

**ARKANSAS DEPARTMENT OF EDUCATION  
Special Education Unit**

**IN RE:**

**XXXXXXXXX**, Parent on behalf of  
**XXXXXX**, Student

**PETITIONER**

VS.

**CASE NO. H-19-20**

**WHITE HALL SCHOOL DISTRICT**

**RESPONDENT**

**HEARING OFFICER’S FINAL DECISION AND ORDER**

**ISSUES PRESENTED:**

Whether the White Hall School District (hereinafter “District” or “Respondent”) denied XXXXXX (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”) between February 19, 2017 and February 19, 2019, in violation of certain procedural and substantive requirements of the Individuals with Disabilities in Education Act of 2004, 20 U.S.C. §§ 1400-1485, as amended (hereinafter “IDEA”), by failing to timely identify Student as eligible for special education programming, failing to consider an evaluation provided by Parents, failing to conduct appropriate and timely evaluations, and failing to develop and implement an appropriate IEP.<sup>1</sup>

**PROCEDURAL HISTORY:**

On February 19, 2019, the Arkansas Department of Education (hereinafter “Department”) received a written request from Parents, through counsel, to initiate due process hearing procedures on behalf of Student. Based on Parents’ complaint, Parents

---

<sup>1</sup> See Due Process Complaint and Parent’s Post-Hearing Brief.

requested a due process hearing because they believed that District failed to comply with the IDEA by failing to timely evaluate student, failing to consider a parent-initiated evaluation, and failing to develop and implement an appropriate IEP.<sup>2</sup>

In response to Parent's request for hearing, the Department assigned the case to an impartial hearing officer. Thereafter, the date of March 26, 2019 was set as the date on which a hearing would commence if the Parent and District failed to reach resolution prior to that time.<sup>3</sup> On March 19, 2019, a prehearing conference regarding this matter was conducted, via telephone. Counsel for both parties participated in the hearing. During the prehearing conference, the parties discussed unresolved issues to be litigated at the hearing of this matter, as well as the witnesses and evidence necessary to address same.

On March 26, 2019, the closed hearing of this matter commenced. Testimony was heard on March 26, 2019, March 27, 2019, March 28, 2019, after which the hearing was continued to April 2, 2019, and April 3, 2019.<sup>4</sup> All testimony was heard in person at the White Hall School District's Administration Building. The hearing concluded on April 3, 2019.

The following witnesses testified in this matter: Parents (mother and father), Amy Allen, Meredith Bailey, Tammie Canada, Gail Echols, Sheryl Hahn, Christy Johnson, Betty Lacy, Lisa Morris, Cindy Spadoni, Shari Taylor, and Vonda Taylor.<sup>5</sup> Parent had the burden of proof regarding the issues raised in this case.

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-

---

<sup>2</sup> See Due Process Complaint.

<sup>3</sup> See Hrg. Tr., Vol. I.

<sup>4</sup> See Hrg Tr., Vols. I-V.

<sup>5</sup> *Id.*

223, Danna J. Young, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. Parent was represented by Theresa L. Caldwell (Little Rock, Arkansas) and the District was represented by Cody Kees (Little Rock, Arkansas).

Both parties were offered the opportunity to provide post-hearing briefs. Counsel for both parties timely submitted a brief for consideration by this Hearing Officer.

**FINDINGS OF FACT:**

Student is a ten-year-old female (DOB 08/12/2008) who is enrolled in the White Hall School District. Between February 19, 2017 and February 19, 2019, the time period statutorily covered in this action, Student was enrolled in two different elementary schools in the District, specifically Taylor and Gandy.<sup>6</sup> Student, as of the date of this decision, is in the fourth grade.

**Student's Diagnoses and Related Observations**

Student was diagnosed in April 2017, during her second grade year, with autism spectrum disorder (ASD), major depressive disorder, specific learning disorder with impairments in reading, specifically dyslexia, and specific learning disorder with impairment in written expression.<sup>7</sup> These diagnoses resulted from a school neuropsychological evaluation that was sought by Parents and conducted by Dr. Katherine Green Pope, Ph.D.<sup>8</sup> Dr. Pope noted during her evaluation that Student's attention waned at times, and that Student exhibited behaviors such as hand flapping, twirling, and walking on tip toes during the evaluation period.<sup>9</sup> Dr. Pope also documented that Student exhibited emotional distress

---

<sup>6</sup> Ex. Vol. I, Parent Ex., pp. 2, 53.

<sup>7</sup> Ex. Vol. I, Parent Ex., pp. 68-89.

<sup>8</sup> Ex. Vol. I, Parent Ex., p. 68.

<sup>9</sup> Ex. Vol. I, Parent Ex., p. 73.

when plans were changed, specifically documenting an incident in which Student became emotionally distressed when she had to return from lunch without receiving an anticipated dessert.<sup>10</sup> Dr. Pope noted that it took student approximately twenty-five (25) minutes to calm down as a result of this incident.<sup>11</sup> Pursuant to Dr. Pope's report, although Student does not present with typical autism symptoms, her difficulties with sensory issues, focus on specific and fixed interests, social difficulties, early language deficits with continued social pragmatics difficulties, and trouble regulating mood and related behaviors indicated that Student is on the autism spectrum.<sup>12</sup>

**Meetings, Conferences, and Related Events During Statutory Time Period**

Parents requested a special education referral for Student on October 26, 2015, Student's first grade year, based on concerns that Student's first nine weeks grades were low.<sup>13</sup> Parents' referral letter indicated that Parents wanted a conference to discuss potential issues regarding Student, and that Parents gave District permission to evaluate Student.<sup>14</sup> On November 5, 2015, District administered a STAR reading test to Student to determine her reading level. The report indicated that Student was reading at the grade equivalent of 1.1 (first grade, first month).<sup>15</sup> As a result, Student was not offered services because she was determined by District to be on grade level.<sup>16</sup>

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Ex. Vol. III, District Ex., p. 72. It is noted that any actions taken prior to February 2017 are outside of the statute of limitations in this matter; however, certain events falling outside of the statutory period have utility in providing background information regarding Student.

<sup>14</sup> *Id.*

<sup>15</sup> Ex. Vol. III, District Ex., p. 7.

<sup>16</sup> Tr. Vol. V, p. 242.

Nearly one year later, when Student entered second grade, she was administered a STAR reading test that indicated that she was reading at the grade equivalent of 1.3 (first grade, third month).<sup>17</sup> Subsequently, on October 19, 2016 Student was administered another STAR reading test that indicated she was still reading below grade level, specifically at a grade equivalent of 1.9 (first grade, ninth month). As a result, on December 4, 2016, a dyslexia screener was administered to Student.<sup>18</sup> On December 7, 2016, District obtained Parents' consent for same.<sup>19</sup> The dyslexia screener revealed that Student was below average with regard to reading and that she qualified for Title I services.<sup>20</sup>

Approximately one month later, on January 5, 2017, Student was referred by her teacher to be fully evaluated for special education services.<sup>21</sup> The referral notice stated that Student had below average performance in the areas of reading and spelling, and provided assessment information in support of the referral.<sup>22</sup> Among the assessments provided was a DRA Level, with indication that Student's level was 10, as opposed to 16, which was the expected score for Student's age and grade.<sup>23</sup> A notice of conference dated January 5, 2017 was sent to Parents, indicating that a conference would be held on January 24, 2017.<sup>24</sup> The record contains a referral conference decision dated January 24, 2017 indicating that no evaluation was needed.<sup>25</sup> Parent was told by District that a qualified interventionist would

---

<sup>17</sup> Ex. Vol. III, District Ex., p. 15.

<sup>18</sup> Ex. Vol. III, District Ex., p. 4.

<sup>19</sup> Ex. Vol. III, District Ex., p. 3. It is unclear why consent was obtained after the dyslexia screener was administered; however, it is undisputed the Parents wanted Student to be screened and this is not being alleged by Parents as a procedural violation pursuant to the IDEA.

<sup>20</sup> Ex. Vol. III, District Ex., pp.3-6.

<sup>21</sup> Ex. Vol. III, District Ex., p. 604.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Ex. Vol. III, District Ex., p. 605.

<sup>25</sup> Ex. Vol. III, District Ex., p. 609.

come to District and work on the Barton program with Student, so Parent agreed to forego special education evaluation at that time.<sup>26</sup>

Following the January 2017 referral conference and meeting, Student continued receiving Title I services for dyslexia.<sup>27</sup> This service was not addressed on an Individualized Education Plan (IEP) and there were no stated goals or methods to measure progress of Student. Parents were provided little to no information regarding Student's dyslexia instruction or the results of same.<sup>28</sup>

On March 29, 2017, Parents hired Dr. Pope to conduct a school neuropsychological evaluation of Student.<sup>29</sup> Pursuant to her April 24, 2017 report, Dr. Pope diagnosed Student with autism spectrum disorder, major depressive disorder, Specific learning disorder with impairments in reading, specifically dyslexia, and specific learning disorder with impairment in written expression.<sup>30</sup>

On August 14, 2017, at the beginning of Student's third grade year (2017-2018 school year), Parents submitted a letter requesting, once again, that a meeting be held to discuss special education evaluation of Student. Parents included the evaluation that they had secured from Dr. Pope.<sup>31</sup> In response, District sent Parents a notice of conference dated August 15, 2017, which specified that a referral meeting would occur on August 30, 2017.<sup>32</sup> On August 30, 2017, a referral conference was held at District.<sup>33</sup> A notice of action form dated

---

<sup>26</sup> Tr. Vol. V., p. 246.

<sup>27</sup> Ex. Vol. III, District Ex., p. 45.

<sup>28</sup> Tr. Vol. V, pp. 247-48.

<sup>29</sup> Ex. Vol. III, District Ex., pp. 193-204.

<sup>30</sup> *Id.*

<sup>31</sup> Ex. Vol. III, District Ex., p. 269.

<sup>32</sup> Ex. Vol. III, District Ex., p. 615.

<sup>33</sup> Ex. Vol. III, District Ex., p. 620-21.

August 30, 2017 indicated that a “[d]ecision was made not to move forward with referral.”<sup>34</sup> District did not accept Dr. Pope’s evaluation. The notice further stated that Parents wanted to assist Student with 504 accommodations.<sup>35</sup> Parent signed the notice of action.<sup>36</sup>

On or about September 8, 2017, Parents contacted District and requested that Student be evaluated by a speech pathologist.<sup>37</sup> On this same date, a 504 conference was convened, and Parents consented to Student receiving 504 accommodations.<sup>38</sup> Student’s 504 plan included the following services and accommodations: (1) use of magnetic letters during spelling tests, in addition to written words; (2) use of modified grading on spelling so that spelling errors were not counted incorrect; (3) reduce number of spelling words; (4) provide copies of charts and board/overhead work; (5) use orange overlays for classwork; (6) use orange highlighter instead of yellow; (6) use colored paper when assignment requires Student to write responses; (7) use one-sided copies only; (8) eliminate time limits on multiplication table tests; (9) reduce assignments as needed for other subjects; and (10) experiment to find a computer background color that is helpful in viewing the screen.<sup>39</sup> The purpose of these accommodations was to reduce Student’s anxiety related to making poor grades.<sup>40</sup>

---

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Ex. Vol. III, p. 595.

<sup>38</sup> Ex. Vol. III, pp. 173-74, 179. This Hearing Officer has no jurisdiction to consider and decide Section 504 issues. The information regarding Student’s 504 plan is provided in this case for the purpose of documenting efforts by District and determining whether District should have identified Student for IDEA services prior to the date that it created an IEP for student.

<sup>39</sup> Ex. Vol. III, District Ex., pp. 183-84.

<sup>40</sup> Ex. Vol. I, Parent Ex., p. 99.

Approximately one week later, on September 17, 2017, Parents made another referral request for special education services, this time specifically asking that Student be evaluated for speech and language deficits.<sup>41</sup> A notice of conference was sent to Parents on September 22, 2017, and, thereafter, a referral conference was held on October 6, 2017. Documentation indicates that Parents decided at this meeting to continue with 504 accommodations and forego special education evaluation.<sup>42</sup> However, eleven days later, on October 17, 2017, Parents' attorney contacted District and, once again, requested a special education evaluation. A referral conference was held on October 30, 2017, during which the committee decided to conduct a comprehensive evaluation to determine whether Student needed special education services.<sup>43</sup> This evaluation was also to include evaluations to determine if occupational and physical therapy were needed.<sup>44</sup> On this same date, District held a 504 conference with Parents to address current accommodations.<sup>45</sup>

On October 30, 2017, District conducted a social history on Student.<sup>46</sup> On November 2, 2017, District administered hearing and vision screeners.<sup>47</sup> On November 13, 2017, Student was evaluated for occupational therapy needs.<sup>48</sup> On December 7, 2017, District held a 504 meeting and occupational therapy services were added to Student's plan.<sup>49</sup>

---

<sup>41</sup> Ex. Vol. III, District Ex., p. 599.

<sup>42</sup> *Id.*

<sup>43</sup> Ex. Vol. I, Parent Ex., p111.

<sup>44</sup> Ex. Vol. III, District Ex., p. 1111.

<sup>45</sup> Ex. Vol. III, District Ex., pp. 467-68.

<sup>46</sup> Ex. Vol. I, Parent Ex., p. 113.

<sup>47</sup> Ex. Vol. I, Parent Ex., p. 168.

<sup>48</sup> Ex. Vol. III, District Ex., pp. 306-12

<sup>49</sup> Ex. Vol. III, District Ex., p. 249.

On December 22, 2017, a psycho-educational evaluation was completed for Student.<sup>50</sup> Student was diagnosed with a specific learning disability in the areas of written expression-spelling.<sup>51</sup> On January 29, 2018, District held a meeting to discuss Student's initial placement for special education services. The record contains an incomplete Individualized Education Program (IEP) with no duration of services listed.<sup>52</sup> The notice of action stated that "programming and placement were deferred" for additional testing.<sup>53</sup> Specifically, District deferred programming and placement because it required an Autism Diagnostic Observation Scale (ADOS) and a Childhood Autism Rating System (CARS), which, in their opinion, had not been performed.<sup>54</sup> On March 13, 2018, a CARS was conducted. On February 5, 2018, District referred Student to Centralized Intake and Referral/Consultant Unified Intervention Team (CIRCUIT) for an ADOS evaluation.<sup>55</sup>

On February 26, 2018, Parents requested a meeting to discuss the status of Student's initial evaluation, programming and placement.<sup>56</sup> On March 14, 2018, District held an IEP meeting to "determine initial or continued eligibility for special education and related services."<sup>57</sup> At this meeting, Student was found eligible for special education and related services under the category of specific learning disability, specifically deficits in written expression – spelling.<sup>58</sup> District adopted an IEP that provided indirect services to Student. Occupational therapy services were noted, but there was no specification of frequency,

---

<sup>50</sup> Ex. Vol. IV, District Ex., pp. 1034-49.

<sup>51</sup> *Id.*

<sup>52</sup> Ex. Vol. IV, District Ex., pp. 1054-60.

<sup>53</sup> Ex. Vol. IV, District Ex., pp. 1061-62.

<sup>54</sup> *Id.*

<sup>55</sup> Ex. Vol. I, Parent Ex., p. 138.

<sup>56</sup> Ex. Vol. I, Parent Ex., p. 155.

<sup>57</sup> Ex. Vol. IV, District Ex., pp. 1373, 1375.

<sup>58</sup> Ex. Vol. IV, District Ex., p. 1377.

location, or duration of these services.<sup>59</sup> The IEP contained a single goal for the area of English language arts.<sup>60</sup> There is no evidence to suggest that this goal was implemented.

On April 9, 2018, a notice of conference was sent to Parents, scheduling an annual review for April 19, 2018.<sup>61</sup> On April 19, 2018, District obtained Parents' consent to evaluations required to assess Student's eligibility for services under the disability category of autism.<sup>62</sup> Approximately one week later, on April 25, 2018, District held an IEP meeting to review and revise Student's IEP, and also to conduct an annual review.<sup>63</sup> The revised IEP had a duration of services from August 13, 2018 to May 23, 2019. No substantive changes were made to Student's IEP for the upcoming 2018-2019 school year.<sup>64</sup> The autism evaluations for which District obtained consent had not yet been completed by the date of this meeting. There is no evidence that Student's classroom grades, standardized test scores, or annual goals, including progress toward same, were discussed at this annual review.<sup>65</sup>

On May 31, 2018, District conducted a speech evaluation and, based on findings, did not recommend speech services.<sup>66</sup> Subsequently, pursuant to a report dated June 30, 2018, an ADOS was conducted.<sup>67</sup> The ADOS was conducted as part of a full evaluation conducted by a BCBA, a speech/language pathologist, and a behavior support specialist as a result of the state CIRCUIT referral.<sup>68</sup> The June 30, 2018 evaluation recommended speech services,

---

<sup>59</sup> Ex. Vol. I, Parent Ex., p. 147.

<sup>60</sup> Ex. Vol. IV, District Ex., p. 1398.

<sup>61</sup> Ex. Vol. IV, District Ex., p. 1002.

<sup>62</sup> Ex. Vol. IV, District Ex., p. 1423.

<sup>63</sup> Ex. Vol. IV, District Ex., p. 985.

<sup>64</sup> Ex. Vol. III, Parent Ex., p. 159.

<sup>65</sup> *Id.*

<sup>66</sup> Ex. Vol. IV, District Ex., pp. 857-64.

<sup>67</sup> Ex. Vol. IV, District Ex., p. 749.

<sup>68</sup> Ex. Vol. IV, District Ex., pp. 749-70.

despite the findings in the District's May 31, 2018 speech evaluation, because the initial evaluation failed to evaluate Student for pragmatic language deficits. The June 30, 2018 evaluation also noted a recommendation, in bold letters, that Student undergo a mental health evaluation.<sup>69</sup> The report noted concerning behaviors, specifically Student rubbing her head to the point that she created a bald spot, as well as Student's statements that she had suicidal thoughts.<sup>70</sup>

On July 30, 2018, a notice of conference was sent to Parents, scheduling a meeting for August 9, 2018 to determine initial or continued eligibility for special education and related services.<sup>71</sup> Student, based on recommendations in the June 30, 2018 comprehensive evaluation, was transferred from Taylor Elementary to Gandy Elementary.<sup>72</sup> On August 9, 2018, District made the decision, based on the June 30, 2018 comprehensive evaluation of Student, that Student needed speech therapy services to address pragmatic and social skills.<sup>73</sup> Also, Student's category of eligibility for services pursuant to the IDEA was changed to autism. District did not schedule a mental health evaluation for Student. Parents eventually filed a state complaint with the Arkansas Department of Education, complaining that District refused to conduct a mental health evaluation pertaining to Student.<sup>74</sup> On October 4, 2018, a mental health evaluation was conducted for Student.<sup>75</sup> This evaluation was requested by District in response to Parents' state complaint regarding same.

---

<sup>69</sup> Ex. Vol. I, Parent Ex., p. 190.

<sup>70</sup> *Id.*

<sup>71</sup> Ex. Vol. IV, District Ex., pp. 832-33.

<sup>72</sup> Ex. Vol. I, Parent Ex., p. 49.

<sup>73</sup> Ex. Vol. IV, District Ex., p. 840.

<sup>74</sup> Ex. Vol. I, Parent Ex., pp. 45-46.

<sup>75</sup> Ex. Vol. II, Parent Ex., pp. 279-82.

On December 17, 2018 and January 24, 2019, District held IEP meetings for the purpose of discussing the addition of mental health services to Student's IEP. No change was made to incorporate the results of the October 4, 2018 mental health evaluation.

**Evaluations and Other Information Considered in Determining IDEA Eligibility**

Between February 19, 2017 and January 29, 2018, the date Student was placed on an initial IEP, there were several completed evaluations for consideration by District. As referenced previously, Dr. Pope completed a school neuropsychological evaluation of student on March 1, 2017, March 8, 2017, and March 29, 2017, and issued a report dated April 24, 2017.<sup>76</sup> Dr. Pope administered several tests to Student as part of this evaluation, including: (1) Neuropsychological Processing Concerns Checklist for School-Aged Children and Youth – Third Edition (NPCC-3); (2) Autism Diagnostic Observation Schedule (ADOS-2); (3) Childhood Autism Rating Scale, Second Edition (CARS-2); (4) Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V); (4) Wechsler Individual Achievement Test – Third Edition (WIAT-III); (5) Wide Range Assessment of Memory and Learning – Second Edition (WRAML-2); (6) Test of Word Reading Efficiency – Second Edition (TOWRE-2); Comprehensive Test of Phonological Processing – Second Edition (CTOPP-2); (7) Woodcock Reading Mastery Tests – Third Edition (WRMT-III); (8) Delis-Kaplan Executive Function System (D-KEFS); (9) NEPSY-II; (10) Beery-Buktenica Developmental Test of Visual-Motor Integration – Sixth Edition (Beery VMI); (11) Behavior Assessment System for Children – Third Edition (BASC-3); (12) Conner's 3 – Teacher; and (13) Children's Depression Inventory (CDI), parent and self.<sup>77</sup>

---

<sup>76</sup> Ex. Vol. I, Parent Ex., pp. 68-89.

<sup>77</sup> *Id.*

Results of Dr. Pope's evaluation indicated that Student's was of average intelligence; however, her academic achievement testing showed variable performance.<sup>78</sup> Student's reading scores were lower than expected, but math was in the average range. Student's reading accuracy was determined to be considerably lower than her oral reading rate, falling within the below average range.<sup>79</sup> Her listening comprehension scores were below expectations as well. Regarding spelling, Student's scores fell in the low average range and Student was ranked at the 8<sup>th</sup> percentile. Regarding phonological awareness, Student performed well below expectations, with performance ranging from poor to very poor.<sup>80</sup> Student's performance in the area of phonological memory was also lower than expected, with a below average performance.<sup>81</sup> Student demonstrated below expected language processing abilities and exhibited below average scores on visual deductive reasoning.<sup>82</sup> Behaviorally, it was noted that Student demonstrated evidence of difficulties with communication and reciprocal social interaction, and that she demonstrated some restricted and repetitive behaviors. Her speech was idiosyncratic, and her gesturing was infrequent and sometimes unusual.<sup>83</sup> Student engaged in hand flapping on occasion and had less eye conduct than expected.<sup>84</sup> Dr. Pope also noted that behavioral reports completed by parents and teachers indicated that Student had significant emotional and behavioral issues. Ultimately, Dr. Pope determined that Student had autism spectrum disorder, major

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

depressive disorder, specific learning disorder with impairments in reading, and specific learning disorder with impairment in written expression.<sup>85</sup>

Based on her findings, Dr. Pope made the following recommendations: (1) further evaluation for mental health issues; (2) further evaluation to determine whether Student has ADHD; (3) include functional communication skills in Student's curriculum; (4) structured environment; (5) continuation of dyslexia intervention; (6) scheduling of IEP meeting to address findings of report; (7) further evaluation to determine need for occupational therapy; (8) accommodations for spelling weaknesses, including a reduced spelling list; (9) use of visual materials in classroom when teaching new skills; and (10) use of a behavioral plan to address Student's "uncontrollable emotional reaction at unpredictable times."<sup>86</sup>

In addition to Dr. Pope's evaluation, the record in this case contains an evaluation conducted on December 22, 2017, with a report dated the same.<sup>87</sup> This evaluation, requested by District, indicates that Student was administered the following tests: (1) Reynolds Intellectual Assessment Scales – Second Edition (RIAS-2); (2) Woodcock Johnson – IV Tests of Achievement (WJ-IV); (3) Full Range Test of Visual Motor Integration (FRTVMI); (4) Visual Aural Digit Span Test (VADS); (5) Clinical Evaluation of Language Fundamentals – Fifth Edition (CELF-5); (6) Woodcock Reading Mastery Test – Third Edition (WRMT-III); (7) KeyMath-3; and (8) Test of Written Spelling – Fourth Edition (TWS-4).

The evaluation dated December 22, 2017, conducted by Pine Bluff Psychological Associates, PA, indicated that Student has a specific learning disability in written expression

---

<sup>85</sup> *Id.*

<sup>86</sup> Ex. Vol. I, Parent Ex., pp. 78-79.

<sup>87</sup> Ex. Vol. I, Parent Ex., pp. 119-134.

– spelling. The examiner noted that “[i]dentified deficits in spelling skills are likely to result in achievement difficulties, not only in the specifically named areas, but in overall academics as well due to lowered self-esteem and self-confidence.”<sup>88</sup> It was recommended that spelling instruction be coordinated with reading instruction, and that efforts be made to increase phonological awareness of Student.<sup>89</sup>

An occupational therapy evaluation was conducted on November 13, 2017, and a report dated November 24, 2017 is included in the record. Student was administered the following tests: (1) The Bruinicks-Osteresky Test of Motor Proficiency – Second Edition (BOT-2); (2) The Beery-Buktenica Developmental Test of Visual Motor Integration; and (3) The Sensory Integration Inventory-Revised (SII-R).<sup>90</sup> It was determined that Student exhibited “significantly low scores” in fine motor skills, as well as signs of sensory modulation issues.<sup>91</sup>

As a result of the CIRCUIT referral in this case, a comprehensive evaluation was conducted in March, April, and May 2018. A report summarizing all findings was issued on June 30, 2018. Evaluators Sheryl Hahn, M.Ed., BCBA, Mary Ann McIntyre, M.A., CCC-SLP, BCBA, and Sandy Crawley, M.S.E. all played a role in evaluating student. Tests administered as part of this evaluation included: (1) Social Skills Improvement System (SSIS); (2) Social Responsiveness Scale (SRS-2); (3) Autism Diagnostic Observation Scale (ADOS-Revised); and (4) The Autism Diagnostic Interview- Revised. Based on their findings, the evaluators recommended that District should “take the positive results on the ADOS-2, the ADI-R and

---

<sup>88</sup> Ex. Vol. I, Parent Ex., p. 133.

<sup>89</sup> *Id.*

<sup>90</sup> Ex. Vol. I, Parent Ex., pp. 193-200.

<sup>91</sup> *Id.*

the SRS-2 and consider them in light of the school observations,” noting that it was likely based on test results that Student was on the autism spectrum.<sup>92</sup> Also included was a recommendation that Student undergo a mental health evaluation.<sup>93</sup> Finally, it was recommended that speech therapy to address pragmatic deficits be considered. It was recommended that Student receive direct occupational therapy services two times per week for forty-five (45) minutes per session.<sup>94</sup>

On October 4, 2018, as a result of Parents filing a state complaint, Student was referred for a mental health evaluation.<sup>95</sup> The evaluation report noted four presenting problems, including major depressive disorder, autistic disorder, expressive language disorder, and dyslexia.<sup>96</sup> Psychotherapy was recommended to address anxiety and adjustment issues.<sup>97</sup>

### **Student's Current IEP**

Student's current IEP was amended on August 9, 2018 and has a duration of services from August 13, 2018 to May 23, 2019. The IEP includes a statement of child's present levels of academic performance which includes summaries from various assessments conducted since the fall of 2017.<sup>98</sup> Regarding the schedule of services, the IEP indicates that student will receive indirect services in spelling.<sup>99</sup> There is no indication of time or frequency requirements for this service, but there is a reference to the indirect instruction occurring in

---

<sup>92</sup> *Id.* at p. 188.

<sup>93</sup> *Id.* at p. 190.

<sup>94</sup> *Id.*

<sup>95</sup> Ex. Vol. II, Parent Ex., pp. 279-82.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Ex. Vol. III, District Ex., pp. 24-30.

<sup>99</sup> *Id.*

the regular classroom and for the duration of the year.<sup>100</sup> The schedule of services also provides that Student will receive occupational therapy two (2) times per week for forty-five (45) minutes per session, speech-language pathology two (2) times per week for thirty (30) minutes per session, and dyslexia services two (2) times per week for sixty (60) minutes per session.<sup>101</sup> Student's IEP also includes several accommodations, which appear to be identical to those accommodations addressed on Student's previous 504 plan.<sup>102</sup>

In addition, Student's IEP includes two goals, one for English language arts, and a second for speech.<sup>103</sup> Student's English language arts goal provides that, by the end of the school year, Student will spell words independently with 80% accuracy when presented with instructionally appropriate word lists.<sup>104</sup> Student's speech goal provides that, by the end of the 2018-2019 school year, Student "will demonstrate understanding and use of a variety of strategies for effective comprehension and expression of language in social situations with 80% accuracy." This goal also provides objectives for student which provide that, by the end of the school year, Student will with 80% accuracy be able to correctly identify and label emotions and non-verbal cues, make social inferences, and demonstrate the ability to comment appropriately on a conversation in a small group setting.<sup>105</sup>

---

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Exhibit Vol. III, District Ex., pp. 24-30.

**Student's Performance on School Work, School Assessments, and in Response to Related Services**

Regarding class work, a review of Student's grade report for the 2016-2017 school year, Student's second grade year, indicates that Student's first semester grades (average of first and second nine weeks) were as follows: B for writing, A for language arts, B for mathematics, C for Reading, D for Spelling, and a rating of S (satisfactory) for conduct, music, physical education, science, social studies, and visual arts.<sup>106</sup> Student's second semester grades (average of third and fourth nine weeks) for the same school year, spring 2017, were as follows: A for language arts, B for mathematics, C for reading, F for spelling, and S for handwriting, music, physical education, science, social studies, and visual arts.<sup>107</sup>

A review of Student's grade report for the 2017-2018 school year, Student's third grade year, indicates that Student's first semester grades (average of first and second nine weeks) were as follows: A for language arts, B for mathematics, A for reading, A for science, A for social studies, B for spelling, and S for conduct, handwriting, music, physical education and visual arts.<sup>108</sup> Student's second semester grades (average of third and fourth nine weeks) for the same school year, spring 2018, were as follows: A for language arts, B for mathematics, A for reading, A for spelling, and S for handwriting, music, physical education, science, social studies, and visual arts.<sup>109</sup>

---

<sup>106</sup> Ex. Vol. II, Parent Ex., p. 436. It is noted that any actions taken prior to February 2017 are outside of the statute of limitations in this matter; however, certain events falling outside of the statute have utility in providing background information regarding Student.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

A review of Student's grade report for the 2018-2019 school year, Student's fourth grade year, indicates that, as of the date that this action was filed, Student's grades were as follows: C for language arts, A for spelling, B for reading, F for science, A for mathematics, A for social studies, and S for music and conduct.<sup>110</sup>

Student's most recent ACT Aspire test indicates that Student scored in the 33<sup>rd</sup> percentile for English, the 50<sup>th</sup> percentile for reading, the 37<sup>th</sup> percentile for science, and the 13<sup>th</sup> percentile for math.<sup>111</sup> Student's English score indicated an ACT readiness level of "Ready," a Reading readiness score of "Close," an ELA and STEM readiness score of "Below Readiness," and Science and Math readiness scores of "In Need of Support."<sup>112</sup>

In addition to the ACT Aspire, the record contains a student diagnostic report from Student's second grade year.<sup>113</sup> This report indicates that Student was administered the STAR reading test and, based on the results of that test, was reading at a grade equivalent of 1.9 (first grade, ninth month) and ranked at the 36<sup>th</sup> percentile.<sup>114</sup> Also, the record contains three different TWS-5 test summaries.<sup>115</sup> The TWS-5 is a Test of Written Spelling, Fifth Edition, and is used by the District to track progress of Student. Student was administered the TWS-5 in October 2018, November 2018, and January 2019.<sup>116</sup> On the October 2018 TWS-5, Student's scores indicated that her spelling was "poor," that she was performing at grade equivalent 2.4 (second grade, fourth month), and that she was ranked at the 8<sup>th</sup>

---

<sup>110</sup> Ex. Vol. II, Parent Ex., p. 429.

<sup>111</sup> Ex. Vol. II, Parent Ex., p. 430.

<sup>112</sup> *Id.*

<sup>113</sup> It is noted that any actions taken prior to February 2017 are outside of the statute of limitations in this matter; however, certain events falling outside of the statute have utility in providing background information regarding Student.

<sup>114</sup> Ex. Vol. II, Parent Ex., p. 434.

<sup>115</sup> Ex. Vol. II, Parent Ex., pp. 437A-F.

<sup>116</sup> *Id.*

percentile.<sup>117</sup> On the November 2018 TWS-5, Student's scores indicated that her spelling was "poor," that she was performing at grade equivalent 2.2 (second grade, second month), and that she was ranked at the 6<sup>th</sup> percentile.<sup>118</sup> On the January 2019 TWS-5, Student's scores indicated that her spelling was "poor, that she was performing at grade equivalent 2.0 (second grade, beginning), and that she was ranked at the 4<sup>th</sup> percentile.<sup>119</sup>

Student's teachers testified that Student was performing well in their classrooms. Student's teacher for science and social studies testified that Student works well in groups, makes good eye contact, gives hugs, and only one time demonstrated hand flapping.<sup>120</sup> She further testified that Student had not become upset or cried in her class.<sup>121</sup> Student's teacher for the subjects of reading and spelling also testified, stating that she was aware of Student's accommodations, but that Student was doing so well that the accommodations were not needed any longer.<sup>122</sup>

Student's occupational therapist testified as well. She stated that Student had made "amazing" progress during the 2018-2019 school year, Student's fourth grade year, explaining that Student had begun to self-regulate and self-correct to the extent that Student may not need services during the next school year.<sup>123</sup> Student's speech therapist also testified, stating that she sees Student at least four (4) to six (6) times each day in passing, and that she provides speech therapy to Student thirty (30) minutes, twice per week.<sup>124</sup> She

---

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Tr. Vol. V, pp. 75-77.

<sup>121</sup> *Id.*

<sup>122</sup> Tr. Vol. III, pp. 130-31, 208-09.

<sup>123</sup> Tr. Vol. II, pp. 301-305.

<sup>124</sup> Tr. Vol. III, pp. 112-120.

had not observed any of the autism characteristics that were previously addressed in evaluations, and had observed Student interacting well in groups, noting that Student had made significant progress during the 2018-2019 school year.

**CONCLUSIONS OF LAW AND DISCUSSION:**

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 United States 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); *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804 (8th Cir. 2011). 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 student's education was reasonably calculated to provide the student educational benefit. *Id.*

**Procedural Violations of FAPE – Child Find**

It must first be determined whether District complied with the procedures set forth in the IDEA between February 19, 2017 and February 19, 2019. In the present case, Parent alleged that District failed to find Student eligible for special education services, failed to consider an evaluation provided by Parents, and failed to timely evaluate student. Some circuits have expressly stated that child find and failure to evaluate claims are procedural in nature and, therefore, must be analyzed prior to determining whether there was a

substantive violation of the IDEA. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249-250 (3d Cir. 2012); *D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 453 (5th Cir. 2010); *Bd. of Educ. of Fayette Cnty. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007).

Congress enacted the IDEA for the purpose of ensuring that all children with disabilities have access to a “free appropriate public education.” 20 U.S.C. § 1400(d)(1)(A). In order to ensure that all children with disabilities receive a FAPE, school districts are required to satisfy a “child find” obligation. 20 U.S.C. § 1412(a)(3). Specifically, districts must ensure that:

All children with disabilities residing in the States, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3)(A).

Child find extends to children who are suspected of having a disability and in need of special education, even though they are advancing from grade to grade. 34 C.F.R. §300.111(c)(1). Once a child is identified as potentially having a disability, the child’s school district is required to conduct a full and individual evaluation to determine whether the child has a disability. The IDEA requires that initial evaluations and reevaluations meet certain requirements. 34 C.F.R. § 300.304. Specifically, a public agency must utilize a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child.” *Id.* at § 300.304(b)(1). In addition, evaluations and reevaluations must assess all areas related to Student’s suspected disability, “including, if appropriate, health, vision, hearing, social and emotional status, general intelligence,

academic performance, communicative status, and motor abilities. *Id.* at § 300.304 (c)(4). Finally, initial evaluations must be completed within sixty (60) days of receiving parental consent for evaluation. *Id.* at § 300.301 (c)(1).

In the present case, it is the opinion of this Hearing Officer that District did not properly consider an evaluation provided by Parents and, therefore, failed to fulfill its child find obligations with regard to Student. Prior to August 14, 2017, there were signs that Student was struggling with reading, and District took steps to provide a dyslexia screener and begin appropriate interventions. As of August 14, 2017, however, District was provided a copy of Dr. Pope's neuropsychological evaluation and was officially on notice that Student had various diagnoses that were likely contributing to Student's deficits. The evaluation was extremely thorough and addressed deficits that extended beyond those that District was addressing through dyslexia intervention. Specifically, in addition to reading deficits, the report referenced difficulties with communication, reciprocal social interaction, repetitive behaviors, idiosyncratic speech, unusual gesturing, and significant emotional issues. The report also provided that Student had a diagnosis of autism spectrum disorder, major depressive disorder, specific learning disorder with impairments in readings, and specific learning disorder with impairments in written expression. Despite the information provided by Parents, District neither worked with Parents to create an IEP for Student, nor immediately conducted its own comprehensive evaluation of Student to determine academic needs. In fact, it was approximately seven (7) months after District received Dr. Pope's report that Student was identified as eligible for special education services pursuant to the IDEA and provided with an IEP. Unfortunately, this was near the end of the third grade, resulting

in Student not being properly identified and not receiving appropriate services for nearly the entire 2017-2018 school year.

District's argument that Parents opted for Section 504 services, as opposed to going forward with a comprehensive evaluation and development of an IEP, is duly noted. Certainly, Parents signed the notice of action on August 30, 2017 which stated that they were opting for 504 services instead of going forward with the referral. Parents' signature in this regard, however, is counter to their actions in this case. First, if Parents felt that the dyslexia intervention being provided to Student was sufficient, it is unlikely that they would have paid for a neuropsychological report to be conducted. Second, on September 8, 2017, approximately one week following the August 30, 2017 meeting when Parents signed a notice of action indicating that they were foregoing referral for evaluation, Parents again contacted District and requested that Student be evaluated for speech deficiencies. Another week thereafter, on September 17, 2017, Parents made another referral request. It seems unlikely that Parents were on board with continuation of 504 services in light of these additional requests within a week to two weeks of Parents' signature. Third, Parents went to the extent of hiring an attorney to represent them in October 2017. On October 17, 2017, Parents' attorney requested a referral conference. Essentially, within three weeks of the August 30, 2017 referral conference, Parents made three additional referral requests, one with the assistance of an attorney. It seems unlikely that Parents would take these steps if they had truly chosen to forego a special education evaluation in lieu of continued 504 services.

It is also the opinion of this Hearing Officer that District failed to timely evaluate Student. At the point that District initiated evaluation, it failed to complete all necessary evaluations within sixty (60) days as required by statute. On October 30, 2017, in response to Parents' attorney's request, District held a referral conference and decided to conduct a comprehensive evaluation for the purpose of determining whether Student needed special education services. On this same date, District conducted a social history regarding Student and, within the week, District conducted hearing and vision screeners. Within two weeks of Parents' consent, District requested an occupational therapy evaluation. Nearing the end of the sixty-day period, specifically on December 22, 2017, District requested a psycho-educational evaluation for Student. All of these things fell within the 60-day period as required by the statute.

Other evaluations, however, were not completed until months later. Specifically, District indicated that it wanted to conduct an ADOS and a CARS. The CARS was conducted on March 13, 2018, approximately two months beyond the sixty-day deadline. Similarly, District contacted the state and made a CIRCUIT referral on February 5, 2018 for the purpose of requesting that an ADOS be conducted. The request itself occurred more than a month beyond the sixty-day period. It was several months later that District received a final report from the CIRCUIT referral with ADOS results. From the date of consent, specifically October 30, 2017, to completion of all evaluations, specifically June 30, 2018, a total of eight (8) months passed. This is clearly more than 60 days and, as such, a procedural violation of the IDEA.

### **Substantive Violations of FAPE**

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that District failed to appropriately evaluate Student and engage in child find activities pursuant to the IDEA, it is now necessary to consider whether the District's actions resulted in a substantive denial of a FAPE to Student. 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 pupil's right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process, or caused a deprivation of educational benefits." *Id.* at 804-05.

Prior to March 22, 2017, Eighth Circuit law provided that if a student received "slight" or "de minimis" progress, then he or she was not denied educational benefit. *K.E.*, 647 F.3d at 810; *Paris Sch. Dist. v. A.H.*, 2017 WL 1234151 (W.D. Ark 2017). On March 22, 2017, however, the United States Supreme Court "rejected the 'merely more than *de minimis*' standard that had previously been the law of the Eighth Circuit." *Paris Sch. Dist.*, 2017 WL at 4 (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, No. 15-827*, 2017 WL 1066260, 580 U.S. \_\_\_ (2017), 137 S.Ct. 988 (2017)).

In *Endrew F.*, the standard set forth by the Court is "markedly more demanding" as compared to the "merely *de minimis*" test outlined in *Rowley*. *Endrew F.*, 137 S. Ct. at 1000. The Court stated the following:

It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom,

but is satisfied with barely more than *de minimis* progress for those who cannot. When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to “drop out.”

*Endrew F.*, 137 S.Ct. at 1001 (citations omitted). The Court held that the IDEA requires, even demands, more. Specifically, the IDEA requires that students under the Act be provided with an “educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.*

The IEP is the guiding document and primary method for providing special education services to disabled children under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). “Through the development and implementation of an IEP, the school provides a FAPE that is ‘tailored to the unique needs of a particular child.’” *Paris Sch. Dist.*, 2017 WL 1234151, at \*5 (citing *Endrew F.*, 2017 WL 1066260, at \*1000). An IEP is not designed to be merely a form but, instead, a substantive document that is developed only after a district has carefully considered a student’s “present levels of achievement, disability, and potential for growth.” *Id.* (citations omitted). Pursuant to *Endrew F.*, a district “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 2017 WL 1066260, at \*1000. For most students, to comply with this standard, providing FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.” *Id.* However, in the event that this is not possible, the education of a disabled child still needs to be “appropriately ambitious” in light of a student’s individual circumstances. *Id.*

Every IEP, pursuant to the IDEA, is required to include the following: (1) a statement of a student's present levels of academic achievement and functional performance; (2) a description of how a student's disability affects his or her involvement and progress in the general education curriculum; (3) annual goals that are measurable, as well as a description as to how progress toward stated goals will be measured; and (4) a description of special education and related services provided to student. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV).

In the present case, regarding the issue of evaluations and child find, it is the opinion of this Hearing Officer that District's failure to properly consider an evaluation provided by Parents, to properly evaluate Student in a timely manner, and to properly consider her for special education programming and related services between February 19, 2017 and February 19, 2019 resulted in a substantive denial of a FAPE. Specifically, between August 2017, when Parents presented Dr. Pope's evaluation to District and requested a referral conference, and March 2018, when District finally identified Student for services, Student lost up to eight (8) months of special education services. The majority of Student's third grade year was spent without needed academic services and support.

Student's academic performance, or lack thereof, supports that Student was denied FAPE. District argued in this case that Student's grades were improving and that she was doing well in occupational and speech therapy. Certainly, looking at these measures that conclusion could be drawn. Those are not the only measures to consider though. Student's objective tests, specifically the ACT Aspire scores and the tests given at the school to track progress show the opposite. Despite having excellent grades in all subjects throughout the third grade, the ACT Aspire that Student took during her third grade year placed student at

low percentiles in all subjects and “in need of support” or “below readiness” in four of six subjects tested. One other score was “close.”

In addition, despite having been on an IEP since March 2018, which provides for indirect instruction in spelling, Student’s most recent administrations of the TWS-5 show declining scores regarding spelling. In October 2018, Student’s TWS-5 score indicated that her spelling was “poor,” that she was performing at grade equivalent 2.4 (second grade, fourth month), and that she was ranked at the 8<sup>th</sup> percentile. One month later, in November 2018, Student’s TWS-5 score indicated that her spelling was “poor,” that she was performing at grade equivalent 2.2 (second grade, second month), and that she was ranked at the 6<sup>th</sup> percentile. Finally, in January 2019, Student’s TWS-5 score indicated that her spelling was “poor, that she was performing at grade equivalent 2.0 (second grade, beginning), and that she was ranked at the 4<sup>th</sup> percentile. Student’s grade equivalent and percentile rank on this test declined monthly between October 2018 and January 2019, despite how well her teachers reported that Student was doing. Student is now at the end of her fourth-grade year and still spelling at a second-grade level, which is not much higher than she was performing when she was first referred for services.

Last, but not least, regarding the issue of whether Student’s current IEP is appropriate, it is the opinion of this Hearing Officer that Student’s IEP is not reasonably calculated to enable Student to make progress appropriate in light of her individual circumstances. While Student’s IEP includes statements of her present levels of academic achievement and functional performance, there is not a sufficiently clear description of services being provided to Student. The IEP specifically states that Student will receive

indirect services in spelling, with no particular explanation as to what these services will entail. There is also no indication of frequency. Even assuming that Student's IEP had a legitimate description of services, it is concerning that Student's teacher for reading and spelling feels that Student no longer needs to use accommodations for Student. Clearly, if Student is nearly three grade levels behind, what District is presently doing to address her academic deficiencies in reading and spelling is not sufficient. Finally, Student's current IEP includes two goals, one for English language arts and one for speech. This is insufficient given all of the deficits that Student has been determined to have academically. At a minimum, Student should have goals addressing all areas where Student is deficient pursuant to the most recent ACT Aspire, as well as aggressive goals regarding Student's deficiencies in reading and spelling. Finally, it is the conclusion of this Hearing Officer that Student's IEP is nothing more than her previous Section 504 accommodations on an IEP form. Given that the Section 504 accommodations were not addressing all of Student's deficits, that approach for her IEP is problematic.

### **Conclusion**

Having considered Parents' allegations of procedural and substantive due process violations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that Student was denied FAPE between February 19, 2017 and February 19, 2019 as a result of procedural and substantive violations of the IDEA.

### **ORDER:**

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

evidence that District denied Student FAPE between February 19, 2017 and February 19, 2019. District is hereby ordered to take the following actions regarding Student:

- (1) By or before May 30, 2019, District shall seek out and schedule any additional necessary evaluations for the purpose of obtaining current information so as to determine appropriate special education programming and related services, pursuant to the IDEA, to address Student's academic deficits. District will utilize the evaluations previously obtained, including the evaluation from Dr. Pope that was previously provided by Parents, and shall only seek additional evaluations for areas of concern not already evaluated.
- (2) All evaluations ordered in the preceding paragraph, specifically paragraph (1) in this section, must be completed by July 30, 2019 and shall be paid for by District.
- (3) District is required to hold an IEP meeting for Student by or before August 1, 2019. District shall find Student eligible for services and, at this IEP meeting, District and Parents shall discuss all evaluation results and determine appropriate programming, to include direct instruction, as well as related services, to address Student's deficits. At a minimum, Student's IEP should address all areas of deficit on her most recent ACT Aspire, including appropriate goals. The IEP should also address the results of Student's most recent mental health evaluation and services necessary in light of the recommendations resulting from that evaluation.
- (4) District shall schedule an IEP meeting every 60 days throughout Student's fifth grade year for the purpose of evaluating Student's progress (grades, progress assessments) and making any necessary adjustment to Student's IEP.

(5) District shall provide to Student fifty (50) hours of compensatory education in the areas of reading and spelling during Student's fifth-grade school year. This equates to approximately two additional hours of direct instruction per week during the 2019-2020 academic year. These hours are to be provided outside of the normal school day, and District shall work with Parents to choose the best time(s) for such instruction to be provided during the school week.

**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.**

/s/ Danna J. Young

---

**HEARING OFFICER**

05/10/2019

---

**DATE**