

**ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION UNIT**

**XXXXXXXXXXXXXXXXXXXXX,  
AS PARENTS OF  
XXXXXXXXXX, STUDENT  
Petitioner/Parents**

**VS.**

**NO. H-24-29**

**QUITMAN SCHOOL DISTRICT,  
Respondent/District**

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

XXXXXXXX (“Student”) is a child with a learning disability who is eligible for special education services from the Quitman School District (“District”). On January 8, 2024, Student’s parents XXXXXXXXXXXXXXXX (hereinafter referred to as “Parents” or singly as “Father” or “Mother” where appropriate), filed a request for a due process hearing pursuant to the Individuals with Disabilities in Education Act, 20 U.S.C. § 1400 et seq. (“IDEA”) alleging that District failed to comply with the IDEA, its implementing regulations, and regulations of the Arkansas Department of Education, Special Education Division (“Department”), thereby denying Student a free and appropriate education (“FAPE”) under the IDEA.

**I.  
ISSUES PRESENTED**

Whether District denied Student a FAPE in violation of the IDEA when it:

1. Failed to conduct a new functional behavioral assessment that would inform changes to Student’s behavior intervention plan to address new maladaptive behaviors that Student exhibited at school;

2. Significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student by limiting, delaying, or denying Parents access to school personnel;

3. Failed to provide Parents the opportunity to examine all of Student's educational records concerning his behavior;

4. Failed to allow Student's paraprofessional to attend IEP team meetings as a person who Parents identified as a discretionary team member; and

5. Failed to provide teachers and support staff with the training needed to implement Student's individualized education program ("IEP"), and in particular, his behavior intervention plan, with fidelity.

## **II. NON-JUSTICIABLE ISSUES**

Parents also allege that 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. Additionally, Parents assert a claim of First Amendment retaliation under the Fifth and Fourth Amendments to the U.S. Constitution. This Hearing Officer has no jurisdiction over these federal claims. Accordingly, to the extent Parents' due process complaint raises disability discrimination claims and First Amendment retaliation, those claims are **DISMISSED WITHOUT PREJUDICE**.

## **III. PROCEDURAL HISTORY**

On January 8, 2024, the Arkansas Department of Education (hereinafter referred to as "Department") received from Parents a request to initiate due process hearing procedures. Parents requested the hearing because they believed that District failed to comply with the IDEA,

as well as regulations set forth by the Department, by failing to provide Student with appropriate supports and services to address his learning and behavioral disabilities related to autism.

In response to Parents' request for a due process hearing, the Department assigned the case to the undersigned impartial Hearing Officer. A Joint Motion to Continue was granted, and the due process hearing was scheduled for three days to begin on April 23, 2024.

Having been given jurisdiction and authority to conduct the hearing pursuant to the IDEA, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Cheryl L. Reinhart, J.D., Hearing Officer for the Department, conducted a closed impartial hearing. Present for the hearing were Mother and Parents' attorney Ms. Theresa Caldwell, of Caldwell Law Office, Little Rock, Arkansas; Ms. Misty Atkin, District LEA Supervisor, and the District's attorney, Mr. Khayyam Eddings, Friday, Eldredge & Clark, LLP, Little Rock, Arkansas. Ms. Audra Alumbaugh was present as an advocate for Parents.

Four days of testimony was heard on April 23-26, 2024. In addition to Mother and Atkin, the following witnesses testified in this matter: Audra Alumbaugh, advocate for Parents and Student; Ramona Standridge, Student's second grade paraprofessional, Quitman Elementary School; Officer Mande Love, School Resource Officer, Quitman Elementary School; Michael Stacks, Assistant Superintendent, Quitman School District; Shelby Barger, Student's second-grade phonics teacher, Quitman Elementary School; Bridget Mauldin, Student's second-grade general education teacher (English language arts), Quitman Elementary School; and Jennifer Spears, Student's first-grade paraprofessional, Quitman Elementary School. *See, generally*, Transcript Vols. I-IV.

Both parties requested to provide post-hearing briefs in lieu of closing arguments. The deadline for providing briefs was May 19, 2024, and briefs were filed on that day.

#### IV. BURDEN OF PROOF

Parents assert that District bears the burden of proof that it had an "appropriate" IEP for Student and that his educational placement is "necessary." Complaint, pp. 11-12. In *Schaffer v. Weast*, 546 U.S. 49 (2009), the U.S. Supreme Court maintained adherence to the rule that, absent a contrary indication of legislative intent, the burden lies with the party seeking relief. *Id.* The *Schaffer* Court found no legislative intent to deviate from the traditional rule.

Parents interpret Arkansas's rule as shifting the burden of proof to District. The rule states that "the public agency ... must ... provide evidence and testimony at the hearing to show that the proposed course of action is necessary and appropriate." Ark. Dep't of Educ., Spec. Educ. and Related Servs. Rule 10.08.1.7 (February 2024). However, another section of the rule, 10.29.1, requires the hearing officer to make a decision on the burden of proof as to a particular issue at the time of the hearing. This hearing officer does not interpret either rule section as shifting the burden of proof to a school district when the school district is the respondent.

Although the *Schaffer* Court declined to rule on whether a state regulation may assign a different burden of proof, the Eighth Circuit Court of Appeals has ruled that it is reversible error "to assign the burden of persuasion to a ... school district in an action to enforce the procedural and substantive requirements of the IDEA." *M.M. ex rel. L.R. v. Special School Dist. No. 1*, 512 F.3d 455 (8th Cir. 2008) (citing *School Bd. of I.S.D. No. 11 v. Renollett*, 440 F.3d 1007, 1010 n. 3 (8th Cir. 2006)). Further in 2020, the Eighth Circuit applied the traditional rule, stating that "it is indisputable that the party seeking relief carries the burden of proof in an administrative hearing challenging an IEP." *D. L. v. St. Louis City Sch. Dist.*, 950 F.3d 1057, 1064 (8th Cir. 2020). Therefore, the burden of proof is on Parents as the party seeking relief under IDEA.

**V.**  
**FINDINGS OF FACT**

At the time the due process complaint was filed in this case, Student was eight years of age and enrolled in second grade at Quitman Elementary School. Student was diagnosed with autism spectrum disorder ("ASD") at age three by Dr. Angela Scott, UAMS Dennis Developmental Center ("Dennis"), in 2018. Parent Exh., pp. 101-102. Student's autism also impacts his health, weight, sensory needs, and behavior. To address his disabilities, Student received Applied Behavioral Analysis ("ABA") therapy in his home for the full three years of the program. Tr. Vol. IV, p. 9. Mother testified that Student has difficulty with being introduced to new foods, and not realizing when he is no longer hungry (thus thinks he is hungry all the time). Tr. Vol. IV, p. 14.

Student was subsequently evaluated in 2020 (age 4-5) and the following results were reported:

- 1) Greenbrier School District evaluation, June 2020: Composite Intelligence Score of 88 on the Reynold's Intellectual Assessment Scales-2 (low range); Adaptive Behavior Score composite standard score of 78 on the Vineland, with deficits in communication and socialization (mild); low in written expression on the Kaufman Test of Educational Achievement Third Edition, with a strength in letter/word identification (Parent Exh., pp. 95-100);
- 2) Pediatrics Plus physical therapy evaluation, June 19, 2020: Score of -2.00 on the Peabody Developmental Motor Scales-2 (delay in locomotion) (Parent Exh., pp. 224-230);
- 3) Pediatrics Plus speech evaluation, October 28, 2020: on the CELF-P2 scores of SS 5 sentence structure, SS 8 word structure, SS 10 expressive vocabulary, SS 6 concepts and following directions, SS 6 recalling sentences, SS 8 word classes-receptive, SS 6 word classes-expressive, SS 86 core language, SS 77 receptive language, SS 89 expressive language, SS 87 language content, SS 79 language structure, SS 71 SSIS social skills scale, and SS 104 CAAP-2 (Parent Exh., pp. 111-118);

- 4) Pediatrics Plus occupational therapy evaluation, November 2, 2020: Visual motor skills 5<sup>th</sup> percentile (moderate delay) and fine motor skills 1<sup>st</sup> percentile (severe delay) on the Miller Function and Participation Scales; self-care raw score 48/100 and 45/48 social on the Pediatric Evaluation of Disability Inventory (both severe deficits); no areas in the typical range on the Sensory Profile 2 (by Student's mother) or on the Sensory Profile 2 School Companion (Parent Exh., pp. 154-159).

#### **A. 2022-2023 School Year (August 11, 2022, to June 30, 2023) – First Grade**

Student first enrolled in the Quitman School District on August 11, 2022, for the 2022-2023 school year, his first-grade year. The majority of his first IEP at District, covering the period from August 8, 2022, to April 27, 2023, was adopted from Greenbrier School District. *See* Parent Exh., pp. 31-50. The District's IEP team changed Student's related services as follows: speech-language pathology services changed from 30 minutes twice weekly to 60 minutes once a week; occupational therapy services changed from 60 minutes twice weekly to 90 minutes once a week. Parent Exh., pp. 37. District maintained Student's indirect services for social skills at 60 minutes per week, physical therapy services at 30 minutes twice weekly, and kept the one-on-one adult supervision. *Id.* The first-grade IEP contained written goals for behaviors, speech therapy, physical therapy, and occupational therapy. Parent Exh., pp. 38-46.

With autism as his primary disability, Student progressed well academically, but was easily agitated and had problems with his behavior when sensory triggers affected him and when he made a mistake. Parent Exh., p. 33. Student used noise-canceling headphones and a sensory vest. Parent Exh., p. 35. Student's first-grade IEP contained three behavior goals. Parent Exh., p. 38. His physical therapy focused on strength, endurance, bilateral coordination, and motor planning skills. *Id.* Occupational therapy provided services to work on sensory processing, self-regulation, body awareness/motor planning, core strengthening/stability, social skills, following multi-step directions, fine motor skills, and visual motor skills. Parent Exh., p. 34.

The following is a timeline of actions taken concerning Student's first-grade IEP:

- August 18, 2022: The IEP team recommended that a functional behavior analysis ("FBA") be conducted for Student and obtained Parents' consent. Dist. Exh., pp. 29-30;
- September 20, 2022: Parents filed a Complaint for Due Process;
- October 26, 2022: Shana Bailey, BCBA, provided a report on the FBA she conducted. Dist. Exh., pp. 84-100.
- November 28, 2022: The IEP team conducted an existing data review ("EDR"), at which it reviewed the new FBA and determined that a behavior plan was needed. Parent Exh., pp. 74-79. The team also determined that Student needed a comprehensive language evaluation. Id.
- November 28, 2022: The Notice of Action for the IEP meeting also noted that, "Parent will receive copies of the A-B-C [antecedent, behavior, consequence] data weekly." Parent Exh., p. 75.
- February 21, 2023: Paige Stanton, speech-language pathologist, provided her report on the comprehensive language evaluation she conducted. Parent Exh., pp. 111-118.
- April 3, 2023: Parents obtained an order from this Hearing Officer for compensatory speech, physical, and occupational therapy services.<sup>1</sup> The compensatory services ordered were completed in part during the end of the school year and also in the summer. Tr. Vol. I, p. 63.
- April 13, 2023: District held an annual review of Student's IEP and developed a new IEP for the remainder of first grade through April 12, 2024. The new IEP contained two new behavior goals. Parent Exh., p. 9.  
District also developed a Behavior Intervention Plan at the April 13 meeting that targeted behaviors of yelling, physical aggression, and leaving the classroom. Parent Exh., p. 11.
- Parents requested and District agreed that Student would have a couple of weeks of therapy before school started for second grade to ease him into resuming school. Tr. Vol. I, p. 19.

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<sup>1</sup> For detailed information on issues with Student's initial enrollment in the district, see the Final Decision and Order in Case No. H-23-13, Arkansas Department of Education, Special Education Division, dated April 3, 2023.

## **B. 2023-2024 School Year (July 1, 2023, to January 5, 2024) – Second Grade**

### **1. IEP**

On September 11, 2023, the IEP team met to review Student’s behavioral issues over the first three weeks of school, citing his “non-compliance with requests to do his schoolwork and the use of inappropriate language,” as the primary issues (Parent Exh., p. 15), and noting the following relevant factors:

It is important that special education, O.T. and S.T. ***work cooperatively and in a coordinated way*** to ensure that there is increased consistency across areas in the instruction and intervention provided. This includes [Student’s] paraprofessional, working under the guidance of instructional staff. The criteria and rating system used with the program for teaching him social skills problem-solving at school will be coordinated [with] the one used in the home for consistency. (emphasis added) Parent Exh., p. 16.

The team amended Student’s IEP to provide direct services in behavior/social skills. Tr. Vol. I, pp. 35. The two behavior goals in the IEP were as follows:

Goal #1: When interacting with others, [Student] will demonstrate awareness and understanding of socially acceptable rules of interpersonal interaction by interacting appropriately 90% of the time by the end of the current IEP as demonstrated by behavior data and teacher observations.

Goal #2: When given non-preferred assignments and academic tasks, [Student] will demonstrate improved social/behavioral skills by following directions to complete assignments and tasks appropriately within the required time frame 90% of the time by the end of the current IEP.

Both goals were to be measured by observation charts and checklists. Parent Exh., p. 9.

Student’s pragmatic skills were also the focus of long-term speech therapy goals. *See* Parent Exh., pp. 124-153. The speech therapy goals are not included with the September 11, 2023, IEP in evidence. *See* Parent Exh., p. 170. Student’s advocate, Alumbaugh, testified that at the IEP meetings, the team discussed Student’s progress on speech goals, but did not provide documentation to Parents. Tr. Vol. I, pp. 41-44.



Student's goals and the progress on those goals for physical therapy ("PT") and occupational therapy ("OT") were discussed at IEP meetings by the respective therapists. Tr. Vol. I, pp. 41-42. Neither the goals nor the progress data were provided to Parents until after this complaint for due process was filed. Tr. Vol. IV, pp. 74-75.

## 2. Academics

Student's second-grade IEP stated that he progressed at grade level in all areas in the first grade. Parent Exh., p. 2. Student's Spring 2023 to Winter 2024 MAP and NWEA testing indicated Student's growth in reading and math was in the 51<sup>st</sup> percentile. Parent Exh., p. 327. Student's teachers and Parents agree that 'student reads above grade level. Tr. Vol. I, p. 38; Tr. Vol. III, pp. 62, 178-180. Mauldin testified that Student participated successfully in the Accelerated Reader program. Tr. Vol. III, p. 180.

Writing and phonics proved to be non-preferred tasks in the second grade, and therefore triggers for behavior escalation. Tr. Vol. I, pp. 49-50. At the September 11, 2023, IEP meeting, the team added direct services in writing for 150 minutes per week. Parent Exh., p. 5. Student's phonics skills were above those being taught in the second grade, and he became frustrated with phonics instruction. Tr. Vol. I, pp. 50-51. As a result, the IEP team decided to pull Student from the regular classroom during phonics to work with him on phonics and written expression at his reading level. Tr. Vol. I, p. 52. Student received the direct services for writing from his special education resource teacher, Ms. Duncan. Tr. Vol. II, pp. 209-210. Yet, Atkin testified that the IEP team did not write goals for written expression, because Student was "pulled for extension." Id. The District used Handwriting Without Tears as a curriculum for his written expression instruction. Tr. Vol. I, p. 54. Staff and Parents testified that his handwriting and written

expression had improved. Tr. Vol. III, pp. 41, 76-79; Tr. Vol. IV, p. 199. *See also* Student's report card, Parent Exh., p. 330.

Student's written expression deficit carries over into math when he is instructed to write out an answer, a new task in second grade. Tr. Vol. I, p. 60. Again, having to write out an answer or getting an answer wrong proved to be a trigger for his behavior to escalate. Tr. Vol. III, pp. 72-73, 78; Tr. Vol. IV, p. 203.

### **3. Behavior Plan and Implementation**

On September 11, 2023, the IEP team also amended Student's BIP. *See* Parent Exh., pp. 11-14. The IEP team noted that, of the three targeted behaviors in the BIP, Student had met his "leaving the classroom" goals. Tr. Vol. IV, pp. 68-69. However, at the beginning of second grade, Student had begun to use profanity and other inappropriate language in the classroom towards adults and students. *Id.* Therefore, "leaving the classroom" was removed and replaced with "inappropriate language in the school." Parent Exh., p. 11, 14.

Under the BIP, behaviors are rewarded "through verbal praise, rewards such as additional lego [sic] and block time, items from the treasure box, and being given a preferred task such as reading ... Rewards will be given when the reward chart/schedule is completed with goal met as predetermined by [Student] and his one-on-one each morning." Parent Exh., p. 11. Shana Bailey, the BCBA who designed the BIP, included only one statement in the BIP concerning training: "Review of behavior strategies by special education teacher." Parent Exh., p. 12.

The BIP was provided to and reviewed with Student's teachers and one-on-one paraprofessional, but no formal training on its implementation was given. Tr. Vol. I, p. 201 (para); Tr. Vol. III, pp. 209-210 (Mauldin). Student's teachers reported that in situations where Student exhibited targeted behaviors and redirection did not work, they either expected the para

to “handle it” or called for administrative assistance. Tr. Vol. III, pp. 72, 85, 102 (Barger); Tr. Vol. III, p. 155 (Mauldin).

Student’s para delivered the direct services for behavior/social skills minutes under the IEP. Tr. Vol. II, p. 159. The minutes were delivered under Atkin’s direct supervision using the curriculum Atkin provided, “Autism Adventures.” Tr. Vol. III, pp. 20-21.

District implemented the BIP through the following strategies:

(i) Check In/Check Out System (C/C):

The C/C system was used to set a points goal for Student in the morning and afternoon to work towards earning a reward for successfully managing two target behaviors: (1) “Follow Instructions;” and (2) “Do My Work.” See Dist. Exh., pp. 126-223. Atkin testified that the C/C sheets were designed by Shana Bailey, the BCBA who conducted Student’s first-grade FBA, to help targeted behaviors on the BIP. Tr. Vol. II, pp. 177-178. Student’s para established the points goals and administered the C/C system daily for Student. Tr. Vol. I, pp. 220-221. Student had the opportunity to earn points in the morning and/or the afternoon. Tr. Vol. I, pp. 204-205. His rewards consisted of extra reading time or time playing with LEGOs. Tr. Vol. I, p. 161. The C/C system was used independently of any other strategies for addressing targeted behaviors – in other words, points were awarded and rewards given even on days when Student had other maladaptive behaviors on the same day. Tr. Vol. I, p. 207. The C/C sheets had a comments section for para to communicate with Parents. Tr. Vol. I, p. 203. Mauldin testified that the sheets went home to Parents every day. Tr. Vol. III, p. 199. The majority of the comments were “good morning,” “rough start to our afternoon,” “great afternoon,”

“great morning,” “great day,” “much better afternoon,” “pretty good morning,” “struggled.” *See* Dist. Exh., pp. 126-223.

(ii) Behavior reflection sheets:

Student’s para used behavior reflection sheets called “Choices Think Sheets” that gave student the opportunity to identify the problem behavior, how it affected the target, and what he could do as a replacement behavior. Tr. Vol. I, pp. 166-168; *See also* Parent Exh., pp. 311-323.

(iii) Teacher’s LEGO Block Board:

Mauldin testified that she used a LEGO block board in her classroom as a positive reinforcer for Student. Tr. Vol. III, pp. 153-154. When Student met goals, i.e., following instruction and doing his work, he earned time to play with LEGO blocks. *Id.* Mauldin structures Student’s time into five periods in her class, during each of which he can earn points. Tr. Vol. III, pp. 158, 161. It was Mauldin’s understanding that merely exhibiting one of the targeted behaviors on the BIP would not “take him out of his points” on the C/C sheets, or her LEGO block board. Tr. Vol. III, p. 153.

(iv) Antecedent/Behavior/Consequence (“A-B-C”) Checklists:

A-B-C checklists are a data collection measure that documents the occurrence of Student’s targeted behaviors under the BIP. Parent Exh. pp. 11-14. District began collecting A-B-C data in Student’s first-grade year, and Student’s para continued collecting A-B-C data in Student’s second-grade year. Tr. Vol. I, p. 170. By December 6, 2023, Student’s para documented 53 behavior incidents on A-B-C checklists. *See* Parent

Exh., pp. 258-284. Student's para turns in the A-B-C checklists daily to Atkin. Tr. Vol. VI, p. 190.

A-B-C checklists were not provided to Parents contemporaneously with the behaviors. Tr. Vol. I, p. 65. Parents were told they could request copies of A-B-C checklists for "specific instances," but for the most part they were not informed when behaviors happened, and thus did not know when or how to request those documents. Tr. Vol. I, p. 69.

**(e) Social stories:**

Student's para read with Student social stories, "Autism Adventures," provided by Atkin when they were appropriate to the behavior he was displaying. The social stories were separate from the social skills curriculum under the IEP. Tr. Vol. II, pp.173-174, 231, Vol. III, pp. 20-21.

**(f) Paraprofessional Notes on Verbal/Physical Aggression ("V/P Notes"):**

Beginning November 1, 2023, District required Student's one-on-one paraprofessional to take daily notes concerning any physical and verbal aggression. The V/P notes taken by the paraprofessional were not provided to Parents. Tr. Vol. I, p. 60.

**(g) Documentation of Student's time out-of-classroom:**

Out of concern for the amount of time Student was spending out of the classroom, Atkin asked the paraprofessional to document when and for how long Student left the classroom, whether by appropriately requesting to leave or not. Tr. Vol. I, p. 187; Tr. Vol. II, p. 169; Parent Exh., pp. 287, 295-297.

**(i) District PBIS Reports:**

District uses a district-wide program for student behavior, Positive Behavioral Improvement System (“PBIS”). Tr. Vol. III, pp. 123-126. Under the PBIS, students earn points for various aspects of good behavior and are rewarded by shopping at the “BG” store using their points earned. Tr. Vol. III, p. 124. These points are in addition to the points that Student earns on his C/C sheets. Tr. Vol. III, p. 126. District also uses the PBIS to document major and minor referrals for inappropriate student behavior. Tr. Vol. III, p. 125. By the November 13, 2023, IEP meeting, Student had three PBIS reports for major and minor behavior referrals. Parent Exh., pp. 245-248. Parents did not know about the first three PBIS reports until the very end of the November 2023 IEP meeting, and at that time requested copies of the reports. Tr. Vol. I, pp. 65-66; Tr. Vol. IV, pp. 61-63. Two days after the IEP meeting, on November 15, 2023, Student had another major referral for “threatening to burn down all of first grade and destroy all of fourth grade.” Parent Exh., p. 248.

**(i) District “GROWL” Reports:**

District also uses a rating system of “personal/social development” traits that is a part of each student’s report card. See Parent Exh., pp. 330-331. The “GROWL” report rates a student on grit, respect, ownership, work ethic, and leadership. Parent Exh., p. 331. Atkin testified that she and Student’s second-grade general education teachers determined Student’s scores as a “team.” Tr. Vol. III, p. 95. Student was scored 1, 2, and 3 throughout the first three semesters of the school year, out of a possible 3 points on

each trait. Tr. Vol. III, p. 97. There is no consequence for the points given, just that it is reported on the report card. Id.

Parents were not aware of the level of the almost daily documentation being made by the para, including A-B-C data, V/P notes, and documentation of Student's time out of the classroom. Tr. Vol. I, pp. 133, 135. When Parent asked about A-B-C data, District told them they could request it "for a specific instance." Tr. Vol. I, p. 69. Not having any knowledge of the data that District had collected, or of the many behavioral incidents documented and not included on C/C sheets, Parents could not request that it be provided or reviewed at IEP meetings. Tr. Vol. I, p. 46. Atkin admitted that she should have provided the para's documentation to Parents. Tr. Vol. II, p. 204. Indeed, under the first grade IEP, District was to provide the A-B-C checklists to Parents. Tr. Vol. II, pp. 155-156. Additionally, Parents never saw any progress data for Student at (or after) an IEP meeting, did not know what his goals were, and did not know who was responsible for those goals. Tr. Vol. I, pp. 103-104; Tr. Vol. IV, pp. 74-75. When Mother requested documentation at IEP meetings, she was told they would be provided, but for various reasons she never received them. Tr. Vol. I, p. 133.

Student was also frequenting the nurse's office without Parents knowing about it. Tr. Vol. IV, pp. 101-104. He made 21 visits to the nurse's office in the first semester, and Mother testified that she did not know it was happening with such frequency. Id. Many of the visits were attempts by Student to avoid work – one of his targeted behaviors – and to try to go home. Id. Mother had not seen any of the documentation before they were produced for the due process hearing. Id.

The following is a partial summary of evidence provided to illustrate the discrepancy between what District told Parent and what District was actually documenting:

**8/23/23 –**

*Information to Parents on C/C Sheet:* None.

*District documentation:* Minor PBIS referral for “going on day 3 of yelling F\*\*\* many times” (Parent Exh., p. 248)

**8/25/23 –**

*Information to Parents on C/C Sheet:* “rough morning”; morning and afternoon points goals were met (Dist. Exh., pp. 126-127)

*District documentation:* A-B-C data - “screaming ... walked away ... grabbed me, bit my right arm, hit and kicked me”; “Ran from class, shut door and tried to hold it shut... started to hit and shove [Coach, in hallway] screaming threats” (Parent Exh., p. 258)

**8/29 to 9/4/23 –**

*Information to Parents on C/C Sheet:* (“great morning ... working through his frustrations ... became very upset ... pretty good afternoon ... rough morning ... had meltdown” (Dist. Exh., pp. 128-135)

*District documentation:* A-B-C data – five incidents recorded (Parent Exh., pp. 259-261)

**9/5/23 –**

*Information to Parents on C/C Sheet:* AM: “rough patch this morning ... calling us fools”; morning points goals were met; PM: “got upset during the nurse’s screening... meltdowns during math... refused to do his work”; afternoon points goals were not met (Dist. Exh., pp. 136-137)

*District documentation:* A-B-C data - “Did not want to do work. Charged at para twice with raised fists. Hit in stomach. Pulled by arms. Called teacher and para ‘a fool’” (Parent Exh., p. 261)

**9/6 to 9/21/23 –**

*Information to Parents on C/C Sheet:* “got upset ... left class ... rough first half of the morning ... great day ... good morning ... one meltdown ... elevated ... becoming more aggressive toward adults” (Dist. Exh., pp. 138-151)

*District documentation:* A-B-C data - 16 incidents, including two days with five each (Parent Exh., pp. 262-269)

**9/22/23 –**

*Information to Parents on C/C Sheet:* “Great morning”; morning and afternoon points goals were exceeded (Dist. Exh., pp. 152-153)

*District documentation:*

- A-B-C data - Pinched student, “left room ... screaming at para ... hitting, scratching, and stomping [para’s] foot” (Parent Exh., p. 270);
- Minor PBIS referral for pinching (Parent Exh., p. 248)



**9/25 to 10/25/23 –**

*Information to Parents on C/C Sheet:* “good morning,” “rough start to our afternoon,” “got upset after shopping at the BG,” “great afternoon,” “great morning,” “great day,” “much better afternoon,” “pretty good morning,” “struggled” (See Dist. Exh., pp. 154-171)

*District documentation:* A-B-C data - 16 behavior incidents, including two days with five incidents on each day (Parent Exh., pp. 271-278)

**10/26/23 –**

*Information to Parents on C/C Sheet:* AM: “threw scissors ... had to be removed from Barger’s class to calm down ... telling me this morning he will punch me and I’m not the boss of him ... is aggressive this morning, hitting, pinching, kicking, and scratching me” – did not meet points goal; PM: “had [candy] from the BG store ... had a much better afternoon” – exceeded points goal (Dist. Exh., pp. 172-173)

*District documentation:*

- A-B-C data documented most of the same behaviors, plus “stabbed a pencil at my leg ... making threats” (Parent Exh., pp. 280-281);
- Major PBIS referral for “excessive defiance/disrespect” – Threw scissors during OT at therapist” (Parent Exh., p. 247)
- See also videos at Parent Exh., pp. 382-384.

*[Timeline Note – Parents requested to view 10/26/23 video and requested an IEP meeting]*

**10/27 to 11/14/23 –**

*Information to Parents on C/C Sheet:* “struggled ... tired ... good day ... good morning” (Dist. Exh., pp. 174-199)

*District documentation:*

- A-B-C data - Five incidents (Parent Exh. 279, 282-283);
- V/P Notes: Beginning 11/1, documented 29 verbal and 7 physical incidents (Parent Exh., pp. 298-302)

*[Timeline Note – An IEP meeting was held on 11/13/23; Parent gave written consent to FBA on 11/13 or 14]*

**11/15/23 –**

*Information to Parents on C/C Sheet:* AM: “became upset at lunch ... we overcame adversity today ... by demonstrating appropriate behavior when losing a game. Great job [Student]!”; PM: “better afternoon;” exceeded points goals morning and afternoon (Dist. Exh., pp. 200-201).

*District documentation:*

- A-B-C data - “became upset that fourth grade is winning the coin wars” (Parent Exh., p. 283);

- V/P Notes - “yelling in music class ... raised hands to hit Coach Stacks ... [upset at losing coin wars] ... upset with writing assignment, yelling he will quit!” (Parent Exh., pp. 302-303);
- Major PBIS referral for excessive defiance/disrespect, “threatened to burn down all of first grade and destroy all of fourth grade” (Parent Exh., p. 246)

#### **11/16/23 –**

*Information to Parents on C/C Sheet:* AM - did not meet points goal; PM: “Ate Thanksgiving lunch with Mom and Grandma; Great Afternoon!”, exceeded points goal (Dist. Exh., pp. 202-203)

*District documentation:* V/P Notes - “hit me about three times... contained room escalates him ... demanding [to be taken] outside for his lesson”; “told Ms. Duncan he was going to blow her up!” (Parent Exh., p. 303)

*[Timeline Note – 11/18 – 11/26/23 was Thanksgiving Break, CIRCUIT referral made on 11/27/23]*

#### **11/27/23 –**

*Information to Parents on C/C Sheet:* None.

*District documentation:* V/P Notes - “Screaming that he will destroy the Fall Festival. It’s stupid. He will fire us. We are all liars.” (Parent Exh., p. 303)

#### **11/28/23 –**

*Information to Parents on C/C Sheet:* “very upset about missing Fall Festival. Homesick for Mom’s beautiful face”; did not meet points goal (Dist. Exh., p. 207)

*District documentation:*

- A-B-C data - Left room; stomped foot (Parent Exh., p. 284);
- V/P Notes - “Getting dynamite to blow up the school. Going to chop my Mom’s and Dad’s heads off. Blow up Santa... (upset he did not go to Fall Festival)” (Parent Exh., p. 303)

#### **11/29 to 12/11/23 –**

*Information to Parents on C/C Sheet:* Mostly “had a great morning/day,” “worked hard” (See Dist. Exh., pp. 208-223)

*District documentation:*

- A-B-C data - One incident reported (leaving the room) (Parent Exh., p. 284);
- V/P Notes - “Told Coach Stacks he hates her.” (Parent Exh., p. 243)

#### **4. Request for New FBA**

Mother testified that Student did not exhibit at home any physical aggression or the type of verbal aggression that Student was exhibiting at school. Tr. Vol. IV, p. 149-150. She was

surprised to see the account of Student's behavior on the October 26 C/C sheet and became concerned that Student received rewards even when exhibiting targeted behaviors on the same day. Tr. Vol. IV, pp. 89-90. Concerned with the physical aggression noted on the C/C form, Mother requested to view the classroom video for that day. Tr. Vol. IV, pp. 31-32. District at first refused, but later granted Parents' request to view the video, but without sound. Tr. Vol. IV, pp. 34-35. Three videos were played for the hearing: two October 26, 2023, videos without audio of Duncan's classroom (Parent Exh., pp. 382-383), and an October 26, 2023, video without audio of Barger's classroom (Parent Exh., p. 384). In the videos, Student was visibly upset and attempting to leave the classrooms, but blocked by teachers and para. Parent Exh., pp. 382-383. Student raised his fists as if to hit the para and teacher. Parent Exh., p. 383. It also appeared that he attempted to use a pencil to stab at the para. Parent Exh., p.384.

At Parents' request, an IEP meeting was scheduled for November 13, 2023, for the purpose of a "separate programming conference/IEP update." Parent Exh., pp. 17-18. Parents requested that the entire IEP team view the October 26 video, but District refused, and IEP team members never viewed it. Tr. Vol. IV, p. 34.

At the IEP meeting, Parents requested and gave verbal consent for District to conduct a new FBA. Parent Exh., p. 18. Parents provided written consent on the same day or possibly the next. Parent Exh., p. 19. District made a CIRCUIT (Centralized Intake and Referral / Consultant Unified Intervention Team) referral on November 27, 2023. Parent Exh., pp. 20-21. However, the CIRCUIT form completed by District checked "No" for behavior problems, and stated, "[Student] currently has a behavior plan that was developed last year, after a circuit was completed. **He is not showing new or increased behaviors**, however parent has requested new circuit." (emphasis added) Parent Exh. p. 21. The CIRCUIT coordinator determined that

Student's referral "does not meet criteria," after her December 6, 2023, conversation with Atkin, as follows:

Spoke with Misty Atkin. Student is **demonstrating consistent progress based on data**. Team is continuing to collect data on BIP goals and implementation. At this time, the CIRCUIT does not meet criteria. Email sent to MA. (emphasis added) Parent Exh., p. 20.

Mother testified that the physical aggression towards teachers and the verbal threats did not happen in the first grade, so were new behaviors in the second grade. Tr. Vol. IV, p. 108. Alumbaugh, who attended IEP team meetings, also testified that, "In every meeting we had, ... he had just had two major things that had happened ... his aggressive behavior was increasing. That was the fear." Tr. Vol. I, p. 98. Student's para, who was with Student all day every day, testified that his behavior had not improved "in any class." Tr. Vol. I, p. 176. On the other hand, his homeroom teacher, Mauldin, testified anecdotally that from the beginning of the school year to January 2024, Student's verbal and physical aggression improved. Tr. Vol. III, pp. 187-188.

This hearing officer finds that District undermined the CIRCUIT referral for an FBA by providing misleading information to CIRCUIT, despite District's own documentation of Student's verbal and physical aggression toward staff and students from August 23 to November 15, 2023, and the change in his behavior plan that included new verbal aggression.

The requested FBA was not completed at the time the due process complaint in this case was filed on January 8, 2024. Tr. Vol. IV, p. 145. After the CIRCUIT referral was denied, Atkin advised Parents that another IEP meeting and consent were required because the Notice of Action mentioned a CIRCUIT referral. Tr. Vol. II, p. 219. Parents disagreed and were unhappy with the delay. Tr. Vol. IV, pp. 65-66. Atkin insisted on a second meeting and consent form, stating that an IEP meeting would be held with or without Parents. Tr. Vol. IV, pp. 65-67.

Parents did not receive a Notice of Conference for another IEP meeting before the filing of this complaint. Tr. Vol. IV, p. 68.

### **5. IEP Team Composition**

Parents assert that two of Student's special education teachers, two of Student's general education teachers, and Student's para were not part of the IEP team or invited to attend IEP meetings. Tr. Vol. I, pp. 88, 106-107. The list of attendees on Student's IEP amended September 11, 2023, is illegible as to all attendees. Parent Exh., p. 8. Witnesses testified that the following persons attended as required members of the IEP team: XXXXXXXXX, parent; Atkin, LEA and special education teacher; Griffin, school principal; Mauldin, Student's general education teacher; occupational, physical, and speech therapists; Alumbaugh, advocate; and Marcia Harding, district consultant. Tr. Vol. I, p. 20; Tr. Vol. III, pp. 12, 198-199. Duncan, one of Student's special education teachers, Barger, one of Student's general education teachers, and Standridge, Student's one-on-one paraprofessional did not attend IEP meetings. Tr. Vol. I, p. 88.

Parents consistently requested that Ramona Standridge, Student's one-on-one paraprofessional, be invited to attend IEP meetings. Tr. Vol. I, p. 20. Parents assert that Standridge has direct information relating to Student's behavior on a daily basis, which would have been important to the IEP team decision-making. Id. Standridge testified that she has a high school diploma, completed the PRAXIS paraprofessional exam, and has been a para for seven years. Tr. Vol. I, 142. Standridge was provided a copy of Student's IEP and Behavior Plan (Tr. Vol. I, p. 170), but stated she was not trained by a BCBA (Tr. Vol. I, p. 201), and that some of her strategies used with him were just, "Things I have learned" (Tr. Vol. I, pp. 179-180). Standridge stated, "before school started, I meet with Ms. Atkin and ... Ms. Mauldin, and they were able to ... tell me about [Student]. We went over his IEP, Behavior Plan, and things like

that. And ... we discussed what had worked for him in the past and what had not worked with him.” Tr. Vol. I, pp. 226-227. Standridge also met with Student’s teachers, and occasionally the principal, weekly to go over Student’s week, which she testified, “helped me tremendously to be able to learn how to work with him.” Tr. Vol. I, p. 227, 229.

Standridge stated that she was “in close proximity” to Student for all but recess and lunch each day. Tr. Vol. I, p. 142-144. In addition to administering the C/C sheets, she assisted with keeping him on task, accompanying him when he needed to leave the classroom and cool down. Tr. Vol. I, pp. 160-162. Standridge delivered some of his behavioral instruction services (as supervised by Atkin). Tr. Vol. I, pp. 178-179; Tr. Vol. II, p. 159. Standridge also testified that she documented behavioral aggression on the A-B-C sheets, wrote the V/P notes, times that he left the classroom, and “thinking sheets” when he needed to reflect on a maladaptive behavior. Tr. Vol. I, pp. 166-168. Standridge indicated that she did not “duplicate” bad behaviors on the C/C sheets that she entered on A-B-C checklists, because she thought parent was getting the A-B-C checklists. Tr. Vol. I, p. 207. She further testified that she had no knowledge of whether Atkin or any of Student’s teachers communicated with Mother about the behaviors. Tr. Vol. I, pp. 210-211. She turned in her documentation monthly to Atkin (Tr. Vol. I, p. 190), but the data was not discussed at the weekly meetings she had with Student’s teachers. Tr. Vol. I, p. 229. Standridge testified that she believed Student’s behavior had improved, and that there might be a period of weeks that she did not need to fill out an A-B-C checklist. Tr. Vol. I, pp. 223-225.

Standridge has never attended an IEP meeting for Student, and District has never asked her to. Tr. Vol. I, p. 154. She stated that if she was asked to, she would not have any problem providing information on Student’s behavior. Tr. Vol. I, p. 155. District denied every Parent request for Student’s para to attend an IEP meeting, citing a lack of coverage for Student in the

classroom, or that the para did not want to attend. Id. Alumbaugh testified that Atkin had told her and Mother that, “We have told you time and time again, the parapro is not coming to the meetings.” Tr. Vol. I, p. 101. Stacks testified that it is the District’s “practice” that paras never attend IEP meetings. Tr. Vol. II, p. 81. Student’s first-grade para testified that she never attended an IEP meeting for Student. Tr. Vol. IV, p. 224. Indeed, the District made it a policy at a 2024 board meeting that paras were not required to attend IEP meetings. Tr. Vol. II, p. 114. Stacks testified that he did not want the para to attend IEP meetings because he did not want to “put our paraprofessionals through that ... [meaning] I don’t want my paraprofessionals to have to come deal with you and Audie and Ms. XXXXX in an IEP meeting. They don’t get paid enough money ... the bullying and intimidation and everything we have to deal with in this setting.” Tr. Vol. II, pp. 80-81. Stacks also testified that Student’s previous two paraprofessionals had told him they did not want to attend IEP meetings, one saying she “didn’t want to deal with [Mother].” Tr. Vol. II, pp. 112-113. By his own statements, then, Stacks admits that keeping the para, and others, from attending IEP meetings, and in fact, developing a District board policy to that effect (Tr. Vol. II, p. 114), was a direct response to Parents filing due process complaints.

## **6. Parent participation**

Parents argue that District limited, delayed, or denied Parents access to school personnel and other information about District's implementation of Student’s IEP, by the following actions:

(a) Parents assert that there always had to be an administrator in the teacher/parent conferences concerning Student. Complaint, p. 6. Stacks testified that it is District policy that when a teacher requests an administrator be present in a parent/teacher conference, that one will be made available. Tr. Vol. II, p. 123. When asked why Student’s teachers would ask for an administrator, but Student’s sister’s teachers did not, Stacks replied, “My guess is because she is

not suing the teachers in this school for her daughter.” Tr. Vol. II, pp. 125-126. Mauldin testified that she is more comfortable having an administrator present so that “something I’m [doing or saying] doesn’t come back against me.” Tr. Vol. III, p. 193. Mauldin stated that she learned of the “lawsuit” (meaning the due process complaint) just as a member of a small community, and that it made her “hesitant as a teacher.” Tr. Vol. III, pp. 194-195.

(b) Mother asserts that she was intentionally omitted from messaging about and deliberately denied opportunities to participate in District’s parent involvement groups. Tr. Vol. IV, pp. 117, 120-122. Stacks denied this, stating that the district had changed its strategy for parent involvement groups for reasons that had nothing to do with Mother. Tr. Vol. II, p. 104-105.

(c) Parents also assert that Mother was denied an opportunity to have lunch with Student (except at thanksgiving) (Tr. Vol. I, p. 116), or to observe Student in the classroom, (Tr. Vol. IV, p. 109), and that Student was not allowed to call her when he requested to or needed to call (Tr. Vol. IV, p. 155). Stacks testified that no parents are allowed to have lunch with students or observe in the classroom. Tr. Vol. II, pp. 105-106, 108. Mother agreed that for Student to call Mother every time he is escalated could become a negative reinforcer for him. Tr. Vol. IV, p. 155.

(d) Mother asserts that she was excluded from a text or dojo message group with Student’s teachers and para because of the “litigation.” Tr. Vol. I, pp. 104-105. Student’s first-grade para, Jennifer Spears, testified that she had stopped including Mother in a text message group because “there were some legal things going on ... and I was trying not ... to be drawn into any kind of legal action. Tr. Vol. IV, p. 216. Mauldin testified that she communicates with



Mother on a Dojo group for all parents in her classroom, as well as a separate text messaging group with Mother, Atkin, and the principal. Tr. Vol. III, p. 185.

(e) Parents assert that District denied Parents' request for their attorney to attend an IEP meeting. Tr. Vol. I, pp. 117-118. Stacks testified that attorneys may attend if the District's attorney was also present, and that for the IEP meeting Parents' attorney wanted to attend, the District's attorney was not available Tr. Vol. II, p. 110.

(f) Parents allege they did not receive a Notice of Action of IEP meetings. Complaint, p. 8. The evidence presented at the hearing did contain the Notices of Action, but the testimony was not clear as to whether Parents actually received the notices. See Tr. Vol. IV, p. 77 (Mother testifies about Notice of Action, but appears to mean Notice of Conference).

This Hearing Officer finds that Parents did not refute District's denials of or reasons for these actions or inactions beyond innuendo and supposition. Thus, they have not shown by a preponderance of evidence that District took any of the above alleged actions or inactions to intentionally impede Parents' meaningful participation in the decision-making process for Student's special education services by virtue of these allegations.

### **7. Request for Applied Behavioral Analysis ("ABA") Therapy**

In their post-hearing brief, Parents state that they requested in the November 13, 2023, IEP meeting that District contract with an ABA service provider to work with Student at school. Post-Hearing Brief, p. 14. Atkin testified that the IEP team considered the request, but placed it on hold until after the results of the FBA were received. Tr. Vol. II, p. 220. Parents did not provide sufficient evidence to support a finding that District should have granted the request for ABA therapy for Student in school.

## VI. LAW AND DISCUSSION

The IDEA was enacted to ensure that all children with disabilities have available to them a free appropriate public education (a “FAPE”) that emphasizes special education and related services designed to meet their unique needs...”. 20 U.S.C. § 1400(d)(1)(A). A child is eligible for special education and related services under the IDEA if: (a) the child has a disability; and (b) because of the disability needs special education and related services. Autism is among the disabilities contemplated by the IDEA (20 U.S.C. § 1401(3)), which defines it as:

...a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. 34 CFR 300.8(c)(1); 20 U.S.C. 1401(9).

The first obligation of a school district is to identify, locate, and evaluate children with disabilities or children who are reasonably suspected of having disabilities regardless of their severity. 20 U.S.C. § 1412(a)(3) (emphasis added); 34 C.F.R. § 300.111; Rules of the Arkansas Dept. of Education, Special Education and Related Services, 3.0 Child Find, 3.01.1. After determining that a child is eligible under the IDEA because the child has a disability and, by reason thereof, needs special education and related services (20 U.S.C. § 1401(a)(3)), a school district team of professionals will develop and implement an IEP for the child that meets the requirements of state and federal law and regulations.

### **A. Procedural Rights and Violations**

Throughout the process of evaluating the child, developing an IEP, and implementing the IEP, eligible children and their parents are afforded procedural rights under the IDEA. The basic procedural rights include: (1) the opportunity for parents to examine all records relating to their

child; (2) the opportunity for parents to attend meetings regarding identification, evaluation, and educational placement of their child, and the provision of a FAPE; (3) the opportunity to obtain an independent educational evaluation; (4) prior written notice of proposals or refusals to initiate a change in the identification, evaluation, and educational placement of their child; and (5) the opportunity to present and resolve complaints. 20 U.S.C. § 1415(b)-(e).

Procedural inadequacies are violations if they:

- impede the child's right to a FAPE;
- significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
- cause a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).

***1. Did District commit a procedural violation of the IDEA when it failed to conduct a new FBA?***

One of the procedural safeguards of the IDEA requires that a district conduct an evaluation for which parents have provided consent within sixty days of receiving the parent consent. 20 U.S.C. § 1414(a)(1)(C)(i)(I). In 2007, the Office of Special Education Programs (“OSEP”) provided guidance that if an FBA focuses on the educational and behavioral needs of a specific child, it's an evaluation or reevaluation under the IDEA. *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007).

As discussed above (section V.B.4), I find that not only was the FBA not conducted, but the reason for the CIRCUIT’s denial rests squarely on District’s misinformation provided to CIRCUIT. The IEP team approved a new FBA to inform changes to Student’s behavior intervention plan for addressing new maladaptive behaviors that Student exhibited at school. It is undisputed that Student’s maladaptive behaviors escalate when he is presented with a non-preferred task or difficult task at school, and cause him to miss instructional time. Therefore, by

virtue of its procedural violation, District impeded Student's right to a FAPE and deprived him of educational benefit.

**2. *Did District commit a procedural violation of the IDEA by limiting, delaying, or denying Parents access to school personnel?***

As discussed above in section V.B.6, Parents did not meet their burden of proof as to the actions in question. Therefore, I do not find that District violated the procedural safeguards of the IDEA in this respect.

**3. *Did District commit a procedural violation of the IDEA when it failed to provide Parents the opportunity to examine all of Student's educational records?***

Whether out of an abundance of caution in attempting to avoid legal action, or for some other reason, District denied Parents their rights to examine student's records. Without the records, Parents were not aware of the full extent to which Student's behavior was affecting his education. They were not able to determine whether Student's BIP was implemented with consistency and in collaboration with Parents as required in the BIP. This is a clear procedural violation of the IDEA, and one that significantly impeded Parents' meaningful participation in the decision-making process for Student's special education. In so doing, District denied Student a FAPE.

**4. *Did District commit a procedural violation of the IDEA when it refused to honor Parents' request for Student's paraprofessional to attend IEP meetings as a discretionary member of the IEP team?***

The IDEA mandates who must be on an IEP team: a parent, at least one of the child's special education teachers, at least one of the child's regular education teachers, a district

representative, a person to explain evaluations (may be the same as another team member), and the student if appropriate. 34 C.F.R. § 300.321(a). The statute also states that the public agency “**must ensure**” (Id.) that the individual described below is on the IEP team:

At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services... The determination of the knowledge or special expertise of [the] individual ... must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. 34 C.F.R. § 300.321(a)(6); 34 C.F.R. § 300.321(c).

Here, the evidence clearly shows that Standridge, Student’s one-on-one paraprofessional, was the person with the most first-hand, detailed knowledge of Student’s behaviors. Student’s BIP tasks the para with the several aspects of the BIP implementation. Parent Exh., pp. 11-12. District relied on Standridge to be with Student all day, except for her lunch break, to administer the C/C system, complete A-B-C checklists, behavior reflection sheets, and various other documentation, and provide the support he needed when he left the classroom. Standridge delivered Student’s direct services for behavior supervised by Atkin. Even Student’s teachers relied on Standridge to “handle” Student when he was escalating or leaving the classroom. Standridge submitted all of her documentation to Atkin monthly. Yet, District denied Parent’s invitation for Standridge to attend because Stacks did not want to subject her to the “bullying and intimidation” of the IEP and complaint process. Had Standridge attended the IEP meetings, Parents would have had the opportunity to: learn of Student’s behaviors at school directly from her; gain a better understanding of Standridge’s role in implementing Student’s BIP; learn of Standridge’s methods of working with Student; be able to discuss successful home strategies; and be informed of the documents containing her notes and information for the BIP. Thus, District’s failure to allow Student’s one-on-one paraprofessional to attend IEP meetings at

Parents' invitation significantly impeded Parents' meaningful participation in Student's special education decision-making process, thereby denying Student a FAPE.

5. ***Did District commit a procedural violation of the IDEA by failing to provide Student's general education teachers and his one-on-one paraprofessional with the training needed to implement Student's individualized education program ("IEP"), and in particular, his behavior intervention plan, with fidelity.***

Student's para had successfully passed the PRAXIS exam for paraprofessionals in the classroom, and had previous experience working with autistic children. The evidence in this case shows that Student's teachers and para were provided with a copy of Student's IEP and BIP, which were reviewed with them. However, Standridge acknowledged that she was not trained by a BCBA on implementing the BIP. She said that she benefited from discussing her work with Student at meetings with Atkin and Mauldin, but Mauldin testified that she had not received specific training either. On the other hand, the BCBA who designed Student's BIP, Shana Bailey, did not prescribe any specific training for staff on the behaviors of autistic children or the implementation of Student's BIP. While it would seem logical that staff would benefit from such training, I find the District has not violated any procedural safeguard of the IDEA concerning the training of staff for behavior plan implementation.

## **B. Substantive Violations**

The failure of a school district to meet the requirements for a student's IEP is a substantive violation of the IDEA and a denial of FAPE. A district must develop a student's IEP pursuant to IDEA requirements, and be "reasonably calculated to enable the student to make appropriate progress in light of his specific circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197, L. Ed. 2d 335 (2017). The IDEA requires every IEP 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 to be provided to student. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV).

Further, a failure to implement a student's IEP, if the failure is material, is also a denial of FAPE. The Ninth Circuit Court of Appeals defines a "material failure" as one that occurs "when there is more than a minor discrepancy between the services provided ... and those required by the IEP." *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811 (9th Cir. 2007) (finding that 5 hours provided of 8-10 hours required is a material implementation failure).

Parents raise two issues about Student's IEP and its implementation. The first is that the IEP does not contain goals for the provision of direct services for written expression. While the failure to have written, measurable goals is an error, there is not a preponderance of evidence to show that Student was deprived of educational benefit due to the lack of written goals for the approximately 14 weeks of school from the September 11, 2023, IEP meeting until the January, 2024, filing of the complaint. Therefore, I find that District's failure was not a material implementation failure, and thus, was not a substantive violation of the IDEA.

Second is an issue Parents raise in their post-hearing brief, alleging that Student did not receive all of the minutes of related services provided in his IEP. Although Parents included a global assertion in the Due Process Complaint #2, under paragraph 11.u., as, "Failing to provide [Student] with special education and related services in conformity with his IEP," they provided no testimony from the occupational, physical, or speech therapists, or any other witness

sufficient to support a failure to provide Student's related services. Parents raise this issue in greater detail in the Post-Hearing Brief, including an exhibit of calculations of missing minutes. The exhibit attached to Parents' Post-Hearing Brief as Exhibit A was not entered into evidence at the hearing, and thus is not considered by this Hearing Officer. Therefore, I find that District did not fail to provide the related services called for under Student's IEP.

### **C. Compensatory Education and Services**

A student is entitled to compensatory education and services to remedy any educational or other deficits that result from the denial of FAPE. *See School Comm. of Burlington v. Department of Education*, 471 U.S. 359, 374, (1985); *Parents of Student W. v. Puyallup School Dist., No. 3*, 31 F.3d 1489 (9th Cir. 1994) (ruling that "the hearing officer's ability to award relief [is] coextensive with that of the court..."(citing *Cocores v. Portsmouth, NH, School Dist.*, 779 F. Supp. 203 (D. N.H. 1991))). District failed to provide Student a FAPE when it did not conduct an FBA, thereby depriving Student of the educational benefit he could have received the implementation of a revised behavior plan. In addition, District significantly impeded Parents' opportunity for meaningful participation in decision-making in the process regarding the provision of a FAPE to Student by failing to allow Student's para to attend IEP meetings and failing to provide Parents the opportunity to examine documentation of Student's behaviors and other educational records. Therefore, Student is entitled to the following compensatory education: an FBA, if one has not already been conducted; a review of the implementation of Student's behavior plan by a BCBA, to determine its effectiveness and whether there is a need for an amendment and for coordination among Parents and District of implementation strategies; the inclusion of Student's one-on-one paraprofessional on the IEP team; and as part of the



Student's IEP, the provision of all records and documentation of Student's behavior under the behavior plan to Parents not less than monthly.

## **VII. ORDER**

IT IS, THEREFORE, ORDERED THAT:

1. Parents' request for an order that District stop retaliation against Parents is DENIED;
2. Parents' request for an order that District contract with a provider to evaluate Student regarding his need for Applied Behavioral Analysis therapy is DENIED;
3. Parents' request for an order to provide compensatory education for lost learning time and missed minutes of related services is DENIED;
4. Parents' request that future IEP meetings be held at a location off of the school campus (made for the first time in the post-hearing brief) is DENIED;
5. Parents' request that Michael Stacks be excluded from future IEP meetings for Student (made for the first time in the post-hearing brief) is DENIED;
6. District is ORDERED to pay for a functional behavioral analysis, if one has not already been conducted, by a BCBA of parent's choice. The BCBA who conducts the FBA shall meet with the IEP team to review the FBA results, Student's Behavioral Improvement Plan and its implementation, and make recommendations for any amendments needed based on the FBA results, including the coordination of and training on implementation strategies by District staff responsible for implementing the BIP. The FBA shall be conducted and recommendations completed within the first sixty (60) days of the start of the 2024-2025 school year;
7. District is ORDERED to include Student's one-on-one paraprofessional on Student's IEP team as long as Parents request the para's inclusion under 34 C.F.R. §§ 300.321(a) and (c);

8. District is ORDERED to include in Student's IEP a requirement that all documentation of Student's behavior, and any educational records requested by Parents, will be provided to Parents at least monthly. District is further ORDERED to provide to Parents copies of any documentation that will be reviewed at an IEP meeting at or before the IEP meeting. District shall obtain and maintain a record of Parents' acknowledgement of receipt of such documentation and educational records. Parents and District shall agree on the method of delivery of documents and educational records; and

9. Parents' claims filed under Title II of the Americans with Disabilities Act, and § 504 of the Rehabilitation Act of 1973, and claims for First Amendment retaliation are hereby DISMISSED WITHOUT PREJUDICE.

**VIII.  
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. 34 C.F.R. §300.516

Pursuant to Section 10.20.9, Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education (February 9, 2024), the Hearing Officer has no further jurisdiction over the parties to the hearing.

**IT IS SO ORDERED.**

/s/ Cheryl L. Reinhart  
Cheryl L. Reinhart  
HEARING OFFICER

Dated: May 24, 2024