

ARKANSAS DEPARTMENT OF EDUCATION

Special Education Unit

[REDACTED]

PETITIONERS

VS.

NO. H-24-32

SPRINGDALE SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Springdale School District (hereinafter “District” or “Respondent”) denied [REDACTED] (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between November 16, 2023, and January 26, 2024, in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”), by: (1) failing to hold the IEP meeting at a time convenient for the parents and their advocate; (2) failing to discuss any of the parents’ listed agenda items; (3) failing to include information the parents’ wanted contained in Student’s IEP; (4) failing to give notice that the IEP team was going to discuss lessening Student’s school day; and (5) the IEP developed on January 26, 2024 contained defamatory statements.

Procedural History:

On February 1, 2024, the Arkansas Department of Education (hereinafter referred to as the “Department” or “ADE”) received a request to initiate a due process hearing from [REDACTED] (“Parents” or “Petitioners”), as the Parents of [REDACTED] (hereinafter referred to as “Student”), against the Springdale School District (hereinafter referred to as “District” or “Respondent”). Parents requested the hearing because they believed the District failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”) and the regulations set forth by the Department by not providing Student with a free appropriate public education. ¹

At the time that Parents filed their request for a due process hearing, Student was a 9-year-old girl and a student at Jim D. Rollins Elementary School within the Springdale School District. ² Student was a student with a disability under 20 U.S.C. §1401(3). Student was identified under the category of other health impairment. Student is diagnosed with ADHD, autism, impulse control disorder, sensory processing disorder with misophonia.³

In response to the Parents’ request for a Due Process hearing, the Department assigned the case to an impartial hearing officer. Thereafter, Prehearing conference was scheduled for March 4, 2024, and the Due Process Hearing set for March 6-8, 2024.⁴ On February 29, 2023, counsel for Parents filed a motion to continue stating that he had a trial in Pulaski County Circuit court set for March 6-8, 2024. This hearing officer granted a continuance, and the prehearing conference was rescheduled for March 25, 2024, and the Due Process Hearing rescheduled for March 27-29.

¹ See hearing officer File-Petitioner Complaint.

² See Hearing Officer File-Petitioner Complaint, pg. 2.

³ District Exhibits, pgs. 989, 1037.

⁴ See Hearing Officer file, Scheduling order.

The Prehearing conference was conducted via zoom on March 25, 2024.⁵ Counsel for both the Parents and the District participated in the prehearing conference. During the prehearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.⁶

Thereafter testimony was heard in this case on March 28-29, 2024.⁷

Present for the Hearing were Mr. J. Paul Coleman, attorney for the parents, Ms. Kendra Clay, attorney for the District, [REDACTED] (parent) and [REDACTED] (Parent) and Andee Ingram, director of special education.

The following witnesses testified in this matter: Isis Trautman, Thomas Hudson Dozier, II (via videoconference), [REDACTED] Jody Johnson and Andrea Ingram.⁸

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended and Arkansas Code Annotated §6-41-202 through §6-41-223, Dana McClain, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing.

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements, and both timely submitted briefs in accordance with the deadline set by this Hearing Officer.⁹

⁵ Transcript, prehearing conference.

⁶ Id.

⁷ Transcripts, Vol. I-II.

⁸ Transcripts, Vol. I-II.

⁹ See Hearing Officer File-post hearing briefs.

Findings of Fact

1. Student is a nine-year-old girl who is in the third grade at Jim D Rollins elementary School within the Springdale school District. Student receives special education and related services under the category of Other Health Impairment (OHI). Student is diagnosed with ADHD, Autism, impulse control disorder, sensory processing disorder with misophonia.¹⁰
2. On September 19, 2023, the IEP team met to discuss changing Student's placement to therapeutic day treatment (TDT), student's behaviors and accommodations and the provision of FAPE.¹¹ Some of Student's behaviors included choking, scratching, hitting, kicking and elopement. Parents and their advocate attended this meeting by zoom.¹²
3. On November 16, 2023, the IEP team, including parents, met and agreed on certain changes to Student's IEP, including adopting a Length of Day Plan and Misophonia management plan.¹³ Student's Day ended at noon, as of November 16, 2023.¹⁴ The Length of Day plan, implemented was agreed to by the parents at the November 16, 2023 IEP meeting, and would allow Student to lengthen her day after a period of good behavior and would trigger an IEP meeting to discuss shortening her day after a period of maladaptive behavior.¹⁵
4. In December, Student met the criteria for increasing her day to 1:00pm after three consecutive days of good behavior.¹⁶

¹⁰ District Exhibits, pgs. 989, 1037.

¹¹ Id., at, pgs. 861-863.

¹² Id.

¹³ Transcripts Vol. 1, pg. 45.

¹⁴ Id., at pgs. 179-180.

¹⁵ Id., at pg. 130.

¹⁶ Id., at pgs. 145-146

5. Student's annual review was due by January 11, 2024.
6. Starting on December 8, 2023, the District, Parents, and Parents' counsel began a series of emails to determine a date for Student's annual review.¹⁷
7. On January 3, 2024, District sent a notice of conference to the Parents for the annual review. The annual review was set for January 26, 2024.¹⁸
8. On January 9, 10 and 11, 2024, Tom Dozier a board-certified behavior analyst with a specialty in Misophonia, observed Student in her school environment.¹⁹ Mr. Dozier's purpose was to observe Student and her behaviors and the staff and help develop a behavior improvement plan.²⁰
9. On January 18, 2024, a proposed IEP agenda was sent out for the meeting scheduled for January 26, 2024. Parents responded that their advocate from Arkansas Support Network was unavailable that day and the meeting would need to be rescheduled. Ms. Clay, District counsel responded that they needed to proceed with the meeting on the 26th, and that ASN hadn't been involved in any meetings over the past several months and they could loop them in later if they found that to be necessary.²¹
10. On January 23, 2024, Parents emailed the IEP team, letting them know that their advocate from Arkansas Support Network was available February 15, 2024.²² Parent emailed later on January 23, 2024, that their advocate was on medical leave until March 2, 2024, but was available March 13, 2024, if that would work for the District.²³

¹⁷ District Exhibits, pgs. 1434-1462.

¹⁸ District Exhibits, pg. 1035.

¹⁹ Transcripts., Vol. 1, pg. 45.

²⁰ Id.

²¹ District Exhibits, pg. 1453.

²² Id., at pg. 1455.

²³ Id., at pg. 1456.

11. January 25, 2024, Ms. Clay responded to the Parents email and asked that the team meet on January 26, 2024 to discuss Tom Dozier's report, the behavior plan and the length of day plan. She reiterated that this will be an IEP meeting because that is the only way there can be changes made to Student's IEP based on current data and Tom Dozier's report.²⁴
12. Parent sent an email in response to Ms. Clay, stating that she wasn't available after 11 on January 26, 2024, and so the Parents would like to wait until their advocate from Arkansas Support Network (ASN) can be at the meeting on March 13, 2024.²⁵
13. On January 25, 2023, Ms. Clay sent an email stating that Student's annual review would be held on March 13, 2024, but the meeting on January 26, 2024, would allow Tom Dozier to present the misophonia plan. She reiterated that the meeting on January 26, 2024, would still be an IEP meeting but that the annual review would be held March 13, 2024.²⁶
14. On January 25, 2024, Tom Dozier, sent an email stating that he understood that the meeting scheduled for January 26, 2024, was not going to be an IEP meeting but a meeting to specifically discuss his observations and recommendations. He stated that other topics were not ripe for discussion without full attendance.²⁷ Ms. Clay responded that it needed to be an IEP meeting in order to make changes to the behavior plan and that a full IEP team would be meeting at 10:00am on January 26, 2024. Mr. Dozier responded that if the meeting on January 26, 2024, was going to be an IEP meeting he

²⁴ Id.

²⁵ Id., at 1457.

²⁶ Id., at 1458.

²⁷ Id., at 1459.

would not be participating.²⁸ There are then several emails exchanged between Mr. Dozier and Ms. Clay culminating with Ms. Clay stating that the meeting on January 26, 2024, will be an IEP meeting.²⁹

15. On January 26, 2024, at 9:06am., Mr. Coleman, attorney for the Parents sent an email stating that the parents would not be attending the meeting that was to begin at 10:00am because it was never intended to be an IEP meeting. He explained that the advocate from Arkansas Support Network was not available and that she had been court ordered to attend all IEP meetings. He went on to state that the purpose of the January 26, 2024 meeting was supposed to be to discuss Tom Dozier's report and review data collected. Because the District insisted on having an IEP meeting rather than a discussion, the Parents, Mr. Coleman and Tom Dozier would not be attending.³⁰
16. On January 26, 2024, an annual review conference was held in which the IEP duration of services was changed to reflect that the IEP would be implemented from January 26, 2024 to January 24, 2025. Additionally, student's day was shortened from 1:00pm to 12:00pm. The meeting and these changes were made without parents' participation.³¹
17. On February 1, 2024, Parents filed this due process request.

²⁸ Id.

²⁹ Id., at 1461.

³⁰ Id., at pgs. 1461-1462.

³¹ Transcripts, Vol. 1, pgs. 183-190.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. Before consideration of the Parents' claims, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Accordingly, the burden of persuasion, in this case, must rest with the Parents.

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8th Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor discrepancies in the testimony were not material to the issues to be determined and, in any event, were not deemed to be intentionally deceptive.

The weight accorded the testimony, however, is not the same as its credibility. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided, discussed as necessary below. The documentation and testimony were sometimes conflicting, although this hearing officer does not necessarily find that any one witness was intentionally untruthful, these inconsistencies did play a role in this hearing officer's decisions. In reviewing the record, the testimony of all witnesses and each admitted exhibit's content were thoroughly considered in issuing this decision, as were the parties' post hearing briefs.

Applicable Legal Principles

The IDEA requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Hendrick Hudson Central School District Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed.

Districts meet the obligation of providing FAPE to eligible students through development implementation of an IEP that is “ ‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s individual circumstance”. The U.S. Supreme Court considered the application of the *Rowley* standard, and it observed that an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The IEP must aim to enable the child to make progress. The essential function of an IEP is to set out a detailed individualized program for pursuing academic and functional advancement in all areas of unique need. *Endrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09). The *Endrew* court thus concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 1001, 197 L.Ed.2d at 352.³²

Andrew, Rowley, and the IDEA make abundantly clear, the IEP must be responsive to the child's identified educational needs. See 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, a school district is not required to provide the "best" program, but rather one that is appropriate in light of a child's unique circumstances. *Andrew F.* In addition, an IEP must be judged "as of the time it is offered to the student, and not at some later date." *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child's "IEP Team," which includes teachers, school officials, the local education agency (LEA) representative and the child's parents. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement of the special education and related services to be provided to the child." *Id.* § 1414(d)(1)(A)(i). A free appropriate public education (FAPE), as the IDEA defines it, includes individualized goals, "specially-designed instruction" and "related services." *Id.* § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. *Id.* §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services "in conformity with the [child's] individualized education program," or "IEP." 20 U.S.C. § 1401(9)(D).

When formulating an IEP, a school district "must comply both procedurally and substantively with the IDEA." *Rowley*, at 206-07 A procedural violation occurs when a district fails to abide by the IDEA's safeguard requirements. A procedural violation constitutes a denial of a FAPE where it "results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010). A substantive violation occurs when an IEP is not "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," *Andrew F.* The IDEA further provides that if a parent refuses to consent to the receipt of special education and related services, or fails to respond to a request to provide such consent, "the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency request such consent." 20 U.S.C. §1414(a)(1)(D)(ii)(III)(aa). Although a parent always retains the right to withhold consent, after consent is withheld, the school district cannot be held liable for denying a FAPE. Additionally, when parents waive their children's rights to services, school districts may not override their wishes. *Fitzgerald ex rel. S.F. v. Camdenton R-II School District*, 439 F.3d 773 (8th Cir. 2006); *Schoenfeld v. Parkway School District*, 138 F.3d 379 (8th Cir. 1998).

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412(a); 34 C.F.R. §300.300(a). In 1982, in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by courts and hearing officers in determining whether a school district has failed to provide FAPE as

required by federal law. 458 U.S. 176, 206-07 (1982). Pursuant to Rowley, the first inquiry that a court or hearing officer must make is that of whether the State, i.e. local educational agency or district, has complied with the procedures set forth in the IDEA. Thereafter, it must be determined whether the IEP(s) developed pursuant to IDEA procedures was reasonably calculated to enable the student to make appropriate progress in light of his specific circumstances. *Andrew F.*

PROCEDURAL VIOLATION OF IDEA

Regarding the first inquiry, that of whether the District complied with the procedures set forth in the IDEA, this hearing officer notes that Parents allege that District violated the procedures set forth in IDEA by (1) failing to hold the January 26, 2024 IEP meeting at a time convenient for the parents and their advocate; (2) failing to discuss any of parents listed agenda items; (3) failing to include information parent's wanted contained in Student's IEP; and (4) failing to give notice that the IEP team was going to discuss lessening Student's school day.

The IDEA codifies the goal that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d). In addition, the IDEA mandates that participating states extend various procedural protections and administrative safeguards to disabled children, parents, teachers, school officials, and educational institutions. 20 U.S.C. § 1415. For example, under the IDEA, parents are entitled to notice of proposed changes in their child's educational program and, where disagreements arise, to an "impartial due process hearing." *Id.* § 1415(b)(2) & (f). Once the available avenues of administrative review have been exhausted, aggrieved parties may file a civil action in state or federal court. *Id.* § 1415(i)(2)

The IDEA includes a number of procedural safeguards "that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Honig v. Doe*, 484 U.S. 305, 311-12, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988). One of those safeguards is the "stay-put" provision; during the pendency of mediation, a due process hearing, or judicial review, "the child shall remain in the then current educational placement" unless the parent and school officials agree to an interim or permanent change. 20 U.S.C. § 1415(j). *M.M. v. Special School Dist.*, 512 F.3d 455, 463 (8th Cir. 2008), *Light v. Parkway C-2 School Dist.*, 41 F.3d 1223, 1227-28, (8th Cir. 1994).

IDEA sets forth a long list of "procedural safeguards" that each participating state must establish and maintain to ensure a FAPE is provided to its students. See generally 20 U.S.C. 1415; see also *Rowley*, 458 U.S. at 205 ("When the elaborate and highly specific procedural safeguards embodied in 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in IDEA, we think that the importance Congress attached to these procedural safeguards cannot be gain said.:). Even if a school district violated IDEA procedures, it does not automatically follow that the school district has denied the child a FAPE. *K.E. v. Indep. Sch. Dist. 15*, 647 F.3d 795, 804 (8th Cir. 2011). Rather, a school district's educational plan for a given student will only be set aside for IDEA procedural violations "if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process or caused a deprivation of educational benefit." *Id.* At 804-805.

A. Did the District fail to hold the January 26, 2024 IEP meeting at a time convenient for the parents and their advocate.

34 C.F.R. §300.322 Parent participation states:

(a) Public agency responsibility general. 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 Team meeting or are afforded the opportunity to participate, including— (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) Information provided to parents. (1) The notice required under paragraph (a)(1) of this section must (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must— (i) Indicate— (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and (B) That the agency will invite the student; and (ii) Identify any other agency that will be invited to send a representative. (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation). (d) Conducting an IEP Team meeting without a parent in attendance. 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 its attempts to arrange a mutually agreed on time and place, such as; (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i) §300.323).

It should be noted, however, that by requiring parental participation, the IDEA in no way requires a school district to accede to parents' demands without considering suitable alternatives. A district does not procedurally violate the IDEA simply by failing to grant a parent's request.

Here, there are detailed emails between the District's counsel Ms. Clay, Mr. Coleman, parents' counsel, and the parents beginning as early as December 8, 2023, attempting to set up an annual review conference.³³ Several dates for possible meetings were discussed and in good faith the District believed that January 18, 2024 would work for everyone and sent out a notice of conference with the required information contained therein. On December 18, 2023, Parent sent an email stating that "the date and time was never discussed with parents prior to setting this meeting and sending notices. We have another appt during that time so it will need to be

³³ Student's IEP was set to expire on January 11, 2024.

scheduled for a time we are available after we address items still on agenda from past meetings first. Thanks”.³⁴ While the parent is correct that the District did not send dates directly to them, the District was corresponding with Parents’ counsel and because Parents’ counsel did not state that the parents were not available to meet on January 18, 2024, the District believed that date would work for everyone and sent out the notice of conference. Once the Parents notified the District they would not be available on January 18, 2024 another round of emails were exchanged and January 26, 2024 was agreed to as the date for the annual review. It is important to note that also during this time the District agreed to contract with Tom Dozier, board certified behavior analyst with a specialty in Misophonia, to observe Student in her school environment, and help develop a behavior improvement plan. On January 18, 2024, the District sent an email with the proposed agenda for the January 26, 2024, annual review IEP meeting.³⁵ Parents then responded that their advocate from Arkansas Support Network was unable to attend the meeting on January 26, 2024, but she would check to see when the advocate was available.³⁶ Ms. Clay, District counsel, responded with the following:

“Good morning! We need to proceed with the meeting on the 26th. ASN has not been involved in any meetings over the past couple of months. We can loop them in at a later date, if necessary. The draft IEP will be going home today. Please keep in mind that this is just a draft and can be changed. Thanks, and I’ll see everyone that can make it on Friday at 11.”³⁷

On January 23, 2024, parents sent an email stating that their advocate from ASN was on medical leave and would not be available until after March 2, 2024. On January 24, 2023, parent

³⁴ District Exhibits, pg. 1441.

³⁵ District Exhibits, pg. 1453.

³⁶ Id.

³⁷ Id., at pgs. 1454-1455.

sent an email stating that their advocate would be available on March 13, 2024, for the IEP review and then asked if they could use the meeting that had been scheduled for January 26, 2024 to go over Tom Dozier's plan.³⁸

Ms. Clay responded stating that they would use the January 26th meeting to discuss Tom Dozier's report, the behavior plan and the length of day plan and that they could complete the remaining items on March 13 from 9-11:30.³⁹

Parent then responded that she is not available at 11 on January 26, 2024 and that they would just wait until parents and their advocate could be present on March 13, 2024. Ms. Clay responded that even though 11 had been the agreed upon time they could make 10 work. Also on January 25, 2024, there were further emails exchanged and Ms. Clay made it clear that:

“the annual review will be March 13. Tomorrow's meeting at 10:00 is in response to your request as follows: Also since you kept the 26th on hold, can we use 10-11am, that day to allow Tom to present the plan to the school staff and us since we had a snow day on his final day and it won't require the whole team.

No changes to the behavior plan can be made outside the context of an IEP meeting, so it will have to be an IEP meeting, but the annual review will be March 13, also at your request.”⁴⁰

From both the testimony and the emails there seemed to be some confusion for Mr. Dozier on the fact that the January 26, 2024, meeting was an IEP meeting. Mr. Dozier did not

³⁸ Id., 1456.

³⁹ Id., 1456.

⁴⁰ Id., 1458.

want it to be an IEP meeting and on January 25, 2024, at 3:10pm, Mr. Dozier sent an email stating he would not participate if the January 26, 2024, meeting was an IEP meeting.⁴¹

On January 26, 2024, at 9:06 am, 54 minutes before the January 26, 2024 previously scheduled IEP meeting was to begin, counsel for the Parents emails the team explaining that the Parents will not be attending the meeting because the meeting was not intended to be an IEP meeting.⁴²

The fact that the parents decided not to attend the January 26, 2024, IEP meeting is not the District's fault. The record shows that the District changed the proposed date for Student's annual review at least twice to accommodate the Parents and their advocate, and when the Parents notified the District that their advocate wouldn't be available until March, the District agreed to moving the annual review to March 13, 2024 and agreed the January 26, 2024 IEP meeting would be to address only Tom Dozier's report, the behavior plan and the length of day plan. However, some 54 minutes prior to the start of the January 26, 2024, IEP meeting counsel for Parents notified the team they would not be attending. Where a parent has "truncated [her] own procedural right to contribute to the development of [a child's] IEP," a school district "cannot be faulted for failing to engage in an open discussion." *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795; *Blackmon v. Springfield R-XII sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999). The record is clear in this case that it was Parents, not the District who refused to participate in the IEP process, and thus any failure of parents participating in the IEP process, the district failing to discuss any of parents listed agenda items, or failing to include information parents wanted

⁴¹ Id., At 1459.

⁴² Id., at 1461.

contained in Student's IEP, belongs with Parents and Parents alone for not participating in the IEP meeting on January 26, 2024.

B. Did the District fail to give notice that the IEP team was going to discuss lessening Student's School Day at the January 26, 2024 IEP meeting?

Parents allege that the District did not provide the appropriate notice that the IEP team was going to discuss lessening Student's school day at the January 26, 2024, IEP meeting. This hearing officer disagrees. The evidence shows that the notice of conference sent out on January 3, 2024, for the January 26, 2024, IEP meeting states the purpose of the meeting is to review/revise the IEP, it doesn't specifically state that the team would be discussing Student's length of day. However, on January 18, 2024, an agenda was emailed to the team, including the Parents, and that agenda included discussion about Student's length of day plan.⁴³ Additionally, Ms. Clay sent an email on January 25, 2024, stating that they would be discussing "Tom's report, the behavior plan and length of day plan".⁴⁴ This hearing officer finds that the Parents received appropriate notice that the team would be discussing Student's length of day plan at the January 26, 2024 IEP meeting. As discussed *supra*, the Parents chose not to attend and participate in the January 26, 2024, IEP meeting.

Conclusion.

Having considered Parent's allegations of procedural due process violations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that District did not procedurally violate the IDEA by (1) failing to hold the January 26, 2024 IEP meeting at a

⁴³ District Exhibits, pg. 1453-1454

⁴⁴ *Id.*, at. 1456.

time convenient for the parents and their advocate; (2) failing to discuss any of parents' listed agenda items; (3) failing to include information parents wanted contained in Student's IEP; and (4) failing to give notice that the IEP team was going to discuss lessening Student's school day.

SUBSTANTIVE VIOLATIONS OF IDEA

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District did not commit procedural violations under IDEA, it follows this hearing officer does not find any substantive violations of IDEA regarding the Parent's allegations that the district denied Student a FAPE by; (1) failing to hold the January 26, 2024 IEP meeting at a time convenient for the parents and their advocate; (2) failing to discuss any of parent's listed agenda items; (3) failing to include information parents wanted contained in Student's IEP; and (4) failing to give notice that the IEP team was going to discuss lessening Student's school day. Further, the Parents do not allege any other substantive violations of IDEA in their due process complaint.

Defamation

Parents allege that the IEP developed on January 26, 2024, contained defamatory statements. This hearing officer's authority only extends to claims under IDEA. Defamation is not an action under IDEA, therefore, Parents claim that the District defamed them in the January 26, 2024 IEP is dismissed.

Conclusion and Order

The results of the testimony and evidence warrant a finding for the District. Specifically, Parents failed to introduce sufficient evidence in the record to establish by preponderance of the

evidence that the District denied Student a FAPE between November 16, 2023 and January 26, 2024.

If Parent also alleges that the District's conduct constitutes disability discrimination in Violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a), and Title II of the Americans with Disabilities Act, 42 U.S.C. §12131-12165. This Hearing Officer has no jurisdiction over disability discrimination claims. See ADE Spec. Ed. Rules §10.01.22.1. Accordingly, to the extent Parent's due process complaints raise disability discrimination claims, those claims are dismissed.

Finality of Order and Right to Appeal:

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

IT IS SO ORDERED.

Dana McClain
HEARING OFFICER

5/12/2024
DATE