

**ARKANSAS DEPARTMENT OF EDUCATION**

**Special Education Unit**

██████████  
**AS PARENT OF**  
██████████

**PETITIONER**

**VS.**

**NO. H-24-34**

**SCHOLARMADE ACHIEVEMENT CHARTER  
SCHOOL**

**RESPONDENT**

**HEARING OFFICERS FINAL DECISION AND ORDER**

**ISSUES PRESENTED:**

Whether the Scholarmade Achievement Charter School (hereinafter “District” or “Respondent”) denied ██████████ (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between August 20, 2023, and February 9, 2024, in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”), by: (1) failing to allow parent the opportunity to inspect and review educational records; (2) failing to develop and implement an appropriate behavior plan using positive behavior interventions; (3) failing to use peer reviewed research to determine supplementary aids and services; (4) failing to use appropriate assessment tools and strategies to provide relevant information to the IEP team;

(5) failing to ensure that Parent is a member of any group that makes decisions regarding student's educational placement; (6) failing to timely implement an IEP for student when he transferred into the district with an IEP in place; (7) failing to properly train teachers; (8) failing to conduct an appropriate manifestation determination for Student.

**Procedural History:**

On February 9, 2024, the Arkansas Department of Education (hereinafter referred to as the "Department" or "ADE") received a request to initiate a due process hearing from [REDACTED] ("Parent" or "Petitioner"), as the Parent of [REDACTED] (hereinafter referred to as "Student"), against the Scholarmade Achievement Charter School (hereinafter referred to as "District" or "Respondent"). Parent requested the hearing because she believed the District failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as "IDEA") and the regulations set forth by the Department by not providing Student with a free appropriate public education. <sup>1</sup>

At the time that Parent filed her request for a due process hearing, Student was a 13-year-old boy and a student at Scholarmade Achievement Place Charter School. <sup>2</sup> Student was a student with a disability under 20 U.S.C. §1401(3). Student was identified under the category of Other Health Impairment (OHI). Student was diagnosed with Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Unspecified Disruptive Impulse Control Disorder. <sup>3</sup>

In response to the Parent's request for a Due Process hearing, the Department assigned the case to an impartial hearing officer. Thereafter, Prehearing conference was scheduled for March 11, 2024, and the Due Process Hearing set for March 12, 13, and 15, 2024. <sup>4</sup>

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<sup>1</sup> See hearing officer File-Petitioner Complaint.

<sup>2</sup> See Hearing Officer File-Petitioner Complaint, pg. 2.

<sup>3</sup> District Exhibits, pg. 153.

<sup>4</sup> See Hearing Officer file, Scheduling order.

The Prehearing conference was conducted via zoom on March 11, 2024.<sup>5</sup> Counsel for both the Parent and the District participated in the prehearing conference. During the prehearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.<sup>6</sup>

Thereafter testimony was heard in this case on March 12, 13, and 15, 2024. At the end of the hearing on March 15, 2024, the parties had not completed their presentation of testimony and the case was continued until April 1<sup>st</sup>, 2024, and testimony was taken on April 1<sup>st</sup>, 2024, and was completed on April 2<sup>nd</sup>, 2024.<sup>7</sup>

Present for the Hearing were Thomas Nichols and Kayla Bishop, attorneys for the parent, Carmen Pruitt, attorney for the District, [REDACTED] parent, Dr. Mary Guinn, special education coordinator for Scholarmade. At the Parent's request, this was an open due process hearing and the following observed the due process hearing; Rick Porter, Arkansas Department of Education (ADE), Mistila Hunt (ADE), Becca Chism (ADE), Derek Henderson (Disability Rights), Dustin Wood (Director of School Choice for ADE), Kimberly Parks (ADE) and Tiffany Kell (Bowen School of Law).<sup>8</sup>

The following witnesses testified in this matter: Dr. Mary Quinn, Taquinlynn Abernathy, Jaylyn Morris, Larry Williams, Leonard McGee, Marquinta Moore, Keneishia Jefferson, Melony Phillips, Eltrudia Toliver, Dayton Artis, Justin Lyndsey, Michael Reed, Dewayne Knowlton, Virgil Williams, Doctor Phillis Anderson, and [REDACTED].<sup>9</sup>

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<sup>5</sup> Transcript, prehearing conference.

<sup>6</sup> Id.

<sup>7</sup> Transcripts, Vol. I-V.

<sup>8</sup> Id.

<sup>9</sup> Id.

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

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements, and both timely submitted briefs in accordance with the deadline set by this Hearing Officer.<sup>10</sup> The Parent argued some issues in her post hearing brief that were not alleged in her Due Process Complaint, as such those issues are not addressed in this opinion as the District was not provided proper notice in order to defend itself.

### **Findings of Fact**

1. Student is a thirteen-year-old boy who is in the 7<sup>th</sup> grade at Scholarmade Achievement Place Public Charter School (“District”).<sup>11</sup>
2. Student is currently identified by the District as a student eligible for special education and related services under the individuals with Disabilities Education Act (IDEA).<sup>12</sup> Student is identified under the category of “Other Health Impairment”.
3. Student is diagnosed with Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, Unspecified Disruptive Impulse Control Disorder.<sup>13</sup>
4. Student was previously enrolled at LISA Academy charter school (“LISA”) until the end of the 2022-2023 school year.<sup>14</sup>
5. Parent enrolled Student in the District around August 30, 2023.<sup>15</sup>

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<sup>10</sup> See Hearing Officer File-post hearing briefs.

<sup>11</sup> Parent Exhibits, pg. 21.

<sup>12</sup> Id., at pgs. 152-166.

<sup>13</sup> Id., at 153.

<sup>14</sup> Id., at 21.

<sup>15</sup> Parent Exhibits, pg. 20.

6. Around August 11, 2024, Parent submitted an application for Student to attend the District. Student transferred into the District on August 30, 2024 from Lisa Academy.<sup>16</sup>
7. Student's enrollment application with the District did not indicate that Student was a student receiving special education services under IDEA.<sup>17</sup> Parent did not inform the District until sometime after Student was enrolled.<sup>18</sup> The District was informed that Student was a child with a disability on or before September 15, 2023.
8. On October 4, 2023, Dr. Guinn, emailed Parent a Notice of Conference to conduct a transfer of special education services from Lisa Academy to Scholarmade Achievement Charter School. Dr. Guinn, explained that the District had received data from Lisa Academy on September 15, 2023 and September 25, 2023.<sup>19</sup> The Notice of Conference stated that the transfer conference was going to be held on October 18, 2023.<sup>20</sup>
9. On October 18, 2023, the District conducted the transfer conference. Student was receiving private occupational and speech therapy. The District did not consult with Student's private therapists about the meeting date and Student's therapists were not in attendance. Parent ended the meeting early because she did not believe that the District had all the people present needed to provide sufficient information regarding Student, or develop an appropriate IEP for Student. Parent did not give written consent for the District to begin providing special education services to Student. The District's notice of conference was inaccurate when it stated that IQ and Achievement testing was included on the Notice of Conference sent to Parent on October 4, 2023.<sup>21</sup>

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<sup>16</sup> Id., pg. 21.

<sup>17</sup> Id., pgs. 179-180.

<sup>18</sup> Transcript Vol. 5, pg.60.

<sup>19</sup> Parent Exhibits, pg. 113.

<sup>20</sup> Id., at 110, 113.

<sup>21</sup> Parent Exhibits, pgs. 130-131.

9. The Notice of Conference stated that the purpose of the conference was to (1) review/revise the IEP and (2) Transfer Conference.<sup>22</sup> The Notice of conference does not indicate that the team would be reviewing data as part of an initial evaluation or re-evaluation, nor does it indicate that the District would be proposing a re-evaluation.<sup>23</sup>
10. Parent participated by Zoom. Although, there was some confusion about whether Parent stated she would attend in person.<sup>24</sup>
11. Immediately following the conclusion of the transfer conference, Parent sent an email stating:

“I would like another meeting it was issues getting in the meeting and as well as I want all providers at the meeting via zoom they don’t have to be in person. I want to make sure that [Student] gets what he needs. If the school is having issues getting documents let me know. So I can assist he has been in the school since September 5 and is having difficulties. And when you have anyone come to the meeting the teacher can’t leave the meeting because I want to know the issues in the classroom and accommodation my child needs. And I would like a new meeting at your earliest convenience. It was supposed to start at 9am”<sup>25</sup>
12. Dr. Guinn, responded to Parent’s email stating she would contact J5 to determine when the OT could participate in a meeting, and reschedule the meeting as soon as possible.<sup>26</sup>
13. After Parent left the transfer conference on October 18, 2023, the District continued with the IEP meeting and developed an IEP for Student, without notification to the parent and parental input. This was compounded by the fact that the Parent left the meeting believing the District would be scheduling another meeting with Student’s therapist and at no point did the District notify Parent that they would be continuing with the transfer conference and developing an IEP for Student without Parent present. Additionally, the

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<sup>22</sup> Id., at 110.

<sup>23</sup> Id.

<sup>24</sup> Parent Exhibits, pg. 131.

<sup>25</sup> Id., pg. 133.

<sup>26</sup> Id.

Notice of Action states that there was no discussion of Student's current academic performance, review of his IEP from Lisa Academy, teacher input, or his accommodations.<sup>27</sup>

14. On October 24, 2023, Parent attended a meeting at the District about incidents on the bus.<sup>28</sup> Parent reported that Student's bus driver was cursing at him, telling him to "shut up, you disrespectful child."<sup>29</sup> At this same meeting, Parent asked the District special education coordinator whether she needed to sign anything to start services and in response the special education coordinator stated she would email it to Parent to sign. There is no evidence that anything was emailed to Parent to sign.<sup>30</sup>
15. Student's IEP and Student's amended IEP developed by Scholarmade are substantially different from Student's LISA academy IEP.<sup>31</sup> In the present level of academic achievement and functional performance section, Student's IEP states that Student will receive 900 minutes of special education services in math.<sup>32</sup> This is a serious departure from the LISA academy IEP, which states Student will receive 1800 minutes per month of direct math instruction in a resource setting.<sup>33</sup>
16. Student's IEP prepared by the District acknowledges that "the parent did not participate in the conference where the IEP was reviewed."<sup>34</sup> However, on the existing data review notice of decision form, also dated October 18, 2023, states Parent participated by

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<sup>27</sup> Transcript Vol I, pg. 65, Parent Exhibits, pgs. 117-130.

<sup>28</sup> Transcript Vol V, pg. 69.

<sup>29</sup> Id.

<sup>30</sup> Transcript Vol. V, pg. 90

<sup>31</sup> Parent Exhibits, pgs. 39-50, 117-129, 152-166.

<sup>32</sup> Id., pg. 118.

<sup>33</sup> Id., pgs. 53, 58.

<sup>34</sup> Parent Exhibits, pg. 117.

zoom.<sup>35</sup> The Evidence shows that Parent left the October 18, 2023 meeting and that the District continued that meeting without Parent and developed an IEP for Student.

17. The District's Notice of Action dated October 18, 2023, states that the District does not have consent to provide any special education services and yet the District represented that it provided special education services from October 18, 2023 forward.<sup>36</sup>
18. Although unclear when, after the transfer conference, the District developed Student's weekly support schedule.<sup>37</sup> District stated that the support schedule was not part of Student's IEP yet the support schedule identifies several individuals not listed on Student's IEP as providing direct instruction in math with corresponding minutes of direct instruction in math.<sup>38</sup>
19. Based on Student's weekly support schedule he was to receive 710 minutes a week in math instruction or 2,840 minutes per month. However, the District stated Student was to receive 1800 minutes of math instruction. There was no evidence as to what information the District used when deciding to deviate from the 1800 minutes of math instruction.<sup>39</sup>
20. Student's support schedule appears to include Student's daily math class for 300 of the math instruction minutes per week. In addition, the schedule includes one Academic Support Class/AVID three times per week, one Academic Resource Support Class once per week, and two windows of "Academic Support" totaling an additional five sessions per week.<sup>40</sup>

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<sup>35</sup> Id., pgs. 115-116.

<sup>36</sup> Id., pgs. 130, 181; Transcript Vol. I, pg. 63.

<sup>37</sup> Parent Exhibits, pg. 134.

<sup>38</sup> Id., pg. 134.

<sup>39</sup> Id., pgs. 128, 165.

<sup>40</sup> Parent Exhibits, pg. 134.



21. Student's math teacher is Jaylyn Morris (Morris) but Student's support schedule indicates/identifies several other individuals who are providing direct instruction in math to Student. All District personnel providing direct instruction in math to Student lack appropriate qualifications required under IDEA. Additionally, it is not stated on Student's IEP who is responsible for Student's special education services in Math.<sup>41</sup>
22. Morris's class structure used Virtual Arkansas, followed by practice problems for standardized state assessments.<sup>42</sup> Some days he did not teach content at all.<sup>43</sup> While Student told Morris that he didn't understand some of the work, Morris did not know why Student did not complete his work. Student's difficulties led to failing grades in math.<sup>44</sup>
23. Morris had never seen Student's Functional Behavior Assessment provided by LISA academy and admitted that he would have changed his approach with Student had he known about it.<sup>45</sup> While he believed he saw documentation related to positive behavior supports for Student, nobody told him what those supports meant or how to provide them.<sup>46</sup>
24. The record is unclear precisely when Student's teachers received, reviewed, or implemented Student's IEP. Dr. Guinn stated that she did not actually provide Student's IEP to Student's teachers but assembled certain components from Student's IEP and other documents to give to them.<sup>47</sup>

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<sup>41</sup> Id., at pgs., 117-129, 153-166.

<sup>42</sup> Transcript Vol. II, pg. 15.

<sup>43</sup> Id.

<sup>44</sup> Transcript Vol. II, pg. 22.

<sup>45</sup> Transcript Vol. II, pg. 26.

<sup>46</sup> Transcript Vol. II, pg. 67.

<sup>47</sup> Transcript Vol. I., pgs. 142-143.

25. On November 2, 2023, Student's grade in math was a "C", and on November 8, 2023, Student's grade had dropped to a "D".<sup>48</sup>
26. On November 4, 2023, parent met with Student, Morris, and Dr. Guinn about Student's math grade.<sup>49</sup>
27. On December 15, 2023, Student's progress toward math goal number four was recorded as both 70% and 74%, while progress toward math goal number five was recorded as both 72% and 74%.<sup>50</sup> It is impossible from the paperwork to determine what these percentages represent.
28. The District uses a behavior program called "scholar bucks" "kickboard" with all Students. Dr. Phillis Anderson (Anderson), the founder and superintendent of the District, described Scholar Bucks as a positive behavior intervention program that provides incentives to Students.<sup>51</sup> Students are awarded or penalized "Scholar Bucks", as dollar amounts, based on their behavior.<sup>52</sup> Once a student has earned enough Scholar Bucks, they are eligible to purchase a tangible reinforcer. Scholar bucks are accumulated or lost in a way that a student can carry a positive or negative balance. If a student has a negative balance, they must have enough positive behavior to eliminate the negative balance before they may accumulate positive scholar bucks.<sup>53</sup>
29. Student's Scholar Bucks record reflected the following:
  - a. On September 26, 2023, Student was penalized \$5.00 for "aggressive play."

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<sup>48</sup> Parent Exhibit's, pgs. 108-109.

<sup>49</sup> Transcript Vol. V., pg 83.

<sup>50</sup> Parent Exhibit's, pgs. 158-161/

<sup>51</sup> Transcript Vol. IV, pg. 102.

<sup>52</sup> Transcript Vol. III, pg. 86.

<sup>53</sup> Transcript Vol. III, pgs. 86-88.

- b. On October 3, 2023, Student was awarded \$3.00 for “Listening,” \$2.00 for “Ready to Learn: On Time,” and \$5.00 for “On Task.”
- c. On October 11, 2023, Student was awarded \$2.00 for “Ready to Learn: On Time,” \$2.00 for “Present/Attendance,” and \$5.00 for “In Uniform.”
- d. On October 16, 2023, Student was penalized \$10.00, calculated as \$5.00 for “Disrupting Class” and \$5.00 for “Disrespect” due to the same incident, wherein Student refused to remove his jacket from his head.
- e. On October 27, 2023, Student was apparently audited, through which he was penalized \$23.00 for previous incidents, calculated as \$5.00 for having his legs in the school bus aisle and not following the driver’s directions on October 24, 2023, \$10.00 for using inappropriate language, cursing and horseplaying on the bus on September 21, 2023, \$5.00 for “exhibit[ing] a persistent defiance as he repeatedly challenged Mr. Morris regarding the rationale behind his solitary seating arrangement at the assigned seat,” and another \$3.00 for the same incident.<sup>54</sup>
30. On November 9, 2023, Student carried a negative balance of \$14.00. This reflected his scholar bucks since he enrolled in the District around August 30, 2024.<sup>55</sup>
31. Between September 13, 2023, and October 24, 2023, Student had eight discipline referrals for behaviors such as yelling, not following directions, inappropriate language, and horseplaying.<sup>56</sup>

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<sup>54</sup> Parents Exhibits, pg. 95.

<sup>55</sup> Id., pgs., 96-97.

<sup>56</sup> Id., pgs., 98-106.

32. Justin Lindsey is Student's onboard educator when he rides the school bus. An onboard educator is an adult who is responsible for maintaining order on the school bus and providing assistance for students completing homework.<sup>57</sup>
33. On February 1, 2024, Student and Mr. Lindsey were involved in an incident on the bus. Student was not in his assigned seat and Mr. Lindsey told him to get in his seat. The two started yelling at each other. Mr. Lindsey told Student to get off the bus and he started flinching at Mr. Lindsey like he was going to hit him.<sup>58</sup>
34. Artis, who conducted the investigation of the incident, concluded that Lindsey was not calm and that the exchange was heated from both him and Student.<sup>59</sup>
35. On February 5, 2024, District held a manifestation determination review (MDR) because the District had recommended Student for expulsion due to the bus incident.<sup>60</sup>
36. During the February 5, 2024, MDR, Parent requested the District look at the video of the incident because she did not think they possessed all the necessary information to make an informed decision. The District agreed to look at the video and reconvene the meeting.<sup>61</sup> The District allowed Student to return to school as he was not recommended for expulsion from school, but the incident involved a bus suspension.<sup>62</sup>
37. The next day, after Student arrived at school he was placed in "in school suspension".<sup>63</sup>
38. On February 8, 2024, the District reconvened the MDR.<sup>64</sup> The team determined that Student's behavior during the February 1, 2024, bus incident was a manifestation of his

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<sup>57</sup> Transcript Vol. IV, pg. 14.

<sup>58</sup> Transcript Vol. IV, pg. 78.

<sup>59</sup> Transcript, Vol. III, pg. 107.

<sup>60</sup> Parent Exhibits, pg. 195, 199.

<sup>61</sup> Transcript Vol. V, pg. 108.

<sup>62</sup> Id., pg. 109.

<sup>63</sup> Id., pg. 110.

<sup>64</sup> Parents Exhibits, pg. 194.

disabilities.<sup>65</sup> However, prior to the incident, bus personnel were not made aware that Student was a student with a disability receiving special education services and had, although unclear because it wasn't part of Student's IEP, some type of behavior program. The District believed Student's behavior program didn't apply to the bus but only applied to the school setting.

39. Following the MDR, Parent requested an opportunity to appeal the facts in Student's record pertaining to the incident. The District rejected Parent's request.<sup>66</sup>

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **General Legal Principles**

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

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8<sup>th</sup> Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4<sup>th</sup> Cir. Va. 2008). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor

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<sup>65</sup> Transcript Vol. V, pg. 116.

<sup>66</sup> Parents Exhibits, pgs. 204-205.

discrepancies in the testimony were not material to the issues to be determined and, in any event, were not deemed to be intentionally deceptive.

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

### **Applicable Legal Principles**

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

Districts meet the obligation of providing FAPE to eligible students through development implementation of an IEP that is " 'reasonably calculated' to enable the child to receive 'meaningful educational benefits' in light of the student's individual circumstance". The U.S. Supreme Court considered the application of the *Rowley* standard, and it observed that an IEP "is

constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The IEP must aim to enable the child to make progress. The essential function of an IEP is to set out a detailed individualized program for pursuing academic and functional advancement in all areas of unique need. *Andrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09). The *Andrew* court thus concluded that "the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." 137 S. Ct. at 1001, 197 L.Ed.2d at 352.

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

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child's "IEP Team," which includes teachers, school officials, the local education agency (LEA) representative and the child's parents. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement of the special education and related services to be provided to the child." *Id.* §

1414(d)(1)(A)(i). A free appropriate public education (FAPE), as the IDEA defines it, includes individualized goals, "specially-designed instruction" and "related services." Id. § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. Id. §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services "in conformity with the [child's] individualized education program," or "IEP." 20 U.S.C. § 1401(9)(D).

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



wishes. *Fitzgerald ex rel. S.F. v. Camdenon R-II School District*, 439 F.3d 773 (8<sup>th</sup> Cir. 2006); *Schoenfeld v. Parkway School District*, 138 F.3d 379 (8<sup>th</sup> Cir. 1998).

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412(a); 34 C.F.R. §300.300(a). In 1982, in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by courts and hearing officers in determining whether a school district has failed to provide FAPE as required by federal law. 458 U.S. 176, 206-07 (1982). Pursuant to *Rowley*, the first inquiry that a court or hearing officer must make is that of whether the State, i.e. local educational agency or district, has complied with the procedures set forth in the IDEA. Thereafter, it must be determined whether the IEP(s) developed pursuant to IDEA procedures was reasonably calculated to enable the student to make appropriate progress in light of his specific circumstances. *Andrew F.*

### **PROCEDURAL VIOLATION OF IDEA**

Regarding the first inquiry, that of whether the District complied with the procedures set forth in the IDEA, this hearing officer notes that Parent alleges the District violated the procedures set forth in IDEA by (1) failing to allow parent the opportunity to inspect and review educational records; (2) failing to develop and implement an appropriate behavior plan using positive behavior interventions; (3) failing to use peer reviewed research to determine supplementary aids and services; (4) failing to use appropriate assessment tools and strategies to provide relevant information to the IEP team; (5) failing to ensure that parent is a member of any group that makes decisions regarding Student's educational placement; (6) failing to timely

implement an IEP for Student when he transferred into the district with an IEP in place; (7) failing to properly train teachers; and (8) failing to conduct an appropriate manifestation determination for Student.

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

The IDEA includes a number of procedural safeguards "that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Honig v. Doe*, 484 U.S. 305, 311-12, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988).

IDEA sets forth a long list of "procedural safeguards" that each participating state must establish and maintain to ensure a FAPE is provided to its students. See generally 20 U.S.C. 1415; see also *Rowley*, 458 U.S. at 205 ("When the elaborate and highly specific procedural safeguards embodied in 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in IDEA, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid.). 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 (8<sup>th</sup> Cir. 2011). Rather, a school district's educational plan for a given student will only be set aside for IDEA procedural violations "if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process or caused a deprivation of educational benefit." *Id.* At 804-805.

### **Educational Records**

34 C.F.R. § 300.613 Access rights states:

"(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not

have the authority under applicable State law governing such matters as guardianship, separation, and divorce.” (Authority: 20 U.S.C. 1412(a)(8); 1417(c)).

Additionally, 34 C.F.R. § 300.501 states:

“(a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§ 300.613 through 300.621, an opportunity to inspect and review all education records with respect to—

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.”

Here, the District sent a letter to Parent counsel stating that it was in response to his request for Student’s completed education records. There is then a statement included in the letter that states:

“Our dedicated staff members have diligently invested 5 days to compile and Duplicate these records in order to fulfill your request at a daily rate of approximately \$800/day.”<sup>67</sup>

The district argues both in witness testimony and through its post hearing brief that this was not a bill, but a misunderstanding by both Parent and district counsel. This hearing officer disagrees with District’s position. In the reading of the letter, a reasonable person would have inferred that when you say staff invested 5 days to compile and duplicate these records at a daily rate of approximately \$800 a day, it is implied that payment is expected by parent or parent counsel. The District gathered and copied a total of 162 pages of documents related to Student. There was no evidence provided that it actually took the District 5 days to compile and duplicate the 162 pages received by Parent counsel in response to his request for Student’s education record.

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<sup>67</sup> Parent Exhibits, pg. 143.

Additionally, during the State Complaint investigation regarding this issue, the team reviewed an exchange of emails in which the District appears to be exchanging emails on September 25, 2023 and September 28, 2023, with Student's prior school. This is the only evidence presented that District attempted to obtain Student's records from his previous school.

For the reasons stated above the District failed to allow for meaningful parental participation by limiting parent's ability to inspect and review educational records.

### **Behavior Plan**

Parent argues that the District failed to develop and implement an appropriate behavior intervention plan (BIP) to address Student's maladaptive behaviors associated with his diagnoses. Specifically, Parent argues that the District failed to develop and implement an appropriate behavior plan using positive behavior interventions. In the case of a child whose behavior impedes the child's learning, the IDEA requires the IEP team to "consider the use of positive behavioral interventions and supports and other strategies, to address that behavior." 20 U.S. C. 1414(d)(3)(B)(i).

The District received a copy of Student's IEP and Functional Behavior assessment (FBA) with behavioral intervention recommendations from Lisa Academy (Student's previous school).<sup>68</sup> Additionally, Student's IEP from Lisa Academy included a variety of behavior strategies including: provide tangible reinforcers, establish rules and review them frequently, behavioral management techniques per the FBA, positive reinforcements/rewards.<sup>69</sup> Further included in Student's IEP from LISA academy was the following:

"[Student] has been identified as having other health impairment. Physical symptoms which affect learning consist of an inability to attend to tasks for the same length of time as peers

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<sup>68</sup> Parent Exhibits, pgs. 39-76.

<sup>69</sup> Id., at pg. 42.

due to a chronic or acute health problem, developmentally inappropriate degrees of inattention, impulsivity, and overactivity. The behavior of children with ADHD that affect the acquisition of new skill includes inattention, impulsivity, overactivity, disruptive and non-compliant behaviors, self-control, impulse control, and problem solving.”<sup>70</sup>

Further the District received a Functional Behavior Assessment (FBA) conducted by LISA academy with behavior intervention recommendations. From the testimony and evidence, it doesn't appear that the District used the information it garnered from LISA academy to either develop or implement an appropriate behavior plan to address Student's disability related maladaptive behaviors. Instead, testimony showed that there was a “plan” for behavior implemented but not included in Student's IEP. Further, there is not a copy of this “plan” included in the record for this hearing officer to review. There is mention of it in the State complaint investigation suggesting that it included some of the behavior interventions listed on Student's IEP from LISA academy. However, there is no mention of a Functional Behavior Assessment, a behavior plan or positive behavior supports in Students IEP developed by the District.<sup>71</sup>

Witness testimony showed that the District uses a program called “Scholar bucks” or “kickboard” as a district wide behavior system.<sup>72</sup> Dr. Phillis Anderson (Anderson), the founder and superintendent of the District, described Scholar Bucks as a positive behavior intervention program that provides incentives to Students.<sup>73</sup> Students are awarded or penalized “Scholar Bucks”, as dollar amounts, based on their behavior.<sup>74</sup> Once a student has earned enough Scholar

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<sup>70</sup> Id.

<sup>71</sup> Id., at pgs 117-129, 153-166.

<sup>72</sup> Transcript Vol. V, pg. 14.

<sup>73</sup> Transcript Vol. IV, pg. 102.

<sup>74</sup> Transcript Vol. III, pg. 86.

Bucks, they are eligible to purchase a tangible reinforcer. Scholar Bucks are accumulated or lost in a way that a student can carry a positive or negative balance. If a student has a negative balance, they must have enough positive behavior to eliminate the negative balance before they may accumulate positive scholar bucks. This program was implemented sporadically and without any consistency within the District. The District should have been on notice that this program was not successful for Student as he had eight discipline referrals for behaviors such as yelling, not following directions, inappropriate language, and horseplaying between September 13, 2023 and October 24, 2023. Additionally, Student carried a negative balance of \$14.00 in scholar bucks on November 9, 2023. Student's maladaptive behaviors culminated in an incident on February 1, 2024, in which Student was involved in an incident on the bus. There was a heated exchange between Student and the onboard educator, which led to Student being suspended from the bus and a manifestation determination review (MDR) being held. On February 8, 2024, the MDR team determined that Student's behavior was a manifestation of his disability.

Testimony throughout the hearing demonstrated that District staff was neither trained on how to deescalate or help prevent Student's maladaptive behaviors. There was testimony that some District personnel received a copy of the "plan" that was testified about during the hearing but not included in Student's IEP or in the record for this hearing officer to consider. Further Dr. Guinn testified that the "plan" did not apply to Student on the bus so not any of the bus personnel were trained on Student's IEP or "plan". There was never an individualized behavior plan developed to address Student's disability related maladaptive behaviors. The District simply instituted the generic Scholar Bucks program it used for all students. Even after the MDR team determined that Student's behavior during the February 1, 2024, incident on the bus was a

manifestation of his disability, the District still failed to address Student's maladaptive behaviors in any way consistent with the requirements of IDEA.

For the reasons stated above the District failed to develop and implement an appropriate behavior plan for Student.

### **Supplementary Aids and Services**

Parent argues that the District failed to use peer reviewed research to determine supplementary aids and services. 34 C.F.R. 300.320 (a)(4) states:

“(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—

- (i) To advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;”

IDEA defines supplementary aids and services as, “aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.” 34 C.F.R. 300.42.



The District's entire argument is that Student's IEP includes a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable. There are two IEPs developed by the District contained in the records in this case. The only thing contained in these IEPs regarding services that are going to be provided to Student is under the schedule of services where inclusion is listed on both IEPs, and under related services occupational therapy is listed on both IEPs.<sup>75</sup> The District eludes to a "verification of receipt for IEP/504 supplementary aides, services/program accommodations instruction modifications that the District says was dated October 23, 2023."<sup>76</sup> The District points this hearing officer again to the State Complaint investigation to support this statement. However, there is nothing in the record for this hearing officer to look at to determine if this is correct. If the District possessed a document that could have verified teachers received supplementary aids and services and accommodations and signed a receipt for the same, they should have put that document into evidence to support its position. They did not. There is nothing in the evidence admitted during the hearing to support that there was ever even a discussion about supplementary aides and services, or accommodations and modifications. There is nothing in Student's IEP or other documentation that shows the District looked at supports to address environmental needs, levels of staff support needed, presentation of subject matter needed, pacing of instruction, assignment modifications needed, testing adaptations needed, training, etc. Further there is nothing in the record that suggest the District even discussed any of the items that Student might need to enable him to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116. Additionally supplementary aids and services should be included in nonacademic

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<sup>75</sup> Parent Exhibit, pgs. 126-127, 163-164.

<sup>76</sup> District post hearing brief pg. 12.

settings. This should include the bus. However, from the testimony, the District believes that Student's IEP and "behavior program"<sup>77</sup> do not apply to the bus.

For the reasons stated above the District failed to use peer reviewed research to determine supplementary aids and services for Student.

### Assessment Tools and Strategies

Parent argues that the District failed to use appropriate assessment tools and strategies to inform that IEP team and help aid in the development of Student's IEP. 34 C.F.R. 300.304(c) states:

"Each public agency must ensure that—

- (1) Assessments and other evaluation materials used to assess a child under this part—
  - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
  - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent

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<sup>77</sup> This hearing officer uses the term behavior program here but there is no behavior program or plan in the record. There was testimony from the District that there was a behavior program for Student. However, this hearing officer isn't convinced that such a program existed or that it was developed in line with the requirements of IDEA.

schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.”

Here at the October 18, 2023, IEP meeting, the District claims Parent would not consent to an evaluation or special education services. This statement by the District regarding the parent is misleading. At that October 18, 2023, IEP/transfer meeting, the Parent voiced her concerns that the District did not invite all the necessary people to attend. Specifically, Parent was concerned that Student's occupational therapist was not invited to attend. She requested that the District invite all the proper parties and they could hold another IEP meeting that would include all necessary people. The District agreed to invite Student's therapist and hold another IEP meeting. However, after Parent got off the zoom call, the District unilaterally continued the meeting and developed an IEP without any input from Parent, without any assessments, or evaluations, etc. During this meeting the IEP team made significant changes to Student's IEP from LISA academy without any of the appropriate and necessary information needed to make those changes. The District changed Student's special education minutes in math from 1800 minutes per month to 900 minutes per month, and there are no behavioral supports listed in either of Student's IEPs developed by the District.<sup>78</sup>

For the reasons stated above the District failed to use appropriate assessment tools and strategies to provide relevant and necessary information to the IEP team so that the team could garner relevant information regarding Student's diagnoses and unique needs associated with those diagnoses in order to develop an appropriate IEP for Student.

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<sup>78</sup> Parent's Exhibits, Pgs. 117-121, 152-166.

## Parental involvement

34 C.F.R. 300.115(a) states that “each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services” The District must ensure that there is a continuum of alternative placements available to meet students’ needs, including provisions for supplementary services that can be employed in conjunction with general education, such as resource rooms or itinerant instruction.<sup>79</sup> When considering placement, 34 CFR 300.116(a) states:

(a) The placement decision—

- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
- (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

After the parent left the transfer conference<sup>80</sup>, the District, without notifying or inviting the parent, continued the meeting and unilaterally developed an IEP for Student. The District did not provide notice to parent that the District drafted an IEP after she left the transfer conference on October 18, 2023.<sup>81</sup> Further, the District did not, as testimony suggested, simply adopt Student’s IEP from LISA academy. In Student’s IEP from LISA academy, Student was to receive 1800 minutes of direct math instruction in the area of math.<sup>82</sup> Student was to receive his math instruction in the resource classroom, which made Student’s placement 76% general education setting and 24% in the resource setting.<sup>83</sup>

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<sup>79</sup> 34 C.F.R. 300.115.

<sup>80</sup> Parent left the meeting because she believed the meeting was over and the District would be rescheduling the IEP meeting to include all appropriate people

<sup>81</sup> Transcript Vol. V, pg. 82.

<sup>82</sup> Parents exhibits, pgs. 53.

<sup>83</sup> Id., pg. 55.

Student's IEP unilaterally developed by the District, in the present levels of academic achievement and functional performance section, the District wrote, "[Student] will receive special education services in math for 900 minutes without discussion as to why Student's math services were cut from 1800 minutes to 900 minutes monthly.<sup>84</sup> In the schedule of services section of the IEP it identifies Student's special education services as "inclusion" and the frequency of those service is blank, and the setting is regular classroom.<sup>85</sup> The testimony, is unclear as to how, where, and duration of math services Student actually received. What the evidence does show is that when Student's special education minutes in math were changed from 1800 minutes to 900 minutes and the placement in which those services would be delivered was changed from resource room to the regular classroom, the Parent was purposely excluded by the District in violation of IDEA.

For the reasons stated above the District failed to ensure that Parent was a member of any group that makes decisions regarding Student's educational placement and procedurally violated IDEA.

#### **Timely implementation of IEP when Student Transferred into District**

Student transferred to the District on August 30, 2023. Although it appears that Parent did not list on her application that Student was receiving special education services, Parent testified that she told multiple District staff that Student had an IEP at his previous school.<sup>86</sup> 20 U.S.C. 1414(d)(2)(C)(i)(I) states:

**(C) Program for children who transfer school districts**

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<sup>84</sup> Parent Exhibits, pg. 55.

<sup>85</sup> Id., pg. 126.

<sup>86</sup> Transcript Vol. V, pgs. 50-61.

**(i) In general**

**(I) Transfer within the same State**

- In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

Here the District knew Student was a child with a disability and identified as eligible for special education and related services at LISA academy no later than September 15, 2023. Instead of immediately providing services to Student comparable to those described in Student's IEP from LISA academy, the District did nothing. The District waited at least another month before it held the transfer conference on October 18, 2023. However, for the 33 days between September 15, 2023, and October 18, 2023, the District failed to provide Student any special education services in violation of 20 U.S.C. 1414(d)(2)(C)(i)(I). Further, it can be gleaned from the evidence in this case that Student hasn't received special education services during any of his time in the District.

For the reasons stated above the District failed to timely implement an IEP for Student when he transferred into the District with an IEP, and procedurally violated IDEA.

**Teacher Training**

Under Section 612(a)(14) of IDEA and 34 C.F.R. § 300.156, the SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of IDEA Part B are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Those qualifications must ensure that each person employed as a public school special education teacher in the State who teaches

in an elementary school, middle school, or secondary school: (1) has obtained full State certification as a special education teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 C.F.R. § 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or (2) passed the State special education teacher licensing examination and holds a license to teach in the State as a special education teacher, except in the case of a teacher teaching in a public charter school. A teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the State's public charter school law. In addition, public school special education teachers may not have special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and must hold at least a bachelor's degree.

Public charter schools are public schools of choice that operate with freedom from many of the regulations that apply to traditional public schools. While many regulations can be waived, it is important to understand that no provision of the Individuals with Disabilities Education Act (IDEA) can be waived and that all teachers providing special education services must be appropriately licensed. All public charter schools must comply with all regulations under the IDEA. Children with disabilities who attend public charter schools, and their parents retain all rights under the IDEA. The charter establishing each such school is a performance contract detailing the school's mission, program, goals, students served, and methods of assessment.

There are two types of public charter schools operating in Arkansas: open-enrollment charter schools and district conversion charter schools. Both types are responsible for the implementation of all special education services as written in the Individualized Education

Program (IEP), as well as the provision of procedural safeguards and Free Appropriate Public Education (FAPE}. Children with disabilities who attend public charter schools, and their parents retain all rights under the IDEA.(emphasis added)

Here, the only person in the District who is qualified under IDEA to provide special education services to Student is Dr. Mary Guinn and her testimony was she doesn't provide direct instruction in math to Student. Jaylyn Morris ("Morris"), who is responsible for implementing Student's math goals and providing Student direct math instruction has been employed by Scholarmade for three years, prior to which he worked at the retail stores Nike and Champs, Federal Express, and Home Energy RX.<sup>87</sup> He has a bachelor's degree in Business Administration from Philander Smith College.<sup>88</sup> While in high school, Morris was a tutor in California for a wide variety of subjects to children aged eight to twelve.<sup>89</sup> While in college, he was a peer support mentor for youth.<sup>90</sup> The 2023-2024 school year is the first year Morris has been a math teacher; prior to that, he taught Science and was a paraprofessional or "academic support."<sup>91</sup> Sometime during the course of the fall semester of 2023, Morris attended a single-day conference at Pulaski Technical College to learn strategies for teaching math.<sup>92</sup> In addition, he attended nearly a dozen other trainings related to topics such as special education, behavior support, suicide awareness, and human trafficking.<sup>93</sup> The following individuals are also listed on Student's Schedule as providing some type of math instruction:

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<sup>87</sup> Transcript Vol. II, pgs. 7-9.

<sup>88</sup> Id., pg. 8.

<sup>89</sup> Id., pgs. 18-19.

<sup>90</sup> Id., pg. 12.

<sup>91</sup> Id., pgs. 16-17.

<sup>92</sup> Id., pgs. 10, 87-89.

<sup>93</sup> Transcript Vol. II, pgs. 76-78.



1. TaquinLynn Abernathy-has been employed with the District since October 9, 2023. Prior to her employment at the District she was a paraprofessional at another charter school, and was an after school tutor. She completed high school but has no post-secondary credentials and no licensure relative to education. She has no training relative to math content instruction.<sup>94</sup>
2. Larry Williams (“Williams”) has been employed with the District since 2022. Prior to the District, he was employed by another charter school in Little Rock for four years. Williams has a Master of Arts in Teaching, along with certifications to teach middle school Math and Science. Currently, Williams teaches sixth grade math and science at the District.<sup>95</sup>
3. Keneishia Jefferson (“Jefferson”) has been employed by the District for three years. She has a Master of Arts in Teaching and is licensed to teach middle school English Language Arts. Prior to working at the District, Jefferson was an elementary school teacher with the Little Rock School District for three years and worked at UAMS. Jefferson’s current role with the District is “instructional coach” and English teacher.<sup>96</sup>
4. Marquinta Moore (“Moore”) has been employed by the District for three years. Prior to working with the District, Moore was a paralegal for thirteen years and an executive administrative assistant at Arkansas Baptist College. She has a Bachelor’s Degree in social science and is pursuing a Master’s Degree in Special Education which she expects will be conferred in Spring of 2025. She is currently the AVID

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<sup>94</sup> Transcript Vol. I., pgs. 156-163.

<sup>95</sup> Transcript Vol. II., pgs. 92-95.

<sup>96</sup> Id., pgs. 163-165.

instructor at the District. AVID is a class that teaches students time management and note-taking.<sup>97</sup>

5. Leonard McGee (“McGee”) has been with the District since the beginning of the 2023-2024 school year. Prior to joining the District, he was a paraprofessional and case manager related to behavior at the North Little Rock School District, Pulaski County School District, and New Beginnings. He has a number of certifications related to academics but does not remember any of them. He is currently an “academic facilitator” with the District.<sup>98</sup>

None of the teachers purporting to be providing Student direct instruction in math as required under Student’s IEP meet the qualifications required under IDEA. Additionally, the IEP is unclear on what services Student is to receive and from whom. For the reasons stated above the District failed to properly train its teachers and procedurally violated IDEA.

### **Manifestation Determination Review**

District fails to address its manifestation argument in its post hearing brief, or during the due process hearing. This hearing officer understands that the manifestation determination review was not completed on the day it was scheduled because the District was to gather additional information. However, ultimately the team determined that Student’s behavior during the February 1, 2024, bus incident between Mr. Lindsey and Student, was a manifestation of

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<sup>97</sup> Transcript Vol. II., pgs. 124-130.

<sup>98</sup> Id., pgs. 110-111.

Student's disability. And although the manifestation review hearing took multiple days ultimately the team made the right decision.

For the reasons stated above Parent did not present sufficient evidence that the District failed to conduct an appropriate manifestation determination for Student.

### **Conclusion**

Having considered Parent's allegations of procedural due process violations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that District did procedurally violate the IDEA by (1) failing to allow Parent the opportunity to inspect and review educational records; (2) failing to develop and implement an appropriate behavior plan using positive behavior interventions; (3) failing to use peer reviewed research to determine supplementary aids and services; (4) failing to use appropriate assessment tools and strategies to provide relevant information to the IEP team; (5) failing to ensure that Parent is a member of any group that makes decisions regarding student's educational placement; (6) failing to timely implement an IEP for Student when he transferred into the district with an IEP in place; and (7) failing to properly train teachers.

### **SUBSTANTIVE VIOLATIONS OF IDEA**

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District procedurally violated IDEA by (1) failing to allow Parent the opportunity to inspect and review educational records; (2) failing to develop and implement an appropriate behavior plan using positive behavior interventions; (3) failing to use peer reviewed research to determine supplementary aids and services; (4) failing to use

appropriate assessment tools and strategies to provide relevant information to the IEP team; (5) failing to ensure that Parent is a member of any group that made decisions regarding Student's educational placement; (6) failing to timely implement an IEP for Student when he transferred into the district with an IEP in place. And (7) failing to properly train teachers. We must now determine if these procedural violations resulted in a substantive denial of 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 (8<sup>th</sup> Cir. 2011). "An IEP should be set aside only if procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process or caused a deprivation of educational benefits." *Lathrop R-II Sch. Dist. v. Gray ex rel. D.G.*, 611 F.3d 419, 424 (8th Cir. 2010) (quoting *Indep. Sch. Dist. No. 283*, 88 F.3d at 562).

Here, the District failed to allow Parent the opportunity to inspect and view educational records and failed to ensure Parent was a member of any group that made decisions regarding Student's educational placement. Both of these procedural violations seriously hampered Parent's opportunity to participate in the formulation process. The District on October 18, 2023, at the transfer conference, unilaterally developed Student's IEP after Parent left the meeting with the understanding the District would be inviting additional participants and rescheduling the meeting. At no point did the District provide notice to Parent they would be continuing the meeting and would be developing an IEP for Student without Parent present. Further, the District didn't notify Parent that an IEP had been developed. Parent was denied participation by the District and this seriously hampered Parent's opportunity to participate in the formulation process resulting in a substantive violation of IDEA.

Additionally, the District (1) failed to develop and implement an appropriate behavior plan using positive behavior interventions; (2) failed to use peer reviewed research to determine supplementary aids and services; (3) failed to use appropriate assessment tools and strategies to provide relevant information to the IEP team; (4) Failed to timely implement an IEP for Student when he transferred into the district with an IEP in place;. These procedural violations go to the very heart of the IEP development. Student was without an IEP in place for some thirty-three days after the District was on notice that Student had transferred from LISA academy with an IEP. The District failed to develop and implement an appropriate behavior plan which culminated in the February 1, 2024 bus incident and ultimately Student being suspended from the bus. Additionally, between September 13, 2023, and October 24, 2023, Student had eight discipline referrals for behaviors such as yelling, not following directions, inappropriate language, and horseplaying. Further there is no evidence that there was ever a behavior program contained in Student's IEP, even though Student's IEP from LISA academy contained both a functional behavior assessment and behavior program associated with it. This procedural violation severely compromised Student's right to an appropriate education resulting in a substantive violation of IDEA.

Further the District failed to use peer reviewed research to determine supplementary aids and services and failed to use appropriate assessment tools and strategies to provide relevant information to the IEP team. IDEA recognizes that in order to develop an appropriate program with appropriate supplementary aids and services that meet the unique needs of the Student information is paramount. Here the District simply developed an IEP without the parent present, and without any of the information necessary to make changes and develop an appropriate program for Student. There were no articulated reasons for changing Student's math minutes form 1800 minutes to 900 minutes per month and there was no justification for

changing student's placement for these services from the resource classroom to the regular education classroom setting. These were arbitrary and unilateral changes made by the District. The District had no assessment tools or strategies and there was no evidence that the District used peer reviewed research to determine supplementary aids and services Student might need. To the contrary there were no supplementary aids and services listed on Student's IEPs developed by the District. These procedural violations compromised Student's right to an appropriate education and also caused a deprivation of educational benefits because Student was not receiving appropriate services and did not have an appropriate IEP because the necessary procedures were not followed. Student went from a C in math to an F in math during this time. This resulted in a substantive violation of IDEA.

The final procedural violation is the District's failure to properly train its teachers. Not one teacher providing Student with direct instruction in Math is qualified to do so under IDEA. The District mistakenly believes that because they can obtain a waiver for teacher licensure that somehow alleviates its obligation to ensure that Student's special education services are provided by a teacher who meets the requirements under Section 612(a)(14) of IDEA and 34 C.F.R. § 300.156. While many regulations can be waived for charter schools, it is important to understand that no provision of the Individuals with Disabilities Education Act (IDEA) can be waived and that all teachers providing special education services must be appropriately licensed. Instead as noted above, Jaylyn Morris ("Morris"), who is responsible for implementing Student's math goals and providing Student direct math instruction has been employed by Scholarmade for three years, prior to which he worked at the retail stores Nike and Champs, Federal Express, and Home Energy RX.<sup>99</sup> He has a Bachelor's Degree in Business Administration from Philander

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<sup>99</sup> Transcript Vol. II, pgs. 7-9.

Smith College.<sup>100</sup> While in high school, Morris was a tutor in California for a wide variety of subjects to children aged eight to twelve.<sup>101</sup> While in college, he was a peer support mentor for youth.<sup>102</sup> The 2023-2024 school year is the first year Morris has been a math teacher; prior to that, he taught Science and was a paraprofessional or “academic support.”<sup>103</sup> The lack of teacher training seriously compromised Student’s right to an appropriate education and caused a deprivation of educational benefits. Student cannot learn math without a teacher who is knowledgeable, adequately trained and meets the licensing requirements under IDEA. Further, Student went from a C to an F in math during this time which shows a deprivation in educational benefits. The District’s failure to properly train its teachers resulted in a substantive violation of IDEA.

### **Conclusion and Order**

The results of the testimony and evidence warrant a finding for the Parent. Specifically, Parent introduced sufficient evidence in the record to establish by preponderance of the evidence that the District denied Student a FAPE between August 20, 2023, and February 9, 2024.

District is hereby ordered to take the following actions regarding Student:

1. Within 15 days of this decision the District shall review and revise if necessary its policies and procedures for providing parental access to educational records and to ensure they are in alignment with State and Federal requirements, specifically, 34 CFR 99.11 and 16.1.01. The District can comply with this section of this order by

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<sup>100</sup> Id., pg. 8.

<sup>101</sup> Id., pgs. 18-19.

<sup>102</sup> Id., pg. 12.

<sup>103</sup> Id., pgs. 16-17.

meeting the requirements from State Complaint C-24-25 corrective action 1a and 1b which appropriately address this issue.

2. No later than June 15, 2024, the District is ordered to provide professional development on policies/procedures for parental access to educational records to all District staff. The District can comply with this section of this order by meeting the requirements from State Complaint C-24-25 corrective action 1a and 1b which appropriately address this issue.
3. No later than June 1, 2024, the District is to contract with an independent behavior specialist, agreeable to both the District and the Parent, to help develop an appropriate behavior plan to address Student's maladaptive behaviors. Upon completion of Student's behavior plan the independent behavior specialist shall provide training to all District staff who interact with Student, including bus personnel.
4. District shall continue to contract with the independent behavior specialist throughout the 2024-2025 school year so the behavior specialist can help modify Student's behavior plan if necessary and ensure that Student's behavior plan is being implemented with fidelity.
5. No later than June 30, 2024, the District is ordered to hold a facilitated IEP meeting with the Parent present, to develop an appropriate IEP for Student.
6. District is ordered to provide Student compensatory education in the amount of 5000 minutes of special education math instruction by a certified special education teacher. I find Student did not receive any of the 1800 minutes monthly of special education math instruction by a teacher qualified to provide such under IDEA between September 15, 2023, and February 9, 2024. The minutes are to be spread over time



and agreeable to the District and Parent, taking into account student's ability to tolerate additional instruction. The instructional minutes ordered will be carried forward on Student's IEP until completed. These minutes are in addition to the compensatory education minutes ordered in state complaint C-24-25.

7. The District is ordered to provide 20 hours of training to District personnel on IDEA its requirements and implementation. This training shall include, at a minimum, IDEA's requirement for parental participation, and IDEA's application to charter schools.
8. From the date of this decision until the end of the 2024-2025 school year the District shall meet once every thirty days with the Arkansas Department of Education to provide progress on their compliance with this order.

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

**Finality of Order and Right to Appeal:**

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

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

**IT IS SO ORDERED.**

*Dana McClain*

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**HEARING OFFICER**

5/15/2024

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**DATE**