

**BEFORE THE STATE DEPARTMENT OF EDUCATION  
OF THE STATE OF ALABAMA**

**M.A.M.,**

**PETITIONER,**

**VS.**

**SPECIAL EDUCATION CASE NO.: 22-47**

**J.C.B.O.E.,**

**RESPONDENT.**

**HEARING DECISION**

**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 March 15, 2022, the Parent filed a due process complaint asserting that the Child's classroom is in need of a third paraprofessional. The undersigned Hearing Officer was assigned by the State Superintendent to hear this matter.

The due process hearing was conducted on May 5th and 6th, 2022. The Parent represented herself *pro se*. The District was represented by Mr. Carl Johnson, Esq.

**II. EXHIBITS ADMITTED INTO EVIDENCE**

There were numerous exhibits submitted by the parties and accepted into evidence

by the Hearing Officer. These exhibits have been examined by the Hearing Officer subsequent to the Due Process Hearing in light of the testimony presented at said hearing.

The Hearing Officer placed no weight on the fact that any particular matter was offered by any party since the purpose was to get all of the appropriate documents produced for consideration by the Hearing Officer so long as they were not prejudicial to any other party participating in the Due Process Hearing based upon objection. The documents were examined and the weight given to each was based upon the contents of the document which was submitted and not on which party introduced said document. 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 list of the Exhibits is attached hereto as **Exhibit "A"** to this Decision.

**III. WITNESSES**

**A. Petitioner's Witnesses**

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]

#### IV. BURDEN OF PROOF

“The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). *See also M.A.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade Cty*, 437 F.3d 1085, 1096 n.8 (11th Cir. 2006)

The standard of proof is by a preponderance of the evidence.

#### V. STATEMENT OF THE FACTS

Following 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.

Before beginning, the Hearing Officer notes that a significant amount of the testimony offered by Petitioner during the due process hearing involved other issues, such as Petitioner’s bullying complaint, which are not before this Hearing Officer. As the Hearing Officer explained to Petitioner during the hearing, the Hearing Officer’s decision is limited to the issue of whether [REDACTED] classroom needs a third paraprofessional in order for [REDACTED] to receive a Free and Appropriate Public Education (“FAPE”). (Tr. 481). The testimony summarized below focuses on that issue, and the Hearing Officer expresses no opinion as to any other issue in this decision.

[REDACTED] is a [REDACTED]-year-old student with [REDACTED] who attends [REDACTED] (Tr. 570). [REDACTED] learns in a self-contained classroom staffed by a special education teacher and two

paraprofessionals. (Tr., p. 87, 224). There are two other self-contained classrooms, each with its own teacher and paraprofessional staff. (Tr., p. 87). In total, there are three teachers, and five or six paraprofessionals. (Tr. 94, 223). The self-contained classrooms are located near the school's administrative suite, where the school's administrative staff are located. (Tr., p. 88). Additionally, the school has one Security Resource Officer. (Tr. 88).

█ has been █ special education classroom teacher for the past three years. (Tr., p. 221-22). In the 2019-20 school year, there were 10 students and 2 paraprofessionals in █ classroom. (Tr., p. 222). In 2020-21, there were 10 students and 3 paraprofessionals in the classroom. (Tr., pp. 96, 222). One of the paraprofessionals who supported the classroom during the 2020-21 school year was released from █ employment. (Tr. 20, 103). In 2021-22, █ classroom started with 10 students, but now there are 9, and there are 2 paraprofessionals. (Tr., p. 224). █ testified that one of the paraprofessionals devotes approximately 90% of █ time to █ (Tr. 342).

In addition to the support from paraprofessional staff, █ receives weekly support from two administrators in the special education department. (Tr., p. 245). If a situation arises that requires █ attention, or requires more than one person's attention, the other special education teachers, paraprofessionals, and administrators work as team to handle it. (Tr., p. 246). If one student has a major behavioral episode, █ can send her students to another teacher's classroom, or *vice versa*. (Tr. 253). The entire special education staff works together and collaborates as a team. (Tr., p. 240). █ testified that █

classroom is adequately served by having a teacher, two paraprofessionals, and the support of the other special education staff in nearby classrooms. (Tr., p. 396).

██████ is the Director of Exceptional Education for the District. ██████ testified that the District has approximately 5,100 special education students. (Tr., p. 538). The staffing of classroom paraprofessional is a group decision that is made with input from the department specialists, the principals, administrators, and the special education teachers. (Tr., p. 536-37). The department specialists are on the front lines of the schools to see what needs exist. (Tr. 557-58). They serve as an intermediary with the school's principal and make recommendations about staffing needs. (Tr. 557-58). The specialists communicate with ██████ regarding unique situations that occur not only during the budgeting process, but as the year progresses. (Tr. 558).

Within the District, paraprofessionals are allocated to each school. (Tr. 541). Last year, there were a total of five paraprofessionals allocated between two of the self-contained classrooms at ██████ school. (Tr. 543). ██████ classroom had a third paraprofessional because one of the students who was in a wheelchair required significant paraprofessional support. (Tr. 540-42). When that student graduated last year, a decision was made based on recommendations from the school and the individual makeup of the classrooms, that the third paraprofessional was no longer needed. (Tr. 544-45). For this year, a total of four paraprofessionals were allocated between two classrooms. (Tr. 545).

██████ testified that, in her opinion, the staffing of ██████ classroom is appropriate. (Tr. 561). The teacher is well-qualified, as are the two paraprofessionals who have been allocated to the classroom. (Tr. 561). There are a total of three adults assigned to nine

students in a classroom that is located neared the administrative suite and in close proximity to the other self-contained classrooms which share a collaborate environment. (Tr. 561).

**VI. ISSUE PRESENTED**

The issue before the Hearing Officer is whether the District must provide a third paraprofessional in [REDACTED] class classroom in order for [REDACTED] to receive a FAPE.

**VII. DISCUSSION OF THE ISSUES**

When Congress enacted the IDEA, it found that “the educational needs of millions of children were not being fully met because ... the children were excluded entirely from the public school system and from being educated with their peers.” 20 U.S.C. § 1400(c)(2). To ensure that the students with disabilities receive a Free and Appropriate Public Education (“FAPE”), Congress enacted the IDEA which mandates the creation of individualized education programs (“IEPs”) for those students. *See Jefferson Cty. Bd. Of Educ. v. Bryan M.*, 706 F. App’x 510, 512 (11<sup>th</sup> Cir. 2017) citing 20 U.S.C. § 1412(a)(4). The IDEA requires school districts to include student’s parents in the IEP team, 20 U.S.C. 1414(d)(1)(B), and treat them as equal partners, *see M.A.M. ex el. C.M. v. Sch. Bd.*, 437 F.3d 1085, 1095 (11<sup>th</sup> 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). An IEP serves to “set out a plan for pursuing academic and

functional advancement.” *Id.* at 999. “Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Id.* See also *Jefferson County Bd. of Educ. v. Amanda S.*, 418 F. Supp. 3d 911, 914 (N.D. Ala. 2019). The test for determining whether a school board has provided a FAPE as called for under the IDEA includes asking “(1) whether the state actor has complied with the procedures set forth in the IDEA, and (2) whether the [individualized educational program] developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefit.” *Id.*

It is evident to this Hearing Officer that the Mother of this Child truly loves her Child and is fully committed to making sure that her Child receives each and every educational benefit that ■■■ is entitled to under the law.

In the present case, Petitioner contends that ■■■■■ classroom needs the support of a third paraprofessional. In a due process hearing, the burden of proof is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). See also *M.A.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade Cty*, 437 F.3d 1085, 1096 n.8 (11th Cir. 2006). The undersigned Hearing Officer finds that Petitioner has not met ■■■ burden to establish the requested relief. Petitioner presented no evidence at the hearing of any procedural violation of the IDEA. Further, Petitioner did not establish that ■■■■■ IEP is substantively deficient in any way. Petitioner’s complaint about the number of paraprofessionals was largely a complaint about the overall staffing of the classroom, rather than the specific educational needs of ■■■■■. Indeed, ■■■■■ individual needs appear to be well-served, and ■■■ testified that one of the paraprofessionals currently devotes approximately 90%

of her time to [REDACTED]. Although [REDACTED] classroom was previously staffed by three paraprofessionals, the evidence indicated that the third paraprofessional was primarily based upon the needs of a student who graduated last year. When that student graduated, the third paraprofessional was no longer needed.

The Hearing Officer found convincing the testimony of [REDACTED] and [REDACTED]. (the District's Director of Exceptional Education) who testified as to their opinions about the staffing of [REDACTED] classroom. Both testified that they believe [REDACTED] classroom is appropriately staffed with three adults who are serving nine students. They each testified that additional support is available, when needed, from the other nearby teachers, paraprofessional staff, and administrators. No evidence was presented suggesting that an additional paraprofessional is necessary due to [REDACTED] unique needs, or that the lack of a third paraprofessional prevents [REDACTED] from accessing any aspect of [REDACTED] curriculum or from otherwise receiving a free and appropriate public education.

#### **VIII. SPECIFIC FINDINGS**

The Hearing Officer finds that the Petitioner has not established that the District must provide a third paraprofessional in [REDACTED] classroom in order for [REDACTED] to receive a FAPE. The Hearing Officer finds that the evidence presented by Petitioner does not establish any substantive or procedural violation of the IDEA.

#### **IX. ORDER**

The Hearing Officer finds in favor of District and hereby denies Petitioner's request for relief.



**X. 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) days** of the filing of the notice of intent to file a civil action.

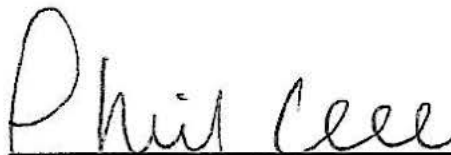
**XI. CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Decision has been forwarded to the following individuals by First Class U.S. Mail with postage prepaid as well as by electronic mail on this the 2nd day of June, 2022.

[REDACTED]

Honorable Carl E. Johnson, Jr.  
Honorable Drew Rudloff  
Bishop, Colvin, Johnson & Kent

[REDACTED]



P. Michael Cole  
Due Process Hearing Officer

**EXHIBIT "A"**

**I. Petitioner's Exhibits:**

1. Petitioner's Exhibit 1 – Admitted into evidence is a 3-ring black notebook.

**II. Respondent's Exhibits:**

1. Respondent Exhibit 1 – Was not admitted into evidence;
2. Respondent Exhibit 2 – Admitted into evidence is a document from Rooted In Nature with khaki-appointment summary;
3. Respondent Exhibit 3 – Admitted into evidence is a resume of [REDACTED]
4. Respondent Exhibit 4 – Admitted into evidence is a 3-ring white folder containing Volume 1 of Witness and Exhibit disclosure by the District;
5. Respondent Exhibit 5 – Admitted into evidence is a 3-ring white folder containing Volume 2 of the Witness and Exhibit disclosures by the District.