeting without contacting the Parent to let her know of the decision to move forward despite her request for the meeting to be rescheduled and for her to be communicated with by e-mail is troubling. The District offered no testimony as to why this meeting could not be rescheduled or why the Parent could not have been advised of her right to participate by telephone since the Parent had previously participated in an IEP meeting by telephone. This Hearing Officer notes that there was no evidence offered by the District of a history on the part of the Parent of not attending IEP meetings. The Parent had either attended in person or by telephone the last two IEP meetings. This Hearing Officer notes that the Parent did leave the [REDACTED] 2018 meeting prior to its conclusion due to being dissatisfied with the recommendation as to LRE but said action does not justify an unwillingness on the part of the District to coordinate a mutually agreeable date and time for the IEP meeting. The District provided substantial evidence of their history of working with this Parent. However, no explanation was given by the District of why they were unwilling to reschedule the meeting or communicate to the Parent their decision to move forward with the scheduled meeting. Thus, I find that the [REDACTED] 2018 IEP meeting did not fully comply with the intentions and the directives of IDEA and the Alabama Administrative Code.

Assuming arguendo that the District's had complied with requirements of IDEA and the Alabama Administrative Code in regard to the notice provisions for the [REDACTED],

2018 IEP meeting, this Hearing Officer finds that the Motion to Compel is due to be denied on other grounds.

Based upon its Motion, the District contends that the evaluation should be compelled as “related services” for the Child. In particular, the District asserts that “related services” include medical services for diagnostic and evaluation purposes. *Ala. Admin. Code* § 290-8-0.07(5). The District cites *Shelby S ex rel. Kathleen T v. Conroe Indep. Sch. Dist.*, 454 F.3d 450 (5th Cir. 2006), for the proposition that the Hearing Officer can compel a medical examination of a special education student where it was necessary for IDEA-mandated reevaluation purposes.

First, to the extent the District contends that the proposed evaluation falls into the category of “related services,” the Hearing Officer must deny the Motion. The Alabama Administrative Code provides that the District “[m]ay not use the mediation process or the due process hearing procedures in order to obtain agreement or a ruling that the **services** may be provided to the child.” *Ala. Admin. Code* § 290-8-9-.08(a)(2)(i) (Emphasis added). Stated differently, the District is not authorized to request, and the Hearing Officer cannot order, that “services” be provided over the objection of the Parent. Thus, to the extent the District seeks an order to compel a [REDACTED] examination as “related services,” the Alabama Administrative Code precludes such a request.

Alternatively, in situations where a public agency believes a “reevaluation” is necessary but the parent refuses consent to a reevaluation, the 2006 IDEA Part B regulations at 34 CFR 300.300 (c)(1)(ii) provide that the public agency may (but is not

required to) pursue the reevaluation by using the consent override procedures described in 34 C.F.R. 300.300 (a)(3). See *Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11). See also *School Dist. of the Chathams*, 66 IDELR 205 (SEA NJ 2015) (a need for information on the current educational, social, and psychological needs of a 12-year-old with OHI convinced an ALJ to allow the district to proceed with the testing as part of the triennial evaluation despite the parents' lack of consent); and *Grossmont Union High Sch. Dist.*, 115 LRP 15149 (SEA CA 03/26/15) (determining that a teen's deteriorating behavioral issues interfered with his ability to learn, an ALJ issued an order allowing the district to conduct the student's triennial evaluation without parental consent). Through the override procedure, a district need not obtain informed parental consent for a reevaluation if it can demonstrate that: (1) it made reasonable efforts (at least two attempts) to obtain consent for the reevaluation; and (2) the parents failed to respond. 34 C.F.R. 300.300 (c)(2); Ala. Admin. Code 290-8-9-.08(4)(a)(6)(i).

In this case, it is unclear whether the District is attempting to obtain a "reevaluation," because it has instead argued that the [REDACTED] examination falls under the category of "related services." Additionally, while it is undisputed that the District made at least two attempts to notify the Parent of the [REDACTED] 2018 IEP meeting, the extent to which the District has attempted to obtain consent from the Parent is unclear from the record before the Hearing Officer. The District has not submitted the actual meeting notices to the Hearing Officer, nor has it provided the details of requested examination, such as who will conduct it. Without those details, the Hearing Officer

cannot say that the Parent's refusal to consent is unreasonable, nor can the Hearing Officer find that the District has satisfied its burden to demonstrate that the examination should be ordered.

Finally, the subject of this due process hearing is a complaint filed by the Parent regarding the least restrictive environment of the Child. While the Alabama Administrative Code provides authority for the District to invoke the due process procedures when a Parent refuses to consent to a reevaluation, it is unclear to the Hearing Officer that the Board's filing of a Motion to Compel properly invokes the jurisdiction of the Hearing Officer on this issue.

For the foregoing reasons, this Hearing Officer denies the District's Motion to Compel. However, this Order should not be construed as prohibiting the District, should it choose to do so, from invoking the due process procedures relating to reevaluation. Nor should this Order be construed as prohibiting a [REDACTED] examination in the event the Parent decides to give consent.

VIII. SPECIFIC FINDINGS.

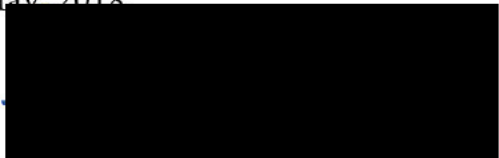
The Hearing Officer finds that Petitioner has failed to demonstrate that homebound placement is inappropriate for the Child. Regarding the location of homebound services, the IEP team shall reconvene with proper notice to the Parent and shall choose from the following options: (1) the Central Office; (2) the Alternative School; (3) the local City Police Station; or (4) the local County Courthouse.

The District's Motion to Compel a [REDACTED] examination of the Child without the consent of the Parent is hereby DENIED.

IX. NOTICE OF APPEAL RIGHTS

Any party aggrieved by the findings and decision made herein has the right to bring a civil action in the appropriate Court under 20 U.S.C. section 1415. *The Alabama Administrative Code* 290-8-9.08(9)(c)16 provides an aggrieved party shall file a notice of intent to file a civil action with all parties to the Impartial Due Process Hearing within **thirty (30) calendar days** upon receipt of the decision of the Impartial Due Process Hearing Officer. The Code further provides that a civil action in a court of competent jurisdiction must be filed within **thirty (30) calendar days** of the filing of the notice of intent to file a civil action.

DONE and ORDERED this 9th day of May, 2018.



P. Michael Cole
Hearing Officer

X. CERTIFICATE OF SERVICE

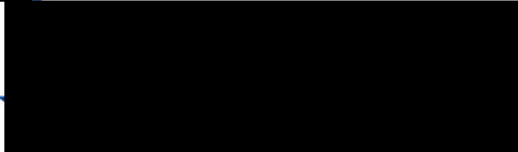
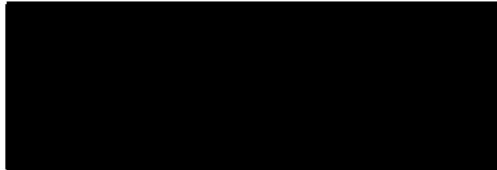
I hereby certify that a copy of this Decision has been forward to the following individuals by Certified Mail with postage prepaid and return receipt requested properly addressed as well as by electronic mail on this the 9th day of May, 2018.

1.



2.

Honorable Erika Perrone Tatum



P. Michael Cole
Due Process Hearing Office