

**ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit**

IN RE:

**XXXXXXXXXX, Parent of
XXXXXXXX, Student**

PETITIONER

VS.

CASE NO. H-25-15

Jonesboro School District, District

RESPONDENT

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

ISSUES PRESENTED:

Whether the Jonesboro School District (hereinafter "District" or "Respondent") denied XXXXXX (hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE") between August 17, 2022 and August 14, 2023 in violation of certain procedural and substantive requirements of the Individuals with Disabilities in Education Act of 2004, 20 U.S.C. §§ 1400-1485, as amended (hereinafter referred to as "IDEA"), which requires an analysis of the following sub-issues:

- (1) whether parent was provided meaningful participation in Student's education;
- (2) whether the District provided Student FAPE in a timely manner by providing an appropriate IEP and implementing appropriate supports and services to address Student's deficits in the areas of math, writing, and behavior; and
- (3) what are the appropriate remedies if IDEA was violated.

PROCEDURAL HISTORY:

On October 23, 2024, Petitioner, the Parent and legal guardian of Student, filed the request for a due process hearing in this matter ("Complaint") pursuant to the Individuals with Disabilities in Education Act ("IDEA"). Parent requested the hearing in this matter because she believed that District failed to comply with the IDEA, as well as regulations set forth by the Arkansas Department of Education, by failing to provide Parent meaningful participation and failing to provide Student with appropriate supports and services to address Student's deficits in academic and behavioral skills. In the complaint, Parent sought the remedy of training for the District in IDEA.

At the time at issue in this matter, Student (male) was 11 years old, in fourth grade, and lived with Parent at a residence in the District. Student attended the District from August 17, 2022 to August 14, 2023. Student's time at the District is entirely within the time for consideration. The IDEA requires "[a] parent or agency [to] request an impartial due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint . . ." 20 U.S.C § 1415(f)(3)(c). The State of Arkansas recognizes this same limitations period. *Ark. Dept. of Educ. Special Educ. And Related Services*, 10.00 Mediations and Hearings, § 10.01.4.6(A). The Eighth Circuit Court of Appeals also applies a two-year statute of limitations period under the IDEA. *See In the Matter of Minnetonka v. M.L.K., by and through his Parents, S.K.*, 2021 U.S. Dist. LEXIS 37609, 2021 WL 780723, at *6 (D. Minn. Mar. 1, 2021). "Any claim of a breach falling outside of the IDEA's two-year statute of limitations would be untimely." *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1083 (8th Cir. 2020).

In response to Parent's request for a hearing, the Department assigned the case to

this impartial Hearing Officer who initially scheduled the due process hearing in Case H-25-15 for November 25-27, 2024 if Parent and District failed to reach resolution. The parties met for a resolution conference on November 7, 2024 but failed to resolve the matter. See Prehearing Tr. I p. 7. Prior to the prehearing conference, the District moved for continuance because of the unavailability of witnesses due to the initial hearing dates falling within a week school was closed. Parent counsel did not object to the continuance as reflected in the motion, and this Hearing Officer granted the continuance on November 18, 2024 for good cause shown. After conferring with the parties, the hearing was rescheduled for January 27-29, 2025 with a prehearing conference on January 23, 2025.

During the January 23, 2025 prehearing conference, Parent Counsel requested that parent be permitted to participate in the hearing via zoom. See Prehearing Tr. I p. 9. This Hearing Officer declined the request as it is the policy of this Hearing Officer that the party representatives attend in person for determinations of credibility and ease in referencing documents, and no reason for the request was provided, except that Parent was currently in Texas. See Prehearing Tr. I p. 9-10. As the complaint in this matter included many allegations for which this Hearing Officer lacked jurisdiction, this Hearing Officer dismissed all claims other than the IDEA claims due to lack of jurisdiction, including but not limited to claims alleged pursuant to FERAP, Disability Discrimination, Act 504, retaliation, bullying, false reporting, negligence, failure to act, breach of duty, and negligent supervision. See Prehearing Tr. I p. 14-16; Tr. Vol. I p. 6.

On the morning of January 27, 2025, Parent Counsel, District Counsel, District representatives and witnesses, as well as this Hearing Officer appeared in Jonesboro, Arkansas for the hearing; however, Parent did not appear. See Tr. Vol. I p. 5-6. Parent did

attempt to file a motion for a continuance around 7 a.m. on the morning of January 27, 2025, but it was not sent to this Hearing Officer and took some time to be forwarded to this Hearing Officer through the Department. See Tr. Vol. I p. 6-7. After speaking with Parent via phone on the morning of January 27, 2025, Parent Counsel informed this Hearing Officer that Parent was unable to travel due to a disability, but Parent had just that day informed her attorney that she could not travel due to a disability. See Tr. Vol. I p. 6-7. On that basis, Parent Counsel orally requested a continuance of the hearing and requested that Parent be permitted to participate in the hearing via zoom. See Tr. Vol. I p. 7-8. In light of Parent's statement that she could not travel due to a disability, the District did not object to the continuance, and this Hearing Officer granted the continuance for good cause shown. See Tr. Vol. I p. 8-9. After confirming that the dates worked for both attorneys and Parent, this matter was rescheduled to be heard on April 2-4, 2025 with a second prehearing conference on April 1, 2025, if needed. See Prehearing II p. 10-11; Tr. Vol. I p. 8-9.

Without utilizing her attorney, Parent emailed the Department on January 31, 2025 requesting to amend her complaint, and the Department forwarded the request to this Hearing Officer. This Hearing Officer replied to Parent copying Parent's Counsel and District's Counsel and requested that Parent communicate to this Hearing Officer only via her attorney. Via email on March 5, 2025, Parent Counsel notified this Hearing Officer that she no longer represented Parent and withdrew from the case. See Prehearing Tr. II p. 5-6. This Hearing Officer amended the scheduling order on March 20, 2025, permitting all parties to participate in the hearing via zoom in the interest of fairness and efficiency. As Parent was proceeding *pro se*, via email on March 20, 2025, this Hearing Officer informed Parent that she must produce any documents she wished to introduce as well as a list of

witnesses at least five days prior to the beginning of the hearing. On March 25, 2025, Parent emailed this Hearing Officer requesting to amend her complaint to add the remedies of reimbursement for an independent evaluation, compensatory education, counseling, and staff training.

Parent desired to participate in the prehearing conference, so a second prehearing conference was held on April 1, 2025. See Prehearing Tr. II p. 5-6. During the April 1, 2025 prehearing conference, this Hearing Officer stated an exception would be made to the policy that parties participate in hearings in person and that Parent, District and witnesses would be permitted to participate in the rescheduled hearing via zoom in light of Parent's statement that she had a disability that precluded her traveling from Dallas for the hearing. See Prehearing Tr. II p. 7-8. Again, this Hearing Officer stated for the record for the benefit of Parent that she was dismissing all the non-IDEA claims contained in the Complaint due to lack of jurisdiction, including but not limited to allegations of FERPA, Disability Discrimination, retaliation, bullying, false reporting, negligence, failure to act, breach of duty, Act 504, and negligent supervision. See Prehearing Tr. II p. 12-13. Parent's motion to amend the complaint was taken up at the prehearing conference, the District made this Hearing Officer aware that it objected to Parent's motion to amend the complaint as the request was made just before the hearing dates, and this Hearing Officer denied Parent's motion to amend the complaint pursuant to 300 CFR §300.510. See Prehearing Tr. II p. 13-14. Parent objected to this Hearing Officer's denial of her motion to amend the complaint. See Prehearing Tr. II p. 14-15. This Hearing Officer restated that Parent had the burden of proof in this matter and that the issues to be heard were whether Student received FAPE and whether parental participation was denied pursuant to IDEA. *Id.* at p. 14-17.

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, Debby Linton Ferguson, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing via zoom. On April 2, 2025, the hearing began as scheduled, and testimony was heard on April 2, 3, 4, and 7, 2025. See Tr. V. II, III, IV, and V. An additional hearing day was necessary due to abbreviated hearing dates resulting from potentially dangerous weather, the length of testimony taken, the availability of witnesses, and this Hearing Officer's requirement to report for juror training on April 4, 2025. See Tr. Vol. IV p. 105-113, 126-131. The hearing was concluded on April 7, 2025. See Tr. Vol. V.

Parent represented herself and Student, and District was represented by Donn Mixon. Also, present for the hearing was Karen Swift ("LEA"). The following witnesses testified in this matter: Parent, XXXXX ("Grandmother"), LEA, Paige Vick ("Ast. Principal"), Jennifer Holland ("School Psychology Specialist"), April Miller ("Math Teacher"), Heather Bentley ("Behavior Interventionist"), Christina West ("Special Education Teacher"), and Ashleigh Rainwater ("PE Monitor"). After the hearing, both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements. Post hearing briefs were initially due on April 27, 2025, Mr. Mixon requested an extension via email on April 25, 2025, and this Hearing Officer granted an extension to both parties to April 29, 2025 via email. Both parties submitted a timely post hearing brief for consideration.

Along with her post-hearing brief, Parent additionally described exhibits that were excluded as a proffer of evidence. The proffered exhibits were not produced by Parent prior to 5 business days before the hearing, and the District objected to their admission.

Thus, the proffered exhibits were not admitted into evidence pursuant to Arkansas Department of Education Special Education and Related Services 10.00 Mediation and Hearings Effective date: February 9, 2024 §10.13.1.3. Further, some of the proffered exhibits were excluded as they were not relevant to the IDEA issues.

FINDINGS OF FACT:

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Independent Sch. Dist. No. 283 v. S.D. ex rel. J.D.*, 88 F.3d 556, 561 (8th Cir. 1996); *Parrish v. Bentonville Sch. Dist.*, No. 5:15-CV-05083, at *8 (W.D. Ark. March 22, 2017). This Hearing Officer found most witnesses who testified to be credible in that they all testified to the facts to the best of their recollection. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided. Inconsistencies in testimony did play a role in this hearing officer's decisions.

The findings of fact were made as necessary to resolve the issues; therefore, not all of the testimony and exhibits were explicitly cited. 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.

1. During the time at issue, the 2022-2023 school year, Student was a fourth-grade student at the International Studies Elementary School in the District. See D. Ex. p. 1, 38.
2. Prior to enrolling at the District, Student attended Marion School District ("Marion") for first grade, and Student missed over 40 days of school in first grade at Marion. See P. Ex. p. 4 and Tr. Vol. II p. 125.
3. On February 5, 2020, during Student's first grade year at Marion, Student received

an educational evaluation completed by Marion. See D. Ex. p. 126-138. On the Reynolds Intellectual Assessment (RIAS-2), Student received an index standard score of 61 for verbal intelligence, 76 for nonverbal intelligence, and a 64 for his composite. See D. Ex. p. 71, 132. The examiner believed that Student's nonverbal score of 76 more accurately reflected his abilities. Id. at p. 137. Student's scores on the ADDES-4 suggested Student had severe inattention and hyperactivity. Id. at p. 137. His scores on the Woodcock Johnson IV Tests of Achievement were in the average range for broad reading (89), written language (93), academic applications (84), letter word identification (106), passage comprehension (88), and spelling (94), but he was in the extremely below average range for mathematics (66) and applied problems (67). Id. at p. 71, 132-134. On the Gilliam Autism Rating Scale-3, Student's Autism index score was 117, which indicated that it is very likely that Student has Autism and exhibits characteristics consistent with a diagnosis of Autism Spectrum Disorder. Id. at p. 71, 136-137. His regression analysis suggested Student had severe discrepancies in the areas of math calculation, listening comprehension, and oral expression. Id. at p. 137. In addition, Marion documented receipt of a physician's statement that Student has the following diagnoses: Autism Spectrum Disorder, Sensory Integration Disorder, delayed milestones, Post Traumatic Stress Disorder, and Chronic Constipation. See D. p. 136.

4. For second grade, Student was enrolled in Marion's virtual learning program due to the COVID19 pandemic. See D. p. 71, 123. See Student received speech therapy ("Speech") of 60 minutes weekly and occupational therapy ("OT") of 30 minutes per month at Marion. See D. Ex. p. 72, 76-77, 123. The last IEP from Marion ran from July 26, 2021 to June 3, 2022. See D. Ex. p. 69. He received all academics in the regular classroom setting along with 60 minutes of pullouts weekly of Speech for language. Id. His Speech report noted he has

difficulty understanding verbal information and instructions, limited interests, lack of attention and distractibility, quality of school issues devices, available resources, district allowed apps, software and extensions and inconsistent attendance to weekly therapy contributed to his lack of progress in therapy. Id. Student's OT report stated he did not master his goal for participating in sensory processing activities or the objective of utilizing sensory strategies. Id. Implementation was limited due to the COVID19 pandemic. Id. Student's teacher noted that Student does not complete assignments on time. Id. Student received the following accommodations/modifications at Marion: redirect with verbal and visual cues for on task behaviors, make up work sent home, excused absences when school was provided a statement noting a medical issue. Id. at p. 72. For testing as well as classroom modifications/accommodations, Student received extra time, special seating, shorter tasks or reduced items, parent/teacher communication log, visual schedule, oral and visual instructions, visual cues and social stories. Id. at p. 72 and 81.

5. Student was a homeschool student for third grade. See D. Ex. p. 123. He received Speech, OT and PT at Sensational Kids. See D. Ex. p. 123.

6. On August 17, 2022, Student enrolled in the District for fourth grade. See D. Ex. p. 1-2, 38; Tr. Vol. III p. 10-11.

7. On August 26, 2022, a transfer conference, existing data review, and re-evaluation conference was conducted by Student's IEP team, including Parent (the "August 26 IEP Meeting"); Special Education Teacher's writing was on the Notice of Action from that conference. See D. Ex. p. 123-125; Tr. Vol. IV p. 25-27, 32-34. The IEP team reviewed Student's documentation and determined that updated testing was needed in the areas of Speech, OT and physical therapy ("PT"), and the team decided additional testing was needed

because Student also had an Autism diagnosis. See D. Ex. p. 123-125; Tr. Vol. IV p. 25-27, 32-34. The District initially provided Speech and inclusion services because Student came to the District with those on his last IEP. The District requested parental consent to serve Student in special education and to conduct any assessments necessary for the programming process, and Parent signed expressing her consent for IQ, achievement, adaptive, Speech, and OT evaluations. See D. Ex. p. 123-124; Tr. Vol. IV p. 30-32. Additional written consent was needed for the FBA, even though Parent verbally mentioned that she consented to the FBA. See Tr. Vol. IV p. 55-56; D. Ex. p. 123-124. The Notice of Action reflected that the team considered pulling Student for resource services but rejected that idea at the time in order to have additional testing completed before making that determination. See D. p. 123. The team agreed that Special Education Teacher would push into Student's general education classroom and work on his social goals for the time. See D. P. 123. Parent was in agreement with creating a draft IEP to be followed until testing could be completed, and the draft IEP would have been initiated that day. See D. p. 123; See Tr. Vol. IV p. 29-30. Parent stated that Student was receiving Speech, OT and PT at Sensational Kids. See D. Ex. p. 123. Parent disclosed that Student could be aggressive, have meltdowns, or run away at times, and Parent expressed interest in having a Behavior Plan developed. See D. p. 123.

8. Special Education Teacher recalled pushing in to work with Student in the morning on literacy. See Tr. Vol. IV p. 42. Special Education Teacher recalled pushing in to work with Student on math in the afternoon. See Tr. Vol. IV p. 42. Student was in his chair appearing to listen to the teacher most of the time, and when he appeared to zone out, Special Education Teacher would redirect him and found him easily redirected. See Tr. Vol. IV p. 42.

9. On September 6, 2022, Student was hit in the head with a soft foam ball during PE

class, and Parent requested an IEP meeting as a result. See P. Ex. p. 113.

10. On September 8, 2022, Parent obtained an independent evaluation from West Psychological Services, PLLC (the “West Evaluation”), which she personally paid for in order to help the team analyze Student’s needs and accommodations to update the IEP quicker because she felt the “school delayed their evaluation.” See Tr. Vol. II p. 113-114. Parent wanted to avoid further delays in implementing Student’s IEP “because the school did not want to use his previous school district’s IEP, citing that it had expired.” See Tr. Vol. II p. 113-114. She testified the West Evaluation cost her \$2,400. See Tr. Vol. III p. 25. Parent was never reimbursed for the West Evaluation, but she introduced no evidence reflecting that she requested reimbursement for the independent evaluation while Student attended the District and reimbursement for the independent evaluation was not requested in Parent’s Complaint. See Tr. Vol. II p. 114; and see Complaint. Parent seemed unaware that the District had 60 days to evaluate Student from the date of her consent. See Tr. Vol. IV p. 65-66.

11. The West Evaluation noted Student’s diagnosis of Autism, along with other medical and psychological issues. See P. Ex. p. 91-103; D. Ex. p. 160. The examiner documented Student’s ASD related behaviors, as well as his difficulty with focus and attention. See D. Ex. p. 161. Student’s score on the Wechsler Abbreviated Scale of Intelligence, Second Edition (WASI-II) of 79 reflected that his cognitive ability was in the borderline range, and the score was within the expected range when compared to Student’s 2019 score of 82, which was in the low average range. See D. Ex. p. 163. His scores on the Wide Range Achievement Test, Fifth Edition (WRAT-5) reflected mildly impaired skills in math computation (63), low average spelling skills (83), and average skills in reading (96). See D. Ex. p. 163. On the Token Test for children, which measured his receptive language, he

scored in the borderline range. See D. Ex. p. 164. On the Trail 1 and Trail 5 tests to assess Student's attention, concentration, resistance to distraction, visual search/sequencing, and cognitive flexibility, Student scored in the average range when placing numbers in sequential order and in the mildly impaired range in cognitive flexibility and working memory needed to connect two types of stimuli. See D. Ex. p. 164. Student's Gilliam Autism Rating Scale, Third Edition (GARS-3) reflected that Student had a very likely probability of Autism Spectrum Disorder (ASD), Dyscalculia, and Bilateral Fine Motor Impairment. See D. Ex. p. 165. The West Evaluation recommended educational supports and services provided through the public school system, ABA therapy, Speech, OT, and counseling. See D. Ex. p. 167-168. Check-ins by the school counselor were recommended to ensure bullying of Student had stopped. See D. Ex. p. 168. The West Evaluation stated, "given his impairments and difficulty with navigating his environment academically and socially, [Student] may benefit from the assistance of a paraprofessional." See D. Ex. p. 168. The examiner also recommended a Functional Behavior Assessment ("FBA") to assist in the development of effective behavior management plans," such as the "first-then" approach. See D. Ex. p. 169. The West Evaluation recommended accommodations including visual schedules, cool down time, seating to reduce distraction and noise near the teacher, check-ins and reminders to stay on task, nonverbal cues for re-direction, rewards for positive behavior, rocking chairs or standing to minimize hyperactivity, and gum chewing. See D. Ex. p. 170.

12. On September 22, 2022, Student's IEP team met ("September 22 IEP Meeting") and that morning, Parent emailed Assistant Principal and Special Education Teacher requesting a one-on-one paraprofessional to support student, listing ways in which a paraprofessional could benefit Student (remove the burden of fulfilling the IEP from the

teacher, organizing his work space and backpack, tying shoes, keeping track of his belongings, diffuse situations with other students, explain scenarios in depth with patience), and listing Parent's concerns that led her to believe Student needed a paraprofessional (having impulsive reactions, mishandling confrontation, misinterpreting social cues, poor transitioning, lack of awareness of surroundings, inability to defend himself, inability to express his feelings, inability to retain information at a classroom pace, putting things in his mouth, inability to follow classroom flow, easily distracted and daydreaming, failing to rationalize well, hypersensitive to sound, and uncomfortable with persons in his personal space). See D. Ex. p. 121-122. Grandmother stated that Student's communication was not always clear, so he would need help with that. See D. Ex. p. 118. The Notice of Action reflects that the team reviewed the information provided by Parent. See P. Ex. p. 4-6; D. Ex. at p. 121-122. Parent informed the rest of the team that Student worked with teachers and paraprofessionals while at Marion. See D. Ex. p. 118. The Special Education Director explained that data must be collected prior to assigning a one-on-one paraprofessional. See D. Ex. p. 118, P. Ex. p. 4; Tr. Vol. II p. 130. The team discussed behavior plans and safety plans. It was noted that Student missed over 40 days of school during first grade, and Student already had 10 absences in fourth grade at the District. See D. Ex. p. 118. Parent explained that Student missed school at times due to meltdowns, anxiety and not wanting to come to school. See D. Ex. p. 118. Student's literacy teacher stated that Student had small meltdowns on two occasions with her. *Id.* Math Teacher stated Student was mostly organized, easily redirected, had not seemed to be aggravated, and that she had not seen a lot of meltdowns. *Id.* Parent requested a behavior intervention plan ("BIP") and consented to a Functional Behavior Assessment ("FBA") in order to begin the process. See P. Ex. p. 5-6; D. Ex. p. 118-

120. Parent stated Student was receiving mental health services at Mid-South, and the team discussed transferring the Mid-South mental health services to school. *Id.* Parent agreed to transfer Student's outpatient mental health services to school-based services. See D. Ex. p. 118-120. Parent mentioned that Student takes Hydroxyzine, and he is scheduled for intake for ABA therapy at Sageway. *Id.* The team discussed that having a paraprofessional would restrict Student more in the classroom and the Notice of Action states that Parent seemed to understand after an explanation. *Id.* Led by Ast. Principal, the team discussed using an "if/then board" and "check-in/check-out." See D. Ex. p. 118-120. The team agreed to add the following accommodations: peer to assist with transitions outside the classroom, repeat directions, cool down periods or breaks when needed, check for understanding, frequent reminders, use a low tone of voice. See D. Ex. p. 119. At that September 22, 2022 IEP meeting, Parent also provided the District with the West Evaluation to the District, Parent felt that the District "dismissed it," but Parent observed that the School Psychology Specialist referenced it in the District's evaluation showing that the District relied on it. See Tr. Vol. II p. 114. At the hearing, Parent stated she did not understand why the West Evaluation was not "implemented" when she presented it to the IEP team on September 22, 2022. See Tr. Vol. IV p. 65-66. Further, Parent's testimony reflected that she did not understand how the West Evaluation failed to provide all the components that the District was required to complete, despite repeated explanations from the Special Education Teacher and School Psychology Specialist. See Tr. Vol. IV p. 66-67, 74-102. Parent agreed that the notes in the Notice of Action from the September 22, 2022 meeting accurately reflected the content of the meeting. See P. Ex. p. 4; Tr. Vol. 126-132.

13. On September 27, 2022, Student was transferred to IS Midsouth School-based

services with provider Sarah Lipsky, based on Parent's statement in the September 22, 2022 IEP meeting that she would like to transfer Student to in school mental health services. See D. Ex. p. 110. Lipsky was unable to provide services to Student, as she needed a PCP referral. Id. District documentation reflected that Parent was contacted three times by Midsouth to get a PCP referral, and Lipsky called and texted Parent multiple times. Id. Parent replied once via text and then never responded again. Id. Lipsky discharged Student for non-compliance for no PCP referral and no contact with parent on November 29, 2022. Id. Parent first denied that she failed to respond to the therapist's calls and then confirmed that she did not respond because she did not know the therapist and that Student was discharged due to a miscommunication. See P Ex. p. 15; Tr. Vol. 138-140. Parent asked to be seen at the outpatient clinic thereafter, and District documentation reflects Student was still on the wait-list at the outpatient clinic at the time of the December 2, 2022 IEP meeting. See D. Ex. p. 110, 112-113. When first asked during the hearing, Parent admitted Student had a gap in mental health therapy due to the transition to school-based services and Parent's "miscommunication" or failure to respond to the therapist. See Tr. Vol. II p. 139-140. Then, Parent asserted Student did not have a gap in treatment from August of 2022 to December 14, 2022 and that the therapy center, Mid-south, got it wrong. See Tr. Vol. II p. 140-143; See P. Ex. p. 15, 22. Parent stated she first agreed to school based services and then changed her mind and kept out of school mental health services with Midsouth. See P. Ex. p. 22; Tr. Vol. II p. 141-143. When asked again for clarification regarding whether there was a gap in Student's counseling, Parent reasserted that Student "did not miss any counseling from Midsouth Health in the fall of 2022," but then, she went on to state that Student missed two months of counseling when there was an attempt to transition Student to counseling at

school but she stated the two months missed were from February 17 to April 4, 2023. See Tr. Vol. III p. 21-24. Based on the District's documentation and Parent's inconsistent testimony, this Hearing Officer finds that Student did not receive mental health services for several months during the time at issue due to Parent's failure to obtain a PCP referral and failure to respond to the provider's calls.

14. On October 10, 2022, District's School Psychology Specialist completed an evaluation of Student (the "District Evaluation"), and the report notes that consent was obtained for an FBA. See D. Ex. p. 112, 180; P. Ex. p. 104-110. The District evaluation includes the scores obtained in the West Evaluation on the WASI-II, the WRAT-5, the TTFC, the Train Making Test, the RAVLT, the RCFT, and the GARS-3, along with the examiner's observations of Student in the classroom and on the playground. See D. Ex. at p. 181. The examiner noted that Student was pleasant, had good manners, and worked diligently but tired after approximately an hour. See Id. at p. 182. However, during the written expression subtest, Student appeared to stare into space and required frequent redirection. Id. He appeared to understand all instructions given and seemed to put forth his best efforts. Id. On the Reynolds Intellectual Assessment-2 (RIAS-2), Student received scaled scores of 54 for Verbal, 55 for Nonverbal, and 48 for Composite. See D. Ex. p. 112, 182. Student's Kaufman Test of Educational Achievement-III (KTEA-III) reflected a 99 for Letter and Word Recognition, 100 for Nonsense Word Decoding, 66 for Math Concepts and Applications, 76 for Reading Comprehension, 93 for Silent Reading Fluency, 71 for Math Computation, 92 for Spelling, and Written Expression was discontinued. Id. at p. 112, 183. The test of auditory processing reflected he was within the average range. Id. at p. 112, 184. The Behavior Assessment Scale for Children-3 (BASC-3) reflected that Student was in the Clinically

Significant range for Somatization, Attention Problems, Learning Problems, Atypicality, Withdrawal, Social Skills, Leadership, Study Skills, and Functional Communication. Id. at 112, 184. Student was in the At-Risk range on the BASC-3 in the areas of Adaptability, Developmental Social Disorders, and Executive Functioning. Id. Math Teacher, who completed the BASC-3 assessment, noted that Student does what is asked of him and has good manners, but the Student zones off and loses focus. Id. Student met the eligibility criteria for special education under the category of Autism. Id. at p. 185. School Psychology Specialist recommended: extended time, shortened instructions, frequent breaks, teaching with repetition and drill at a slower pace, present instruction in a structured and sequential manner, use multi-modal/sensory teaching techniques, related teaching to real life experiences and utilize concrete materials, and have Student repeat back instructions to ensure understanding. Id. at p. 186.

15. Based on Student's OT evaluation dated September 2, 2022 and PT evaluation dated September 7, 2022, Student did not qualify for those services as of that date. See D. Ex. p. 112. Student did qualify for Speech pursuant to the evaluation completed on September 12, 2022. Id. at p. 112.

16. On October 19, 2022, Student's draft IEP was amended to remove Speech by request of Parent, so he would no longer receive Speech at school ("October 19 IEP Amendment"). See D. Ex. p. 52-53; P. Ex. p. 52-53; Tr. Vol. IV p. 21-22. Parent preferred for Student to continue to receive Speech at an outpatient clinic. See D. Ex. p. 51-53, 112.

17. On October 24, 2022, Student broke his collarbone in a fall during recess at the District. See P. Ex. p. 113; D. Ex. p. 201; Tr. Vol. II p. 21, 45, 111, 124. Parent requested permission to view the incident video, and the District declined because the incident was not

visible on video footage. See D. Ex. p. 202, 211; Tr. Vol. 22. Ast. Principal testified credibly that she personally reviewed the video of the playground at the date and time of Student's injury, but there was no video footage of Student's injury because the camera was zoomed in. See Tr. Vol. III p. 100-101.

18. On October 25, 2022, the Behavior Interventionist confirmed with the Special Education Teacher that Student was utilizing visual schedules, social stories, parent/teacher communication, peer escort, verbal cues and verbal and nonverbal prompts as set forth in Student's draft IEP, and Special Education Teacher reported that Student was utilizing all of those and was doing well. See D. Ex. p. 209.

19. On November 2, 2022, the District documented that it provided Parent a Notice of Conference via email of the IEP meeting scheduled for November 16, 2022. See P. Ex. p. 16-19; D. Ex. 106-107, 112-113. On November 9, 2022, the District documented that Parent was contacted via phone and verbally confirmed that she would attend the November 16, 2022 meeting in person. Id. Subsequently, the District documented that Parent requested Student's IEP meeting be rescheduled to December 2, 2022 at 8:30 am. See P. Ex. p. 19; D. Ex. p. 105, 109, 112.

20. At approximately 8:15 a.m. on the morning of December 2, 2022, although Parent had previously requested the IEP meeting be rescheduled to December 2, 2022 at 8:30 a.m., Parent did not appear for the IEP meeting and requested it be rescheduled for December 14, 2022. See P. Ex. p. 19; D. Ex. p. 105, 112; See Tr. Vol. II p. 137. Parent stated she did not appear for the rescheduled IEP meeting at the time and date that she requested "due to a family situation." See D. Ex. p. 26, 37, 50, 109, 112; P. Ex. p. 21, 25-38.

21. On December 2, 2022, when Parent did not appear for the rescheduled IEP

meeting at the time and date that she requested, the remainder of the team decided to proceed with the evaluation programming conference and reviewed Student's recent evaluations ("December 2 IEP Meeting"). See D. Ex. p. 26, 37-38, 50, 109, 112; P. Ex. p. 21, 25-38. Student's OT evaluation dated September 2, 2022 and PT evaluation dated September 7, 2022 reflected that Student did not qualify for those services at this time. See D. Ex. p. 155-159. Student did qualify for Speech pursuant to the evaluation completed on September 12, 2022; however, Parent previously expressed she preferred for Student to continue to receive Speech at an outpatient clinic and Speech services were withdrawn at that time. See D. Ex. p. 52-53; 173-179. On the Reynolds Intellectual Assessment-2 (RIAS-2), Student received scaled scores of 54 for Verbal, 55 for Nonverbal, and 48 for Composite. See D. Ex. p. 38, 112. Student's Kaufman Test of Educational Achievement-III (KTEA-III) reflected a 99 for Letter and Word Recognition, 100 for Nonsense Word Decoding, 66 for Math Concepts and Applications, 76 for Reading Comprehension, 93 for Silent Reading Fluency, 71 for Math Computation, 92 for Spelling, and Written Expression was discontinued. See D. Ex. p. 38, 112. Student's iReady score in literacy on 8/31/22 was 497 (3rd grade level), but his iReady score in math was 369 (kindergarten level). See D. Ex. p. 39. On the Developmental Test of Visual Motor Integration-VI (VMI), Student's standard score of 78 was in the 7th percentile and indicated low functioning in visual perception relative to paper pencil tasks. See D. Ex. p. 38. His Behavior Assessment Scale for Children-3 (BASC-3) reflected that Student was in the Clinically Significant range for Somatization, Attention Problems, Learning Problems, Atypicality, Withdrawal, Social Skills, Leadership, Study Skills, and Functional Communication. See D. Ex. p. 38, 112. Student was in the At-Risk range on the BASC-3 in the areas of Adaptability, Developmental Social Disorders, and Executive Functioning. Id. Math

Teacher, who completed the BASC-3 assessment, noted that Student does what is asked of him and has good manners, but Student zones off and loses focus. *Id.* Math Teacher also stated Student needs assistance completing math problems, and she also sees him zoning out in class. *Id.* Literacy Teacher stated that Student works well with peers but does space out and needs support for writing tasks. See D. Ex. p. 112. The team discussed Student's attendance and noted that he missed 35 days of school so far. See D. Ex. p. 112. The team believed that if Student's attendance improved, he would make more progress in the classroom. *Id.* Although Parent previously expressed that she did not want Student pulled out of class, the IEP team looked at the data, saw Student was still struggling, and drafted the IEP to pull Student out for more support in math. See Tr. Vol. IV. P. 115-116. Based on the findings above, the team determined that Student was in need of special education resource serves in the areas of math and written expression, and he would begin receiving 60 minutes of math pull-out services two times weekly and interventions in the general education setting to help with written expression. *Id.* at 112. Student's IEP was reviewed and revised to reflect the changes above. *Id.* Student was served under the category of Autism. See D. Ex. p. 39. His math goal was "when given a math assignment, [Student] will recall multiplication facts through 12 and will gain familiarity with factors and multiples by solving the problems correctly with at least 80% accuracy, on 3 out of 5 trials as measured by teacher made quizzes and work samples by the end of the school year." See D. Ex. p. 43. His writing goal was "when given a writing task, [Student] will write opinion pieces on topics or texts, which accurately supports his opinion on the topic by typing or writing the main idea with three supporting details with at least 80% accuracy on 2 out of 3 trials as measured by scoring rubrics and work samples by the end of the school year. See D. p. 44. Student's

behavior goal was “after receiving a task, [Student] will begin the task within 1 minute and will remain on task until the assignments is finished with no more than 2 reminders on 3 out of 5 trials with at least 90% accuracy, as measured by observation checklists by the end of the school year. See D. Ex. p. 45. Although Student’s mental health therapy was to be transferred on September 27, 2022, Student was discharged due to 4 missed appointments, lack of contact with Parent and no PCP referral, and Student was on the outpatient clinic’s wait-list at the time of the December 2 IEP Meeting. See D. Ex. p. 110; P. Ex. p. 21-22.

22. Also at the December 2 IEP Meeting, the Behavior Interventionist reviewed the FBA and stated that during the time of the FBA that she did not observe any adverse behaviors. See D. Ex. p. 112; 189. Student’s FBA conducted over five dates between November 27, 2022 and October 24, 2022 reflected no issues, so no further data collection or planning was needed. See D. Ex. p. 189, 203-211. Math Teacher, Literacy Teacher, and Special Education Teacher also stated that they have not observed any adverse behaviors. See D. Ex. p. 112. It appeared that Student was making progress with the accommodations/modifications in the current IEP, which included visual schedule, social stories, peer/teacher nonverbal cues and verbal reminders for tasks. Id. at 39, 41, 112. As no additional supports were needed to allow Student to successfully engage in his academic and social routines, no additional data collecting, observation, or change in the current plan was needed. Id. at 112. Special Education Teacher recalled discussing a possible BIP for Student at the December 2 IEP Meeting and reviewing the FBA showing Student did not need a BIP. See Tr. Vol. IV p. 35.

23. As of December 2, 2022, based on District’s Attendance Report for Student,

Student attended school on 35 of 60 school days. See D. Ex. p. 193-194. Based on District records, Student missed school from October 24, 2022 to November 14, 2022, but Parent did not recall him missing school during that period. See D. Ex. p. 194; Tr. Vol. II p. 124-125.

24. On December 14, 2022 at the request of Parent, Student's IEP team met again ("December 14 IEP Meeting") and reviewed the results of Student's comprehensive evaluation, and Parent and Grandmother attended this meeting in person. See D. Ex. p. 26, 31, 113. School Psychology Specialist again reviewed the result of each evaluation, as well as the results from the FBA. Id. at p. 113. Special Education Teacher testified the West Evaluation was reviewed and considered along with the testing done by School Psychology Specialist, although the West Evaluation was presented to the team at the September 22, 2022 IEP meeting. See Tr. Vol. IV p. 61-63; D. Ex. p. 118. Parent raised that Student broke his collarbone on the playground and mentioned wanting a paraprofessional to help watch Student on the playground. Id. The remainder of the team did not feel that the data supported a need for a paraprofessional at the time. Id. The Special Education Director stated the school could meet with the teachers on duty to help bring awareness to staff that are on duty and that the PE monitor is on the playground also and is familiar with Student. Id. Special Education Director again asked Parent if she would be interested in school-based mental health services for Student to provide additional support, and Parent again declined those services. Id. The team then discussed again which disability category would best fit Student's needs and determined that the evaluation data continues to support that Student meets the eligibility requirements for special education services under the disability of Autism. Id. The team discussed Student's low scores in written expression and math and that Student would benefit from resource math pull-out services at least two times per week

and that the Special Education Teacher could push-in to address Student's needs in written expression. Id. Parent expressed that she did not want Student pulled out, and Special Education Director asked how Parent would like Student to be served. Id. The team then discussed the following accommodations and modifications for Student: allow retake of any test/assignment scored below at 60, allow alternative means of response (oral, email, power-point, etc.), offer social reinforcers (praise) for appropriate behavior, provide frequent review, use peer-mediated strategies (buddy system), simplify/shorten directions, visual schedule, social stories, use of nonverbal cues, reduce all writing assignments by at least 50%, reduce number of items on a task, frequent reminders to complete a task, have Student repeat directions, and special seating/grouping. Id. Parent agreed with the list of accommodations/modifications but asked to change allowing retakes for any assignment scored below a 70 (instead of below a 60), which the District altered at Parent's request. Id. at p. 8, 27, 41. The team then discussed goals for Student to work on. Id. at p. 113. Parent again stated she did not want Student pulled out for services, even though Math Teacher explained that Student could get help on missing foundational skills if he were pulled out. Id. Parent asked if Student could use a calculator, and Ast. Principal checked with the testing coordinator and reported that calculators can only be used in grades 6-10 due to state testing requirements. Id. The team again asked Parent how she would like Student to be served. Id. Parent then stated that she never gave the District permission to do special education testing on Student. Id. Special Education Teacher replied that Parent had consented for testing of Student at a prior meeting. Id. The team reviewed various ways Student would receive services, such as indirect, pull-out, and push-in. Id. Parent stated she wanted a behavior plan and a paraprofessional. Id. The remainder of the team disagreed with Parent's request

in light of Students FBA results. Id. The educators recommended pull-out services in math twice weekly for 60 minutes and push-in services for written expression and explained that the pull-out services would not cause Student to miss any core instruction because they would occur during intervention time. Id. Parent disagreed and asked for Student's goals to be taken away and for him to be an indirect student. Id. The team explained that Student would continue to struggle if he did not receive pull-out services for math, and Parent again stated she wanted a paraprofessional and could not make a decision about Student's services. Special Education Teacher agreed to email the paperwork to Parent for review. Id. Parent was asked to let the team know when she was able to make a decision, so another meeting could be held to complete programming for the Student. Id. At the end of the conference, Parent stated she wanted Student to be served as an indirect student but would like to review the paperwork before making a decision. Id.

25. After the meeting on December 14, 2022, Parent provided input in writing, in which she first stated that she disagreed with the December 2 IEP. See D. Ex. p. 32-33. She again expressed her opinion that Student would benefit from a one-on-one paraprofessional, but then stated that she understood from his teachers that Student was doing well in his classes and receiving good grades. Id. at p. 32-33 and 35. She acknowledged the District had explained that Student did not need a paraprofessional because he was successful in the classroom. See D. Ex. p. 33. She stated that the accommodations in the IEP drafted on August 26, 2022 and September 22, 2022 were not being followed during recess or PE prior to October 24, 2022. Id. On the first page on Parent's written input, Parent states she was still waiting for the IQ achievement test and adaptive behavior testing for Student that she consented to on August 26, 2022, and on the next page, she expressed that she did not give

consent for testing further than the West Evaluation. Id. She stated that she “personally paid for an evaluation in order to help the team analyze Student’s needs and accommodations quick for the soon to be updated IEP because they had not evaluated him all year.” See D. Ex. p. 33. The West Evaluation was completed on September 8, 2022, approximately three weeks after Student enrolled in the District. See D. Ex. p. 160-172. Parent believed the District dismissed the West Evaluation because it “was not appropriate for school” and it “had less than what was needed to properly evaluate him for school under IDEA.” See D. Ex. p. 33. Parent then stated she had been asking for a paraprofessional since the beginning of the school year and that she believed a paraprofessional and “excessive supervision” were necessary for Student because he broke his collarbone during recess for his supervision and safety. See D. Ex. p. 33-34. She also believed Student needed a paraprofessional to help put his coat on, because his grades were dropping in science and math (although she acknowledges his absences and tardies), and because papers were crumpled in his backpack. See D. Ex. p. 34. Parent stated that she refused pull-out resource services for Student to avoid stigmatizing him, which she acknowledges was one of the reasons Special Education Director stated Student should not have a paraprofessional. See D. Ex. p. 34-35. She further stated that Student had never needed resource help in the past and did not need resource help now. See D. Ex. p. 35. She also addressed her request that Student be allowed to utilize a calculator and acknowledged that Ast. Principal informed her that calculators were not allowed in the 4th grade, although that will be a great accommodation for Student later. See D. Ex. p. 36. She closed by agreeing to Student receiving indirect services that he has been receiving, along with the accommodations, and acknowledged that the accommodations were amended by the IEP team on December 14,

2022. Id. at p. 36.

26. In the hearing, Parent confirmed that the notes from the December 14, 2022 IEP meeting were correct and testified she had been confused about terms and misspoke that day when she stated that she had not given the District permission to do Special Education testing on Student. Parent Tr. Vol. II p. 143-150; P. Ex. p. 22. She admitted she did give the District to do Special Education testing for Student but had misspoken on December 14, 2022. See Tr. Vol. II p. 148. When she was saying she did not want him pulled out of class, she was also confused about the terms and meant that she “wanted him to be in the least restrictive environment and . . . didn’t want him secluded from his classmates,” but she did want Student to be served. See Tr. Vol. II p. 147-148.

27. On January 2, 2023, Special Education Teacher contacted Parent to follow-up on completing Student’s programming. Id. at p. 113.

28. On January 3, 2023, Parent provided parental input from the previous conference. Id. at p. 32-36, 113

29. On January 9, 2023, Parent expressed her decision to have Student served indirectly. See P. Ex. p. 46; D. Ex. p. 26, 113. A copy of Student’s IEP was emailed to Parent on January 9th or 10th, 2023. Id. at p. 26, 113; P. Ex. p. 46. At the hearing, Parent testified that on January 9, 2023, the District proposed indirect services for Student and denied that was just what she was willing to do; then she stated that “the committee offered indirect services, which is pulling him out of class.” See P. Ex. p. 22; Tr. Vol. II p. 148-150. Parent remained confused about the difference between direct and indirect services on the date of the hearing. See Tr. Vol. II p. 148-153, 157.

30. On January 21, 2023, after Parent reported Student was struggling at recess, Ast.

Principal emailed the staff working with Student and requested they ask Student what's wrong if he appears upset, call him aside and give him a moment to calm down, and ask what they can do to help fix the situation. See D. Ex. p. 214.

31. On January 23, 2023, an IEP meeting was scheduled, but Parent contacted Special Education Teacher on January 20, 2023 and asked to have the meeting rescheduled to February 3, 2023 to all her more time to prepare. See D. Ex. p. 95, 98; P. Ex. p. 41.

32. On February 3, 2023, Student's IEP team met ("February 3 IEP Meeting") to address Parent's concerns regarding Student's learning at school, Grandmother attended in person, and Parent participated via phone due to a medical condition. See P. Ex. p. 42-50; D. Ex. p. 26, 96-98. Math Teacher expressed that Student struggles due to his lack of foundational skills and that he zones out in class and has to be redirected to stay engaged in the lesson. See D. Ex. p. 96-98. It was noted that his attendance has improved some, but he has still been missing school some. Id. Parent asked when she gave consent to have Student tested for self-contained services, and the Special Education Director explained that Parent consented at the beginning of the school year, on August 26, 2022 and that Student needed to be retested because he transferred to the District with an expired IEP. Id. Special Education Director further explained that Student was not evaluated for self-contained services but for special education services in general. Id. Parent and Math Teacher discussed that Student was struggling with basic math facts, which made it hard for him to solve grade-level problems. See D. Ex. p. 96. Grandmother expressed that she felt that the District wanted to put Student in special education so that the teachers would not have to deal with him. Id. Special Education Director then explained that the District wants Student to get the help he needs in math. Id. Parent asked Math Teacher how she helps Student in

the classroom, and Math Teacher stated she often pulls Student to a table in the back to work with him and mentioned that Student would often say he's thinking when they are working through problems. Id. Math Teacher stated the general education classroom moves at a fast pace, but she often calls on Student to check for understanding and has a peer seated near him to help assist with any questions. Id. Although the December 2, 2022 IEP stated the Student would receive direct instruction (pull-outs) twice weekly for math, pull-outs were not implemented due to Parent's objections based on statements documented during the February 3 IEP Meeting; it was documented that team discussed that Student was currently an indirect student on the continuum with the next step being in the regular class 80% or more if Parent was in agreement with having Student pulled out for help in math. See D. Ex. p. 46, 96. Parent did not agree to pull out services and did not want to discuss the continuum. See D. Ex. p. 96. When Parent asserted that she did not want Student pulled out for help at all, Parent's Advocate, who attended the February 3, 2023 meeting with Parent, stated that IDEA required a discussion of the continuum of learning when students continue to struggle in the general education setting even with accommodations and modifications, including being pulled out for assistance in math. See P. Ex. p. 42; Tr. Vol. II p. 156-157. Parent believed that the advocate was on the side of the school and that the advocate was not advocating for what Parent was advocating for, like a one-on-one paraprofessional, extensive supervision and more behavioral/safety supports, so Parent never invited advocate back. See Tr. Vol. II p. 160-161. Special Education Director reiterated that the team recommended pulling Student out twice weekly for help in math during intervention time, but Parent was still not in agreement. See D. Ex. p. 97. Parent then asked if Student could receive push-in services for math, and the Special Education Director explained that the Special Education Teacher

could do that. Id. Parent expressed that Student did need more attention to make more progress, and she did not know how he had failing grades. Id. The team reviewed Student's grades since the beginning of the school year and he earned mostly B's, C's and a few D's. Id. After the team reviewed Student's accommodations and modifications, Parent expressed that she disagreed with them. Id. The Special Education Director explained that the team agreed on them at the December 2, 2022 IEP meeting. Id. Parent raised that she did not attend the December 2, 2022 IEP meeting and did not agree with the accommodations. Id. Special Education Teacher explained that the other committee members agreed to proceed with the meeting because the meeting had to be held in order to begin providing services to Student. Id. Parent stated that Student's IEP was emailed to her at her request on December 15, 2022. Id. Special Education Director reminded Parent that Parent requested more time over Christmas break to review the IEP. Id. Parent stated again that she did not give permission for the accommodations to be made. Id. The parent advocate explained to Parent how the team can come together to make certain decisions without a parent and that consent is only needed for initial placement and when an evaluation is needed. Id. After comparing the current IEP accommodations/modifications to those from Marion, Parent asked to add reduce the number of answer choices, use of parent/teacher weekly log, oral and visual instructions for assignments, small group testing, and extended time, and the team revised the IEP to include Parent's requested additions. Id. at p. 27, 97-98. Parent also asked if Student could be excused from school on certain days due to his Autism, PTSD, and sensory needs, and District staff replied that the District would need documentation from a medical provider before that accommodation could be made. Id. at p. 97-98. Parent asked how she would know if accommodations and modifications were made, and Special Education

Director explained that the Special Education Teacher makes weekly contact with the general education teachers to ensure accommodations and modifications are being followed. Id. Then, Parent stated that 2 students were making fun of Student at school Id. Ast. Principal stated that she could not fix the problem unless Parent informed her and asked that Parent reach out as soon as it happens so the incident can be looked into. Id. Parent stated she would send a video of Student describing being made fun of, and Ast. Principal said she would review it. Id. Parent then asked the Special Education Teacher if Student was able to complete assignments on his own when she works with him, and Special Education Teacher replied that he was not able to do so yet. Id. Parent requested to email parental input and was told the email would be placed in Student's special education records. Id. At the February 3, 2023 meeting, the remainder of the committee recommended pulling Student out of class twice weekly during intervention time to work on math, but Parent was not in agreement. See P. Ex. p. 42-43; Tr. Vol. II p. 157-159. Parent wanted Student to receive one hundred percent of his support in the general education classroom, and she did not believe pulling him out would make a substantial difference. See Tr. Vol. II p. 158-159. Parent believed the Special Education Teacher was giving Student answers and not explaining assignments to him like a general education teacher would, and she believed the special education teacher would become a crutch. See Tr. Vol. II p. 159. Parent confirmed the notes from the Notice of Action dated February 3, 2023 accurately reflected the content of the meeting. See P. Ex. p. 42; Tr. Vol. II p. 153-155.

33. On February 9, 2023, a Notice of Conference was issued via email for a February 23, 2023 IEP meeting regarding Student. See P. Ex. p. 52. A second contact was made on 2/16/23 via email. See P. Ex. p. 53. Parent responded on February 23, 2023 that she would

be present for the meeting that day. See P. Ex. p. 53.

34. On February 16 and 17, 2023 Parent and Math Teacher exchanged emails regarding an incident in which Student claimed another student was mocking his speech, and the other student had reported that Student was mimicking her, which prompted Student's report of mocking. See D. Ex. p. 212-213.

35. On February 23, 2023, the IEP team met ("February 23 IEP Meeting") to discuss Parent's request for "excessive supervision" of Student and a one-on-one paraprofessional. See P. Ex. p. 55. District responded that there are 5-8 adults on duty when Student is at recess and 2-5 adults on duty to help supervise lunch. Id. The District suggested having an adult in close proximity to Student on the playground, and Parent expressed she did not want "someone following him around at recess." See P. Ex. p. 55-56. The District offered Student more support in math, frequent communications between teachers and parent, and an adult within close proximity of Student on the playground and on event days, check-in/check-out, reduced math and science assignments; Parent accepted those accommodations, which were added to Student's IEP. See P. Ex. p. 55-57; Tr. Vol. II p. 163-165. Parent expressed that she liked Student's IEP goals and seemed pleased with the outcome of this meeting. See P. Ex. p. 56. Parent confirmed that the notes accurately reflected the content of the February 23, 2023 IEP meeting. See P. Ex. p. 54-55; Tr. Vol. II p. 161-164.

36. On April 18, 2023, the IEP team met ("April 18 IEP Meeting"), and Parent and Grandparent were present in person. See P. Ex. P. 71-85; D. Ex. p. 3, 92. Although Student had not mastered any goals during the 2022-2023 school year, it was reported that he was making progress toward his writing and behavior goals. D. Ex. at p. 19-21, 92. His writing goal was updated to: "when given a writing prompt, [Student] will produce clear and

coherent writing in which the development and organization are appropriate to task, purpose, and audience with at least 80% accuracy in 3 out of 4 trials as measured by scoring rubrics and work samples by the end of the 2023-2024 school year.” See D. Ex. p. 11. His 2022-2023 math goal was discontinued due to its level of difficulty, and his math goal was updated to: “when given multi-step math problems involving whole numbers and/or decimals, [Student] will solve the problems with at least 80% accuracy in 3 out of 4 trials as measured by work samples and teacher tests by the end of the 2023-2024 school year.” See D. Ex. p. 12, 92. His behavior goal was made more stringent to: “after receiving a task, [Student] will begin the task within 1 minute and will remain on task until the assignment is finished with no more than 2 reminders on 3 out of 4 trials with at least 90% accuracy as measured by observation checklists by the end of the 2023-2024 school year.” According to Student’s most recent iReady math scores, Student scored at 399 (first grade level), which was a 30 point increase since the beginning of the school year when he scored a 369. Id. at p. 92. His most recent iReady reading score was 494 (second grade level). Id. The team discussed and added to the IEP that absences could be excused providing there was a doctor’s note, and Student would be given the usual amount of time to make up those assignments. Id. at p. 9, 92. All other accommodations and modifications were reviewed and agreed upon, including: allow alternative means of response (oral, email, power-point, etc.), offer social reinforcers (praise) for appropriate behavior, provide frequent review, use peer-mediated strategies (buddy system), simplify/shorten directions, visual schedule, social stories, use of nonverbal cues, reduce all writing assignments by at least 50%, reduce number of items on a task, frequent reminders to complete a task, have Student repeat directions, and special seating/grouping. allow retake of any test/assignment scored below

at 70 for up to 3 attempts, extended time of 300% (for math, science and writing), reduce math/science assignments by 50%, frequent communication via remind/email, adult within close proximity to Student on the playground and during event days. Id. at p. 8, 92. The team further added that Student's "absences will be excused with a doctor's note and he will be given the same amount of time he is absent to make those assignments up." Id. at p. 9. His doctor provided a note stating the Student should not be medically excused for any reason without first being seen in the office. Id. at p. 7. The team agreed to serve Student for 150 minutes weekly in resource math pull-outs, 30 minutes weekly in behavior, and inclusion services for writing. Id. at p. 6, 14, 92. Parent was in agreement with Student's IEP for the next school year, which was to run from August 14, 2023 to May 24, 2024. See D. Ex. p. 3-31, 92. She signed Student's IEP on April 18, 2023. See D. Ex. p. 18. Parent input also reflects that Parent was pleased with Student's progress and did not have any concerns. See D. Ex. p. 3. Parent testified that she agreed to the accommodations listed in the April 18, 2023 IEP, and she was pleased with them. See P. Ex. p. 73; Tr. Vol. II p. 168-169. Regarding Student's services as stated in the IEP created on April 18, 2023, Parent testified she "went along" with the 150 minutes of pullouts for math, 30 minutes for behavior, and inclusion for writing and that Student should have had those services from the beginning of the year. See P. Ex. p. 74; Tr. Vol. II p. 169-171. Parent denied that the District had been offering those services since the beginning of the year. See Tr. Vol. II p. 171. Parent was asked if the services were implemented and she rejected them, and Parent asserted that the services were not implemented until April of 2023. See Tr. Vol. II p. 171. Parent confirmed that the notes from the April 18, 2023 meeting were accurate. See P. Ex. p. 69-71; Tr. Vol. II p. 165-168.

37. On Parent's Arkansas Special Education School Age Family Outcome Survey dated

April 18, 2023, Parent answered affirmatively that: she was offered special assistance to participate in the IEP meeting, her concerns and recommendations were documented on the IEP, she was asked for her opinion about how well special education services were meeting her child's needs, teachers and administrators ensure that she fully understood the procedural safeguards, school communicates regularly with her regarding her child's progress on IEP goals, school provides information on agencies that can assist my child in the transition from school, my child is taught in regular classes with supports to the maximum extent appropriate, general education and special education teachers work together to assure that my child's IEP is being implemented, special education services helped her get needed services, special education services helped me know about her child's rights, she valued school's input concerning her child, she meets with her child's teachers to plan her child's programming and services, special education services helped her understand her child's special needs, and special education services helped her feel that her efforts are helping her child. See D. Ex. p. 22; P. Ex. p. 89; Tr. Vol. II p. 171-175. Parent marked no negative responses, and Parent marked "not applicable" where the survey asked if she participated in the school's PTA or PTO. See D. Ex. p. 22; P. Ex. p. 89. Parent did not dispute the accuracy of the document but asserted it was not a binding document under IDEA. See. Tr. Vol. II p. 171-175.

38. Student's IEP goal progress was documented on October 14, 2022, December 16, 2022, March 14, 2023, and May 31, 23. See D. Ex. p. 19-21. Student's goals were not initiated until March 14, 2023, after Parent consented. See D. Ex. p. 19-21. On 3/14/2023, Student achieved his Math goal of recalling multiplication facts at 25 percent, and on May 31, 2023, Student achieved the goal at 33 percent. See D. Ex. p. 19. On Student's written expression

goal of writing opinion pieces, Student was at 40 percent on 3/14/2023 and 69 percent on 5/31/23. See D. Ex. p. 20. On Student's behavior goal of starting and continuing tasks, Student was at 50 percent on 3/14/2023 and 73 on 5/31/23. See D. Ex. p. 21.

39. Documentation reflects Student withdrew from the District on August 14, 2023. See D. Ex. p. 1-2; Tr. Vol. III p. 11.

40. This Hearing Officer found Parent to be a zealous advocate for her child. Although her demeanor appeared genuine, this Hearing Officer finds her testimony inconsistent, perhaps due to misunderstanding of educational terms and law instead of guile. For example, her signature on August 26, 2022 paperwork reflects she consented in writing for Student's evaluation by the District, but she then claimed that she did not consent in later IEP meetings, as well as in her testimony. See D. Ex. p. 32, 123-124; Tr. Vol. IV p. 30-32. In her parent input sheet dated December 14, 2022, Parent stated she was still waiting for the IQ achievement test and adaptive behavior testing for Student that she consented to on August 26, 2022, and in the next paragraph Parent stated that she provided the District with an independent evaluation at the September 22, 2022 IEP meeting and that "we never discussed any further psychological testing nor did I give them consent to do so at the meeting on 9/22/22." See D. Ex. p. 32. At a later IEP meeting, Parent asked when she consented to testing for self-contained services, but the evaluation was for special education services in general. See D. Ex. p. 96. Parent's testimony also changed with regard to whether there was a gap in Student's mental health treatment, but the District documented that Student was without mental health services from September 27, 2022 to at least December 2, 2022. See P. Ex. p. 15, 22; D. Ex. p. 110-113; Tr. Vol. II p. 138-143; Tr. Vol. III p. 21-24.

41. Parent testified the District denied Student FAPE when it failed to provided him

a one-on-one paraprofessional, a safety plan (which she thought was similar to a behavior plan), delaying implementation of his IEP, the accommodation for him to be closely monitored was not in place until April of 2023. See Tr. Vol. II p. 175-178. She felt that Student's education was negatively affected because the notes stating Student zones out, has to be redirected, and had challenges with communication. See Tr. Vol. II p. 179. When asked if there was a negative impact on Student's grades or test scores, Parent testified there was a negative impact on Student's grades, and she believed that "papers crumpled up in his backpack" was evidence that Student was not being helped or attended to. See Tr. Vol. II p. 179-182. Parent also testified that she did not believe Student's IEP had the support Student needed because a child alerted Math Teacher after Student's recess injury, instead of it being seen by District staff. See Tr. Vol. II p. 111. She stated Student's IEP had academic accommodations but not behavioral or safety accommodations or supports. See Tr. Vol. II p. 112. Parent testified she requested a safety plan and a one-on-one paraprofessional for Student multiple times and that her request was denied or ignored. See Tr. Vol. II p. 112-113. LEA told Parent that Student did not qualify for a one-on-one paraprofessional because he was successful in the classroom, but Parent believed Student was falling behind academically and was becoming emotionally distressed. See Tr. Vol. II p. 113. She felt that Student was at school "basically unsupervised" and he became anxious, withdrawn and scared to go to school, which resulted in a high number of missed school days. See Tr. Vol. II p. 116. However, she asserted that Student's missing school had no effect on his academic success because when he missed a lot of school at Marion, he maintained honor roll status there, and she asserted that Student's absences were "directly related to the school's failure to provide and safe and supportive environment" . . . after he "was injured fairly early into

the school year.” See Tr. Vol. II p. 117, 121. Regarding Student’s absences, Parent asserted that there are dates showing unexcused absences when Student attended but arrived after noon. See Tr. Vol. II p. 122-125. Parent believed Student’s falling grades were due to lack of support and Math Teacher did reach out, but then Math Teacher would come to the IEP meetings and report Student’s negative grades and blame it on Student’s absences instead of on lack of support, as Parent believed. See Tr. Vol. II p. 181-182. Parent did not believe that Student was being provided extra time as an accommodation. See Tr. Vol. III p. 12. Parent reasserted that accommodations were not being followed during recess or prior to October 24, 2022 and that the District did not implement accommodations of allowing oral response, simplified directions, reduced writing assignments, reduced items/answers on a task, and extended time. See Tr. Vol. III p. 13, 16-17. Parent admitted she never went into Student’s classroom, but she thought assignments seemed to be full length in the first half of the year. See Tr. Vol. III p. 18-10. Student’s counseling is covered by insurance. See Tr. Vol. III p. 25. Parent has not hired a tutor for Student. See Tr. Vol. III p. 25. A draft IEP was in the record, and Parent believed the word draft meant “temporary.” See P. Ex. p. 9; Tr. Vol. III p. 35. Parent did not believe Student received accommodations of simplifying/shortening directions, which she based on not seeing what she believed to be shortened work at that time. See Tr. Vol. III p. 31-32; P. Ex. P. 9. She did not believe Student received reduced number of items because tests because assignments did not appear reduced in her opinion. See Tr. Vol. III p. 32; P. Ex. p. 9. She thought he received oral instructions after October 24, 2022. See Tr. Vol. III p. 33; P. Ex. p. 9. She did not believe Student had special seating and grouping because Student reported peers mocked his speech impediment. See P. Ex. p. 9; Tr. Vol. III p. 33. She did not believe Student was checked for understanding because Student did not know how

to do the work by himself and because Student needed to be sent out of class to work with the resource teacher. See P. Ex. p. 9; Tr. Vol. III p. 33-34. She did not believe Student received frequent review because she did not believe teachers did not have time to provide frequent review. See P. Ex. p. 9; Tr. Vol. III p. 34. She did not believe Student received extended time for work because Student was sent out of class to finish assignments. See P. Ex. p. 9; Tr. Vol. III p. 35. Parent restated that she was never in Student's classroom during instruction time and admitted she could not prove those accommodations were not being made. See Tr. Vol. III p. 36-40. Parent acknowledged that Special Education Teacher pushed into Student's classroom. See Tr. Vol. III p. 40.

42. Parent testified she was denied meaningful participation in Student's education because she did not receive video footage of Student's injury, a one-on-one paraprofessional, a safety plan, or evaluations. See Tr. Vol. II p. 115; Tr. Vol. III p. 9. She also felt that she was denied parental participation when decisions were made without her input at the December IEP meeting that she was unable to attend. See Tr. Vol. III p. 8-9. Parent did not feel that her input was genuinely considered and stated that decisions were made without fully including her. See Tr. Vol. II p. 115. Grandmother stated she was in IEP meetings when decisions were made without Parent's input, and Parent and Grandmother learned of changes when they got to the meeting and read them. See Tr. Vol. II p. 25. When probed, Grandmother could not state a particular occasion in which Parent's input was not considered but stated Parent input was not considered at any of the IEPs. See Tr. Vol. II p. 62. Later, Grandmother stated the District was not responsive to Parent input because Student never received a paraprofessional; she thought he needed extra testing time, someone to help him understand assignments, and someone to walk him to the bathroom. See Tr. Vol. II p. 63-64.

Grandmother testified that the District did not respond to her phone calls, but later stated that the District would state they could not speak to Grandmother without Parent's permission, so Parent would call and give the District permission to talk with her. See Tr. Vol. II p. 28-29, 68.

43. Grandmother's testimony was also inconsistent. Grandmother testified Student always struggled in school. See Tr. Vol. II p. 61. She was concerned that Student was not being given the support he needs with his disabilities, that he was bullied, and that he was not able to express himself. See Tr. Vol. II p. 20. Grandmother asserted that the District did not implement a Safety Plan. *Id.* at p. 21. Grandmother testified that Student had meltdowns and did not want to go to school after his injury. See Tr. Vol. II p. 26-27. She expressed that she did not believe Student was adequately supported because he would come home with "crinkled up paper" or disorganized papers. See Tr. Vol. II p. 28. Grandmother believed that a paraprofessional would have provided Student security and possibly prevented the accident and would have helped with his academic performance by ensuring that he understood what was being taught and expected of him. See Tr. Vol. II p. 29. She stated a paraprofessional would have helped him be more expressive, follow instructions, and stay focused. See Tr. Vol. II p. 29-30, 37. Her primary complaint with the District that that Student was given the support needed because he was not given a one-on-one paraprofessional; the District did not feel Student needed a paraprofessional. See Tr. Vol. II p. 37, 46, 49, 101. Student would call himself "stupid," but he did that prior to attending the District. See Tr. Vol. II p. 37, 50, 70-72. Grandmother believed if the District had done its job that Student's collarbone would not have been broken, although she acknowledged that children do have accidents on the playground. See Tr. Vol. II p. 45. Grandmother thought Student laid on the

ground for almost an hour after his injury, but then, she admitted she did not know how much time passed before Student was discovered after his injury. See Tr. Vol. II p. 76-77. She did not believe Student had a support system at school. See Tr. Vol. II p. 51. She did not believe that the District provided any school-based interventions, emotional support, behavioral support, or academic accommodations, although accommodations were in his IEP and would have addressed his behavior. See Tr. Vol. II p. 53-54, 90-91. She did not believe the District was giving Student extra time, although his IEP required it. See Tr. Vol. II p. 72-73. Later, she stated she believed Student was provided the services in his IEP. See Tr. Vol. II p. 74. Grandmother recalled the West evaluation suggested a paraprofessional for Student, but she felt the rest of the team was not receptive to the West evaluation. See Tr. Vol. II p. 57. Grandmother testified that Student's reading was "better," and she saw him progress in reading and math while at the District. See Tr. Vol. II p. 66-68. She believed the District received Student's enrollment information in May of 2022. See Tr. Vol. III p. 42. The Marion IEP had an accommodation to excuse medical absences that was not included in from Student's District IEP, possibly because the District would need a note from a doctor that stated the accommodation was needed. See D. Ex. p. 72; Tr. Vol. III p. 145.

44. LEA attended some of Student's conferences and confirmed that Student received indirect services at times. See Tr. Vol. III p. 50. LEA did not recall making the statement that Student did not need a "mama bear," when discussing the request for a paraprofessional and believes that language came from the Parent Advocate. See Tr. Vol. III p. 53. LEA testified that having a paraprofessional could restrict or hinder a child, but a paraprofessional being a mama bear or crutch was not the reason that a paraprofessional was approved or denied for Student. See Tr. Vol. III p. 55-56. LEA did not believe a paraprofessional was necessary

for Student and that a paraprofessional providing assistance when Student was able to work independently would have been a hinderance. See Tr. Vol. III p. 56-57. Information from Student's classroom teacher and evaluation reflected that Student was able to function independently in the classroom, and LEA relied on that data. See Tr. Vol. III p. 57. LEA testified that paraprofessionals perform duties like personal care, and Student could take care of his personal care needs, transferring a student from wheelchair to desk, assisting with behavior issues, assisting with hand over hand prompting, feeding, redirecting constantly, removing a student frequently for discipline, and assisting with communication devices. See Tr. Vol. III p. 58-60. When determining if a student needs a paraprofessional, the District looks at the four main areas of need (behavior, personal care, social communication, and academics), looks at the student's skills based on behavior evaluations and testing, and then looks further if there are major deficits in any of the areas of need. See Tr. Vol. III p. 60-62. Sometimes the District can meet a student's needs with teacher training, hiring additional staff, or having a behavior interventionist push in, but a one-on-one paraprofessional would be provided after other options are attempted and fail because the District is required to serve a student in the least restrictive environment and allow them to be as independent as possible. See Tr. Vol. III p. 61-62. LEA admitted she believed Student struggled with Autism related behaviors during the school year, but she was not aware if he struggled with personal care. See Tr. Vol. III p. 62-64. After reviewing the Parental Input sheet provided, LEA recalled being aware of the list of behavior issues. See D. Ex. p. 121-122; Tr. Vol. III p. 64-66. The District obtained consent for and conducted an FBA to look into Parent's concern after the Parental Input was provided. See D. Ex. p. 121-122; Tr. Vol. III p. 66-67. She admitted it was possible that Student's Autism diagnosis could have affected

his behavior, personal care, communication, or academics, so the District conducted an FBA and an evaluation to determine Student's needs. See D. Ex. p. 121-122; Tr. Vol. III p. 66-68. Paraprofessionals cannot provide new academic instruction, but they can support a teacher's instruction and reinforce skills. See Tr. Vol. III p. 70-73. Special Education Teacher could push in to work on Student's IEP goals and also assist Student with his work. See Tr. Vol. III p. 74-76. Paraprofessionals can help more than one student in a classroom. See Tr. Vol. III p. 77. When Student enrolled in the District, his IEP from Marion was expired, and the District provided as close to the services previously received and served Student in the environment outlined on the Marion IEP until the District could re-evaluate Student and determine his least restrictive environment. See Tr. Vol. III p. 78-80. This was a temporary situation until the District could develop an IEP. See Tr. Vol. III p. 79-80. LEA believed Student only received pull-out time for Speech and OT and may have had behavior goals in the Marion IEP, but he was in the regular classroom for all instruction, which is the reason the District initially placed Student in the general education classroom and then recommended pull out time later in math. See Tr. Vol. III p. 80-81. The District accepted the Marion IEP while the District was evaluating Student and creating a new IEP. See Tr. Vol. III p. 81-82. Mom told the District that she did not want Student to have Speech and OT in the school setting at the District. See Tr. Vol. III p. 82; D. Ex. p. 118. Pull out services does affect a student's LRE. See Tr. Vol. III p. 85. Student received push-in services in math from Special Education Teacher to work on foundational math skills. See Tr. Vol. III p. 86. LEA recalled Parent stating she did not want Student pulled out for math services. See D. p. 113; Tr. Vol. III p. 94. The Marion Evaluation contained a list of behavioral issues that Student displayed during observation in November of 2019; Ast. Principal testified this data would

have been considered but it was two years old, which required updated information. See D. Ex. p. 126-131; Tr. Vol. III p. 137-138. Ast. Principal does walk throughs, talked to kids, and observes instruction. See Tr. Vol. III p. 143.

45. Special Education Teacher has a M.S. in Special Education, and she provided special education services for Student during the 2022-2023 school year. See D. Ex. p. 242; Tr. Vol. IV p. 9. She pushed into Student's literacy classroom to help him with reading and writing assignments, as well as focusing, and she worked with him a lot in math because he struggled more with math. See Tr. Vol. IV p. 9. She broke down the math problems, showed Student how to do them one step at a time, and redirected him to keep him on task; Student did not require much redirection. See Tr. Vol. IV p. 9. Student was missing some basic skills, like addition and subtraction that he needed to be able to complete multi-step math problems. See Tr. Vol. IV p. 13-14. Some days, Student could complete tasks without her assistance, but for the majority of the time, he was successful in completing his work with accommodations. See Tr. Vol. IV p. 9-10. He could not write an essay on his own, but she could read him a story and ask questions to help vocalize answers. See Tr. Vol. IV p. 10. She pushed in every day to the best of her recollection. See Tr. Vol. IV p. 10. Special Education Teacher recalled meeting with Parent, a principal, and maybe a speech therapist in August of 2022. See Tr. Vol. IV p. 11-12. Special Education Teacher did not specifically recall a meeting to establish a temporary IEP on August 26, 2022, but she remembered a meeting in August of 2022 where they created a draft IEP to put something in place until all the documentation was gathered to create an IEP for Student. See Tr. Vol. IV p. 12. Special Education Teacher's writing is on the consent form dated August 26, 2022. See P. Ex. p. 7. Special Education Teacher recalled Parent requesting a paraprofessional for Student

throughout the school year. See Tr. Vol. IV p. 12-13. Special Education Teacher modified Student's weekly math test by reducing the number of problems he had to do, or she would allow him to give the answers orally and she would write the answers in for him. See Tr. Vol. IV p. 14. She allowed Student to use manipulatives and guided him toward figuring out the answers. See Tr. Vol. IV p. 14. Special Education Teacher confirmed that Parent consented for IQ, achievement, adaptive and related services testing at the August 26, 2022 meeting. See Tr. Vol. IV p. 63-64; D. Ex. p. 123. The District had 60 days to evaluate Student after Parent consented on August 26, 2022 and then 30 additional days to hold a meeting. See Tr. Vol. IV p. 64. Student's District Evaluation was completed on October 10, 2022. See Tr. Vol. IV p. 64-65; D. Ex. p. 180-181. Special Education Teacher testified that Student grew in confidence and competence to carry out requested tasks over the course of the year. See Tr. Vol. IV p. 119-120. At the beginning of the year in math, Student was not able to line up multi-digit problems, but he could line up the problems toward the end of the year. See Tr. Vol. IV p. 121. At the beginning of the year in writing, Student would seem confused when asked a question and take time to verbalize his answer, and he began to "spit out his answers" by the end of the year. See Tr. Vol. IV p. 121-122. On Student's behavior goal at the beginning of the year, Student zoned out and had to be redirected quite a bit, and then, he seemed to begin to redirect himself toward the end of the year. See Tr. Vol. IV. P. 122. Special Education Teacher kept data on Student's goals quarterly. See D. Ex. p. 19-21; Tr. Vol. IV p. 35-42. Special Education Teacher sent home goal sheets quarterly that showed Student's goal progress, and she would also make phone calls. See Tr. Vol. IV p. 46.

46. Special Education Teacher never saw Math Teacher or literacy teacher fail to

provide an accommodation to Student when they should have during the time that she pushed in, and the teachers accommodated Student on their own a lot of times. See Tr. Vol. IV p. 123. Special Education Teacher printed a copy of parental input for the IEP team to review on September 22, 2022, and the team reviewed Parent's written input. See Tr. Vol. IV p. 42-44; D. Ex. p. 121-122. Parental participation occurs when parents give input, and parental participation can occur via phone, in person, or by email. See Tr. Vol. IV p. 45. Special Education Teacher primarily modified Student's assignments, but sometimes the general education teachers would collaborate with her on modifying assignments. See Tr. Vol. IV p. 45-46. In Special Education Teacher's opinion, Student's behavior did not impede his learning. See Tr. Vol. IV p. 48. Special Education Teacher collaborated with general education teachers weekly to make sure Student's accommodations were being followed, such as creating a weekly math test with smaller numbers. See Tr. Vol. IV p. 54. Praise for appropriate behavior and social stories were accommodations that provided Student emotional support. See Tr. Vol. IV p. 56-57.

47. School Psychology Specialist also has an Ed. S. Degree in Special Education, and she conducted Student's District IEP. See D. Ex. p. 180-189, 235. School Psychology Specialist was asked to evaluate Student who transferred from another school district, was being served only for Speech, and an outside evaluation with a diagnosis of Autism was presented. See Tr. Vol. III p. 152. School Psychology Specialist was asked to review the West Evaluation to determine whether additional testing was needed to look at changing Student's IDEA qualifying category from speech/language impairment to Autism; she determined more testing was needed to meet the IDEA rules and regulations and performed that testing. See Tr. Vol. III p. 152, 169. She first looked through Student's evaluation information and

previous paperwork. See Tr. Vol. III p. 152. To change Student's disability category to Autism, School Psychology Specialist had to conduct behavior observations in different settings (classroom, playground, and lunchroom for Student), which she does before she individually evaluates a student, so they do not know her. See Tr. Vol. III p. 152-153, 155. Next, she pulls students for testing. See Tr. Vol. III p. 153. For Student, she first got some background information from Parent, she included a summary of the West Evaluation, she summarized her behavior observations of Student, she gave the cognitive scores, and then the academic achievement scores and other testing, as well as the adaptive behavior rating scale. See Tr. Vol. III p. 153-154. School Psychology Specialist utilized the recognized standardized tests and observations. See Tr. Vol. III p. 155. She found Student to be pleasant, had good manners, and worked diligently but tired after an hour of testing. See Tr. Vol. III p. 156; D. Ex. p. 182. He also worked well in the second testing session, but she believed the writing content was hard for Student, which resulted in Student staring off, needing frequent redirection, and then discontinuing the writing portion of achievement testing. See Tr. Vol. III p. 156-157. In stating Student qualified for Special Education under the category of Autism, the team considered that Student had an outside diagnosis of Autism, so School Psychology Specialist did not repeat testing for that diagnosis. See Tr. Vol. III p. 159. Her recommendations were listed next in her report and include: extended time, simplified instructions, frequent breaks, a slower pace with reinforcement, structured and sequential instruction, multi-modal/sensory instruction, relate learning to real life and concrete materials, and have student repeat instructions back. See D. Ex. p. 186; Tr. Vol. III p. 160. After the District Evaluation was drafted, School Psychology Specialist met with Student's IEP team for an evaluation programming conference and reviewed the results. See D. Ex. p.

38-39; Tr. Vol. III p. 161. Student's IEP team determined Student met the criteria for Autism and then discussed the services Student needed. See D. Ex. p. 38-39; Tr. Vol. III p. 161. After reviewing Student's December 2, 2022 IEP, School Psychology Specialist believed that the District reworded but included her recommendations in the IEP. See D. Ex. p. 41; Tr. Vol. III p. 166-168. Her observations of Student did not reflect that Student was not receiving proper emotional and social support. See D. Ex. p. 181-182; Tr. Vol. III p. 170-175.

48. Behavior Interventionist has a B.S. in Sociology with a minor in Psychology. See D. Ex. p. 247. Behavior Interventionist completed a Functional Behavior Assessment ("FBA") of Student. See D. Ex. p. 189; Tr. Vol. III p. 219-22. She did not observe any behavioral concerns or trigger behaviors during her observations in Student's classroom and at recess, and Student's teachers did not report any repetitive behavioral concerns. See D. Ex. p. 189; Tr. Vol. III p. 219-227. Hiding under the table on one occasion and falling at recess are not a pattern of behavior that would cause a need for a Behavior Intervention Plan ("BIP"). See Tr. Vol. III p. 237-241. Thus, Behavior Interventionist reported no behavior issues when she met with Student's IEP team. See D. Ex. p. 189, 204-205, 210-211; Tr. Vol. III p. 222-223. During her observations on 9/27, 10/6, and 10/14, Behavior Interventionist witnessed the implementation of peer/teacher nonverbal cues, verbal reminders for tasks, and teacher checking for understanding. See D. Ex. p. 189, 204-205, 210-211; Tr. Vol. III p. 227-230, 234-239. Behavior Interventionist confirmed with Special Education Teacher that Student's accommodations of visual schedule, social stories, parent/teacher communication, peer escort, and verbal cues for redirection were being provided, and Special Education Teacher responded on October 25, 2022 that those accommodations were being utilized and Student was doing well. See D. Ex. p. 209; Tr. Vol. III p. 253. Behavior Interventionist has

recommended a Behavior Intervention Plan ("BIP") for students in the District who cried a lot, did not respect boundaries, throwing tantrums, eloping, practicing asking questions or raising their hand, transitioning in the hall. See Tr. Vol. III p. 231-232. Behavior Interventionist explained several times that she would create a BIP if there was a pattern of adverse behavior, which means one or more behaviors are repeated and impact Student's school day. See Tr. Vol. III p. 237-244. A Behavior Plan is different from a Safety Plan; the BIP is tied to a student's FBA. See Tr. Vol. III p. 227, 245. A Safety Plan is used when a student is harming others, and there is a need to keep others safe. See Tr. Vol. III p. 244.

49. Ast. Principal has her M.S. Degree in Educational Leadership, was Student's Ast. Principal, and she attended Student's conferences. See D. Ex. p. 262; Tr. Vol. III p. 98, 106-107. Ast. Principal testified Student had no behavior referrals. See Tr. Vol. III p. 99-102. Ast. Principal testified credibly that there was no video footage of Student's fall on the playground on October 24, 2022. See Tr. Vol. III p. 100-101. Ast. Principal set up Student's check in/check out accommodation and other accommodations Parent requested. See Tr. Vol. III p. 101. Ast. Principal did not recall any inappropriate behaviors or trouble from Student; she recalled Student being pleasant, doing what the teachers asked, and waving and smiling in the hallways in response to her hello. See Tr. Vol. III p. 102. Ast. Principal never saw anyone mistreating or bothering Student; Student seemed to behave appropriately around other Students. See Tr. Vol. III p. 102-103. Ast. Principal confirmed that a student would be marked absent instead of tardy if a student missed 90 minutes. See Tr. Vol. III p. 104. The District put in place extra supervision for Student after October 24, 2022 and made staff aware of who Student was and what he needed. See Tr. Vol. III p. 108-109. The extra supervision included adding staff above the legal requirement and having them stay in close proximity

to Student, but Ast. Principal did not recall the date the extra supervision began, although it was implemented prior to the Glow party. See Tr. Vol. III p. 109-110. Ast. Principal did not recall seeing the West Evaluation and was not certain if she attended the meeting on September 22, 2022. See P. Ex. p. 91-103; Tr. Vol. III p. 111-112. Ast. Principal asserted that there were accommodations in Student's IEP that included safety measures, such as extra supervision; she asserted Student's safety measures were in his IEP. See Tr. Vol. III p. 113-117. Extra supervision was added to Student's IEP on April 18, 2023. See Tr. Vol. III p. 114. When asked about a safety plan for Student, Ast. Principal replied that the committed put in place a plan they felt was most beneficial for Student based on observations of the Behavior Interventionist, and there were no behaviors that suggested a Safety Plan was needed. See Tr. Vol. III p. 114-116. Student had a behavior goal to work on being on task and not zoning out. See D. P. 39, 45; Tr. Vol. III p. 119. Ast. Principal testified Student needed pullout services in math because he was missing foundational skills. See Tr. Vol. III p. 131-134. Students are not permitted to use calculators as an accommodation in fourth grade because they are still learning and being tested on their math facts. See Tr. Vol. III p. 132.

50. Math Teacher had Student in her classroom for homeroom, math and science. See Tr. Vol. III p. 183. Student was compliant with her, and Math Teacher liked Student a lot and thought he was a cool kid. See Tr. Vol. III p. 188. Student was quiet and well behaved; she only recalled that he had one disagreement with another student, which was dealt with by the Math Teacher. See Tr. Vol. III p. 184, 187. In that incident, a little girl reported that Student was mimicking her, and Student approached and stated the girl was lying; the girl replied that she was not lying and that Student would not stop mimicking. See Tr. Vol. III p. 187. Math Teacher asked if the girl wanted to change seats, and Student stated that he

wanted to change seats instead, which resolved the situation. See Tr. Vol. III p. 187. Math Teacher did not recall Parent reporting to her that a little girl was mocking Student's speech impediment. See Tr. Vol. III p. 192-193. Math Teacher was aware Student has Autism because she reviewed his documentation, but she would not know Student had Autism based on her interactions with him. See Tr. Vol. 184-185. Student spent a lot of time trying to catch up because he was frequently late or absent, as he would often come in after the class had moved on to another skill. See Tr. Vol. III p. 185. Student received a lot of support from Special Education Teacher in catching him up and finishing the assignments, which was usually done in the Special Education Teacher's classroom, outside the general education classroom. See Tr. Vol. III p. 185-186. In Math Teacher's classroom, Student sat in his assigned seat but also changed seating in the classroom when there was group instruction, and he handled it well. See Tr. Vol. III p. 186-187. If Math Teacher noticed Student quiet or seeming zoning out, she would ask him if there was anything she needed to explain, and he would always answer. See Tr. Vol. III p. 188. It was hard for her to tell if he was just being quiet or if he was zoning out. See Tr. Vol. III p. 188. When he zoned out, Math Teacher was able to redirect him with subtle prompts like asking if he needed help. See Tr. Vol. III p. 202. Math Teacher recalls that Student had accommodations of extended time, having an adult in close proximity to him at recess or in the gym, and retakes of exams if he made lower than 70, but she could not recall all his accommodations from 2 years ago. See Tr. Vol. III p. 203. Student's Autism did not seem as extreme to Math Teacher, as other students that Math Teacher had with Autism; Student did not stim or seem as literal as other student she had with Autism. See Tr. Vol. III p. 189. Although her answers on the rating scales reflected that Student appeared in the clinically significant range on the BASC-3, Student grew throughout

the year, and her recollection of how well he functioned within the class and school was how she recalled him from the end of the school year in 2023. See P. Ex. p. 108; Tr. Vol. III p. 204-213. At the end of the year, Student knew the building, knew his classmates, and knew the expectations; he made a lot of growth with accommodations and services in place. See Tr. Vol. III p. 212-213.

51. P.E. Monitor was present, along with two other staff members, when Student was his in the head with a ball in P.E., and there were incident reports filed. See Tr. Vol. V p. 13. She did not see Student become emotionally distressed. See Tr. Vol. V p. 14-17. P.E. Monitor was informed of a safety plan for Student in April of 2023, which included having staff in close proximity to Student and keeping an eye on him. See Tr. Vol. V p. 14. Prior to that, Student had the same safety support that other students did, keeping eyes on him, and keeping him safe. See Tr. Vol. V p. 14.

CONCLUSIONS OF LAW AND DISCUSSION:

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children who are eligible for special education services. 20 U.S.C. § 1412(a); 34 C.F.R. § 300.300(a). FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. In 1982, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by hearing officers in determining whether a school district has failed to provide FAPE as required by federal law. See *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982). First, a hearing officer must determine whether the State in the form of the local education agency or district, complied with the procedure set forth in IDEA. *Id.* Then, the hearing officer must determine whether a student's IEP was reasonably calculated to enable the student to receive educational benefit. *Id.* The burden

of proof falls on the party seeking relief. *See Sneitzer v. Iowa Dep't of Educ.*, 796 F.3d 942, 948 (8th Cir. 2015).

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.* § 1402(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. §1409(9)(D). When formulating an IEP, a school district "must comply both procedurally and substantively with the IDEA." *Rowley*, at 206-07.

I. IDEA Procedural Compliance

In this matter, Parent alleges that the District denied her meaningful participation in Student's education. Pursuant to *Rowley*, a hearing officer must first determine whether the District complied with the procedures set forth in IDEA. For a child to be denied a FAPE, the procedural inadequacies must (1) impede the student's right to an appropriate education, (2) seriously hamper the parent's opportunity to participate in the decision-making process, or (3) cause a deprivation of educational benefits. *See K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804-805 (8th Cir. 2011); 20 U.S.C. § 1415(f)(3)(E)(ii)(I)-(III). The U.S.

Supreme Court held that a school district cannot refuse to consider parents' concerns when drafting an IEP and cannot predetermine the educational program for a disabled student prior to meeting with parents. *See Schaffer v. Weast*, 546 U.S. 49, 53 (2005). Predetermination could deprive parents of a meaningful opportunity to participate in the formulation process pertaining to the IEP. *See Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424 (8th Cir. 2010). "The IDEA explicitly requires school districts to include parents in the team that drafts the IEP to consider 'the concerns of the parents for enhancing the education of their child' and to address 'information about the child provided to, or by, the parents.'" *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Cir. 2012) (citing 20 U.S.C. § 1414(d)(3)(A)(ii), (d)(4)(A)(ii)(III)). However, the IDEA does not require a school district to accede to parents' demands without considering suitable alternatives; a district does not procedurally violate the IDEA simply by failing to grant a parent's request. *Id.*

Parent alleges that the District committed procedural violations of the IDEA by denying the Parent meaningful participation in Student's education because: (1) the District failed to provide Student a one-on-one paraprofessional, (2) the District failed to create a formal Safety Plan, (3) the District conducted the December 2 IEP meeting without Parent, and (4) Parent did not feel her input was genuinely considered in IEP meetings.

A. Student was not provided a one-on-one paraprofessional.

As discussed in *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Cir. 2012), a school district does not deny parental participation pursuant to IDEA just by failing to accede to a parent's request. In that case, the school district made a determination about the student's least restrictive environment, analyzed the student's options, and made a determination that an alternative implemented by the school district complied with IDEA,

and the Eighth Circuit Court of Appeals upheld the actions of the District. Id.

Regarding Parent's request for a one-on-one professional, this Hearing Officer finds that Parent consistently requested that for Student in IEP meetings and outside IEP meetings beginning at least by her email dated September 22, 2022 and at the September 22 IEP Meeting. Parent expressed that she wanted Student to have a paraprofessional for his supervision and safety after he was hit in the head with a ball during PE and broke his collarbone in a fall at recess. She also felt Student needed a paraprofessional to help put his coat on, to help Student focus and with his work in class, because his grades dropped in science and math, to organize his workspace and backpack because his papers were crumpled in his backpack, to tie his shoes, to keep track of his belongings, and to diffuse situations with other students. Grandmother expressed that Student needed assistance with communication. As explained by the LEA, the events and reasons given by Parent and Grandparent did not indicate a severe deficit that would warrant a paraprofessional.

In response to Parent's request, the Special Education Director explained that data was needed before assigning a one-on-one paraprofessional, and the IEP team discussed performing an FBA. On October 10, the School Psychology Specialist noted consent was obtained for the FBA, and the FBA was conducted in five observation dates between October 24 and November 27, 2022. Student's FBA reflected that the Behavior Interventionist observed no repetitive adverse behaviors during her observations, so no further data collection or planning was needed. Math and Literacy Teachers also reported no adverse behaviors from Student that would suggest a BIP was needed. Student's only adverse behavior was "zoning out" and that was addressed with a behavior goal in the December IEP.

Student's IEP Team discussed and analyzed whether Student needed a one-on-one

paraprofessional at the December 2 IEP Meeting and the December 14 IEP Meeting, and District staff did not feel that the data supported a need for a paraprofessional for Student in light of Student's FBA but suggested an accommodation of staff remaining close to Student during PE and on the playground, which Parent declined at that time. District staff agreed that Student was successful in the classroom with the accommodations/modifications in the December IEP, and no additional supports were needed, including a paraprofessional. LEA testified that a paraprofessional was not necessary for Student because Student was able to function independently, a paraprofessional would have been a hinderance to him, and Student did not have a major deficit in any of the four categories of personal care, behavior, social communication, or academics that would require a paraprofessional. Math and Literacy Teachers supported that Student was able to function independently. Special Education Teacher testified that Student began to redirect himself to stay on focus during the year, and she saw him grow in confidence and competence through the year. Ast. Principal testified that she had no behavior referrals for Student, and he responded socially to her in the hall. Math Teacher testified that Student was well behaved and followed instructions in the class; she only had one incident in which Student and another student accused each other of mimicking, which was resolved by a seat change. Math Teacher easily redirected him if he zoned out. Although she rated Student as having clinically significant behaviors at the beginning of the year, by the end of the year, Student knew the building, knew his classmates, and knew the expectations. She would not have known Student had Autism if she had not been provided that information.

Here, as in *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Circ.

2012), the District did not violate IDEA by denying Parent's request for a paraprofessional. This Hearing Officer finds that the District responded appropriately to Parent's request for a one-on-one paraprofessional in conducting an FBA and discussing observations regarding Student at Student's IEP meetings. The District conducted an analysis and determined that a one-on-one paraprofessional was not necessary for Student and in fact might hinder Student's progress. Student growth throughout the year evidences that the District's analysis was correct that, and Student did not need a one-on-one paraprofessional. Thus, parental participation was not denied based on the District's denial of Parent's requests for a paraprofessional.

B. Student was not provided a Behavior Intervention Plan or formal Safety Plan.

As discussed above, a school's denial of a parent's request does not automatically constitute a denial of parental participation pursuant to IDEA. *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Circ. 2012). Parent did repeatedly request a Safety Plan for Student, particularly after Student broke his collarbone in a fall during recess on October 24, 2022. In her testimony and questioning, Parent seemed to equate the BIP with a Safety Plan.

In response to Parent's request for a BIP at the December 14 IEP Meeting, the remainder of the team disagreed in light of Student's FBA and teacher input that reflected that no BIP was needed. In response to Parent's request for a safety plan or "excessive supervision" of Student after his fall at recess, the IEP team discussed at the February 23 IEP Meeting that there were 5-8 adults on duty when Student is at recess and 2-5 adults on duty to supervise lunch. The District suggested adding an IEP accommodation of having an adulting in close proximity to Student on the playground, which Parent first rejected stating

that she did not want someone following Student around during recess and then accepted later in the February 23 IEP Meeting. However, District staff did not find that Student exhibited behaviors that warranted a Safety Plan.

Again, District did not violate IDEA by simply declining Parent's request for a BIP or formal Safety Plan. This Hearing Officer finds that the District responded appropriately to Parent's request for increased safety measures. The District conducted an analysis and recommended having an adult in close proximity to Student at recess and special events, which Parent first rejects and then accepted. This accommodation was added to Student's IEP at the February 23 IEP meeting. There is no evidence that Student experienced any injuries after this accommodation was in place. Thus, parental participation was not denied based on the District's denial of Parent's requests for a BIP or formal Safety Plan.

C. The December 2 IEP Meeting was conducted without Parent.

The U.S. Supreme Court has held that IDEA requires school districts to develop an IEP for each child with a disability, and in doing so they must ensure that parents play "a significant role in the IEP process." See *Shaffer v. Weast*, 546 U.S. 49, 53 (2005); see also 20 U.S.C. §§ 1412(a)(4) and 1414(d). IDEA's procedural requirements also require that a parent be allowed "meaningful participation" in the development of the IEP. See *Bd. Of Education v. Rowley*, 458 U.S. 176, 207-208 (1982). A parent is a required and vital member of the IEP team. See 20 U.S.C. §1414(d)(1)(B)(i). A school district must take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are affording the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed on time and place, and offering alternative methods of participating if a parent cannot

attend. See 34 C.F.R. §300.322. However, a meeting may be conducted without a parent if a school is unable to convince a parent to attend, but in that case, the school must keep a record of its attempts to arrange a mutually agreed on time and place. See 34 C.F.R. §300.322.

In this case, this Hearing Officer finds that Student's IEP team met frequently during the 2022-2023 school year, as needed to transition Student, review evaluations and create his IEP, to address Student's lack of progress, and in response to Parent's requests and concerns. The IEP Team met for the August 26 IEP Meeting, the September 22 IEP Meeting, the October 19, IEP Meeting, the December 2, IEP Meeting, the December 14 IEP Meeting, the February 3 IEP Meeting, the February 23 IEP Meeting and the April 18 IEP Meeting. See U.S.C. §1414(d)(4)(A). The evidence reflects that Parent was present in person or via phone and participated fully at each IEP meeting, except for the December 2 IEP Meeting.

This Hearing Officer finds the District documented of its efforts to include Parent in the December 2 IEP Meeting, and this Hearing Officer finds that the District did not violate IDEA in moving forward with the December 2 IEP Meeting without Parent. The December 2 IEP Meeting was initially scheduled for November 16, 2022, and on November 2, 2022, the District documented that it provided Parent a Notice of Conference via email of the IEP meeting scheduled for November 16, 2022. On November 9, 2022, the District documented that Parent was contacted via phone and verbally confirmed that she would attend the November 16, 2022 meeting in person. Subsequently, the District documented that Parent requested Student's IEP meeting be rescheduled to December 2, 2022 at 8:30 am, and the District rescheduled Student's IEP meeting for the date and time requested by Parent.

At approximately 8:15 a.m. on the morning of December 2, 2022, Parent did not

appear for Student's IEP meeting and requested it be rescheduled for December 14, 2022. See P. Ex. p. 19; D. Ex. p. 105, 112; See Tr. Vol. II p. 137. When Parent did not appear for the rescheduled December 2 IEP Meeting at the time and date that Parent requested "due to a family situation," the remainder of the team decided to proceed with the meeting and review of evaluation data. Student needed services, and the District was required to meet timelines pursuant to IDEA. However, the District's efforts to include Parent in creating Student's IEP did not stop there; the District held the December 14 IEP Meeting and reviewed all the information from the December 2 IEP Meeting. When Parent could not make a decision about services for Student at the December 14 IEP Meeting, Parent was emailed a copy of the IEP and given time to consider it and provide a response. The District followed up in January requesting Parent's decision and input. When Parent insisted on January 9, 2023 that Student solely receive indirect services, documentation from the February 3 IEP meeting reflects that the District continued implemented indirect services at Parent's request on December 14 and January 9, instead of the pull-out services District staff recommended and included on the December 2 IEP. The District made strong efforts to include Parent in creating Student's IEP and did not deny Parent meaningful participation in the development of Student's IEPs.

D. Parent's input was genuinely considered.

Parent felt that the District did not genuinely consider her input, but the documentation reflects otherwise. As discussed above, in response to Parent's requests at the August 26 IEP Meeting, District staff gathered dated and analyzed Student's need in response to Parent's requests for a paraprofessional, a safety plan, and a BIP. Parent provided the West Evaluation to the District and felt that it was "dismissed" by the District;

however, it was reviewed and considered at the September 22 IEP Meeting. Although the West Evaluation did not contain all the components needed by the District for Student, the School Psychology Specialist incorporated scores from the West Evaluation in the District Evaluation, and she testified that she did not give the Autism scales but relied on those completed in the West Evaluation.

In response to Parent's concern about Student's mental health, the District offered to and took action to transition Student's mental health services to the school setting, so Student would have addition emotional support at school. Student's draft IEP was amended on October 19, 2022 to remove Student's Speech services at school because Parent preferred that Student receive Speech at an outpatient clinic. Parent's requests to see video footage of Student's playground fall were not ignored but were not granted because, as Ast. Principal testified reliably, the incident was not recorded and so informed Parent.

At the December 14 IEP Meeting, Parent requested that the accommodation of retakes when Student scored below a 60 percent be changed to retakes when Student scored below 70 percent, and that accommodation in Student's IEP was changed accordingly. Parent asked if Student could be accommodated with a calculator, and Ast. Principal checked the standards before declining that request because fourth graders could not utilize calculators in testing. The Notice of Action from the December 14 IEP Meeting reflects that Parent was asked several times how she wanted Student to be served, and the District provided Parent with options to consider, including push-in, pull-out, and indirect services. When Parent could not make a decision at the December 14 IEP Meeting, Parent was emailed a copy of the IEP and given time to consider it and provide a response. Following the December 14 IEP Meeting, the District followed up on January 3 requesting Parent's decision

and input, and after Parent provided written input stating her request that Student receive indirect services, the District continued to provide Student indirect services at Parent's request, as documented in the Notice of Action from the February 3 IEP Meeting.

Also in the February 3 IEP Meeting, after comparing Student's IEP accommodations/modifications to those from Marion, Parent asked to add reduce the number of answer choices, use of parent/teacher weekly log, oral and visual instructions for assignments, small group testing, and extended time, and the team revised the IEP to include Parent's requested additions. When Parent expressed concern about a child mocking Student, Ast. Principal responded that Parent should let her know immediately if that should happen again. On the Arkansas Special Education School Age Family Outcome Survey dated April 18, 2023, Parent expressed that she was offered special assistance to participate in IEP meetings and that her concerns were documented. Parent was asked and confirmed in her testimony that the notes for each meeting did accurately reflect the content of each meeting.

For the above stated reasons, this Hearing Officer concludes that Parent's input was genuinely considered, and Parent did not meet her burden of proving that the District denied her meaningful participation in Student's education.

II. Allegations of Substantive Violations of the IDEA

Next, this Hearing officer must consider whether the District substantively provided FAPE in a timely manner to the Student.

A. Reasonably calculated for progress appropriate in light of the child's circumstances

In considering the application of the *Rowley* standard, the U.S. Supreme Court observed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *See Endrew F. ex rel. Joseph F. v.*

Douglas Cty. Sch. Dist. RE-1, 137 S.Ct. 988, 999 (2017) stating: “a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* at 1001. An IEP calculated to provide “merely more than *de minimis* progress from year to year” does not satisfy the substantive requirements of IDEA. *Id.* at 999.

The August 26 IEP Draft

Documentation reflects that Student enrolled in the District on August 17, 2022, and the District held a transfer conference, existing data review, and re-evaluation conference for Student on August 26, 2022. Student entered the District as a fourth grader with an outdated IEP from Marion under which Student was served under for first and second grades; Student was homeschooled in third grade. The District needed updated evaluations to determine Student’s current needs and obtained consent for the evaluations at the August 26 IEP Meeting. Although Parent testified, she felt that the District’s Evaluation was delayed, District’s Evaluation took time, as School Psychology Specialist completed observations and then testing of Student, and the District’s Evaluation was completed on October 10, within the 60-day timeline, as required by IDEA.

In order to begin providing Student services immediately, Parent and the District agreed to operate under a “draft IEP” as a temporary measure. The District placed Student in the general education environment, as he had been in Marion, and provided him with Speech services, as he had in Marion. The accommodations from Marion were accepted, with the exception of excused medical absences, which District needed a medical note to provide. To further support Student, Special Education Teacher pushed into Student’s classroom during this time. As the District provided comparable services to that of Marion plus additional push-in Special Education services to support Student in math and written

expression, this Hearing Officer finds the August 26 IEP Draft was reasonably calculated to provide Student progress in light of the circumstances.

The December 2023 IEP

Likewise, this Hearing Officer finds that Parent failed to prove that the December 2 IEP, as later amended, was not reasonably calculated for progress in light of Student's circumstances. Parent's refusal of pull-out services, refusal of goals, and Student absences contributed to Student's slower growth pursuant the December 2 IEP. Nonetheless, the District provided an IEP reasonably calculated for Student's progress while attempting to accommodate Parent's request for how Student would receive services. Documentation from December 2, 2022 supports that Student's accommodations/modifications allowed Student to successfully engage in his academic and social routines. Student's grades since the beginning of the school year were mostly B's, C's and a few D's when reviewed in February.

Based the review of Student's OT evaluation dated September 2, 2022 and PT evaluation dated September 7, 2022, Student did not qualify for those services at this time. Student did qualify for Speech pursuant to the evaluation completed on September 12, 2022; however, Parent previously expressed she preferred for Student to continue to receive Speech at an outpatient clinic and Speech services were withdrawn at that time. Although Student's mental health therapy was to be transferred on September 27, 2022, Student was discharged due to 4 missed appointments, lack of contact with Parent and no PCP referral, and Student was still on the wait-list at the outpatient clinic at the time of the December 2, 2022 IEP meeting, due Parent's misunderstanding and no fault of the District. A BIP was not needed because the FBA and teacher input reflected Student had no repetitive adverse

behaviors. Student's behavior goal appropriately addressed the need for Student to work on maintaining focus. The team discussed Student's attendance at the December IEP meetings and noted that he missed 35 days of school so far. The team believed that if Student's attendance improved, he would make more progress in the classroom.

At the December 2 IEP Meeting, it was documented that Student was making progress with the accommodations/modifications in the current IEP, which included visual schedule, social stories, peer/teacher nonverbal cues and verbal reminders for tasks. At the December 14 IEP Meeting with Parental input, the team amended the accommodations and modifications for Student to include: allow retake of any test/assignment scored below 70 percent, allow alternative means of response (oral, email, power-point, etc.), offer social reinforcers (praise) for appropriate behavior, provide frequent review, use peer-mediated strategies (buddy system), simplify/shorten directions, visual schedule, social stories, use of nonverbal cues, reduce all writing assignments by at least 50%, reduce number of items on a task, frequent reminders to complete a task, have Student repeat directions, and special seating/grouping.

Student's achievement testing reflected support was needed in the areas of math and written expression, and his adaptive scales and teacher input reflected that Student's primary behavior challenge was maintaining focus. Accordingly, the IEP team drafted goals at the December 2 IEP Meeting for Student in those areas. His math goal was "when given a math assignment, [Student] will recall multiplication facts through 12 and will gain familiarity with factors and multiples by solving the problems correctly with at least 80% accuracy, on 3 out of 5 trials as measured by teacher made quizzes and work samples by the end of the school year." His writing goal was "when given a writing task, [Student] will write

opinion pieces on topics or texts, which accurately supports his opinion on the topic by typing or writing the main idea with three supporting details with at least 80% accuracy on 2 out of 3 trials as measured by scoring rubrics and work samples by the end of the school year. Student's behavior goal was "after receiving a task, [Student] will begin the task within 1 minute and will remain on task until the assignments is finished with no more than 2 reminders on 3 out of 5 trials with at least 90% accuracy, as measured by observation checklists by the end of the school year. The educators recommended Student begin receiving 60 minutes of math pull-out services two times weekly and interventions in the general education setting to help with written expression.

At the December 14 IEP Meeting, in her subsequent Parental Input dated December 14, and in January, Parent continued to oppose Student being pulled out of class for special education services, and over the recommendations of the educators that Student needed pull out services for foundational skills, Parent asked that Student's goals be removed and insisted Student receive indirect services at the December 14 IEP Meeting. District's February 3, 2023 Notice of Action reflects that Student was still receiving indirect services at that time, and Student's goals were not implemented. Student's lower scores in math and written expression at that time can be attributed to Student's absences and Parent's refusal of Student's goals and services.

The February 3 IEP Amendment

On February 3, 2023, Student's IEP team met to discuss Parent's concerns regarding Student's learning at school. It was noted that his attendance has improved some, but he continued missing school some. Parent and Math Teacher discussed that Student was struggling with basic math facts, which made it hard for him to solve grade-level problems.

Parent asked Math Teacher how she helps Student in the classroom, and Math Teacher stated she often pulls Student to a table in the back to work with him and mentioned that Student would often say he's thinking when they are working through problems. Math Teacher stated the general education classroom moves at a fast pace, but she often calls on Student to check for understanding and has a peer seated near him to help assist with any questions. Although the December 2, 2022 IEP stated the Student would receive direct instruction (pull-outs) twice weekly for math, based on statements, it appears that those pull-outs were not implemented due to Parent's objections; at the February 3, 2023 meeting, it was documented that team discussed that Student continued to receive indirect services. At first, Parent did not agree to pull out services and did not want to discuss the continuum, but with the encouragement of Parent's advocate, Parent asked if Student could receive provide push-in services for math. As reflected on Student's IEP dated April 18, 2023, amended on February 3, 2023, Student began receiving small group intervention in the general education classroom, and Student's math, written expression, and behavior goals drafted at the December 2, 2022 IEP meeting were thereafter implemented in March of 2023. Parent expressed thereafter that she reviewed Student's goals and liked them.

In addition to existing modifications/accommodations, Parent asked to add reduce the number of answer choices, use of parent/teacher weekly log, oral and visual instructions for assignments, small group testing, and extended time, and the IEP was revised to include Parent's additions. Parent also asked if Student could be excused from school on certain days due to his Autism, PTSD, and sensory needs, and District staff replied that the District would need documentation from a medical provider before that accommodation could be made.

With Student receiving push in services for math and written expression and his

behavior goal implemented, this IEP was reasonably calculated for progress in light of Student's circumstances. Student was able to access his education and made mostly As, Bs, Cs, and a few Ds with the accommodations/modifications that he had been previously provided and with the additional accommodations/modifications added, and this IEP provided even more support for Student.

The February 23 IEP Amendment

In addition to Student's push in services, existing goals and existing modifications/accommodations, at Student's February 23 IEP Meeting, the District again offered Student more support in math with frequent communications between teachers and parent, and an adult within close proximity of Student on the playground and on event days, check-in/check-out, reduced math and science assignments. Parent accepted the additional accommodations, which were added to Student's IEP. As Student continued to access his education, made acceptable grades, and showed growth on his iReady testing and quarterly goals, this Hearing Officer also finds that the February 23 IEP Amendment was reasonably calculated to provide Student progress in light of his circumstances.

The April 18 IEP

This Hearing Officer notes that Student's April 18 IEP was not stagnate, but the District adjusted Student's goals to increase difficulty where Student could be challenged and to shift goals if a goal did not appear achievable. The Notice of Action from April 18 reflects that, although Student had not mastered any goals during the 2022-2023 school year, he was making progress toward his writing and behavior goals after Parent consented and goals were implemented on March 14, 2023. Between March 14 and May 31, 2023, Student grew from 25 percent on his math goal to 33 percent, he grew from 40 percent to 69 percent on

his writing goal, and he grew from 50 percent to 73 percent on his behavior goal.

As Student's math goal was discontinued due to its level of difficulty, the District updated Student's math goal to: "when given multi-step math problems involving whole numbers and/or decimals, [Student] will solve the problems with at least 80% accuracy in 3 out of 4 trials as measured by work samples and teacher tests by the end of the 2023-2024 school year." His writing goal was updated to: "when given a writing prompt, [Student] will produce clear and coherent writing in which the development and organization are appropriate to task, purpose, and audience with at least 80% accuracy in 3 out of 4 trials as measured by scoring rubrics and work samples by the end of the 2023-2024 school year." His behavior goal was made more stringent to: "after receiving a task, [Student] will begin the task within 1 minute and will remain on task until the assignment is finished with no more than 2 reminders on 3 out of 4 trials with at least 90% accuracy as measured by observation checklists by the end of the 2023-2024 school year." The team agreed to serve Student for 150 minutes weekly in resource math pull-outs, 30 minutes weekly in behavior, and inclusion services for writing.

The April 18 IEP added the accommodations that absences could be excused providing there was a doctor's note, and Student would be given the usual amount of time to make up those assignments. All other previously existing accommodations and modifications were reviewed and agreed upon, including: allow alternative means of response (oral, email, power-point, etc.), offer social reinforcers (praise) for appropriate behavior, provide frequent review, use peer-mediated strategies (buddy system), simplify/shorten directions, visual schedule, social stories, use of nonverbal cues, reduce all writing assignments by at least 50%, reduce number of items on a task, frequent reminders

to complete a task, have Student repeat directions, and special seating/grouping. allow retake of any test/assignment scored below at 70 for up to 3 attempts, extended time of 300% (for math, science and writing), reduce math/science assignments by 50%, frequent communication via remind/email, adult within close proximity to Student on the playground and during event days.

Parent was in agreement with Student's IEP for the next school year, which was to run from August 14, 2023 to May 24, 2024. She signed Student's IEP on April 18, 2023. Parent input also reflects that Parent was pleased with Student's progress and did not have any concerns. Parent testified that she agreed to the accommodations listed in the April 18, 2023 IEP, and she was pleased with them. Regarding Student's services as stated in the IEP created on April 18, 2023, Parent testified she "went along" with the 150 minutes of pullouts for math, 30 minutes for behavior, and inclusion for writing. Then, she stated Student should have had those services from the beginning of the year and denied that the District had been offering the services since the beginning of the year.

According to Student's most recent iReady math scores as of the April 18 IEP meeting, Student scored at 399 (first grade level), which was a 30-point increase since the beginning of the school year when he scored a 369. His most recent iReady reading score was 494 (second grade level). Student's grades were As, Bs, Cs, and a few Ds throughout the year. Math Teacher testified that Student began to appear to redirect himself later in the year. Student's achievement showed progress on his goals and educational testing after the April 18 IEP, and this IEP provided even more support for Student with pull out services for math and written express. Further, this IEP had goals updated and responsive to Student's current achievement and needs. For these reasons, this Hearing Officer finds that the April 18 IEP

was also reasonably calculated to provide Student progress in light of his circumstances.

CONCLUSION

This Hearing Officer concludes that Parent failed to meet her burden of showing that the District failed to provide an IEP reasonably calculated to provide benefit to the Student in light of his circumstances.

B. Implementation of the IEP

In *Neosho R-v School District v. Clark*, 315 F.3d 1022 (8th Cir. 2003), the Eighth Circuit held that a District's failure to substantially implement because the professionals at issue lacked training constituted a denial of FAPE. Here, Parent alleges that the District delayed and failed to implement Student's IEP, specifically goals and accommodations, resulting in substantive violations of the IDEA.

Parent argued the District delayed implementation of services, but Special Education Teacher began push-in services for Student in math and written expression under the August 26 Draft IEP and before Student's first official IEP was drafted in December. In order to begin providing Student services immediately, Parent and the District agreed to operate under a "draft IEP" as a temporary measure. The District placed Student in the general education environment, as he had been in Marion, and provided him with Speech services, as he had in Marion. The accommodations from Marion were accepted, with the exception of excused medical absences, which District needed a medical note to provide. To further support Student, Special Education Teacher pushed into Student's classroom during this time. There was no delay in implementation of services, except for any delay resulting from Parent's refusal of direct services and Student's absences.

Parent alleged the accommodations in the IEP drafted on August 26, 2022 and September 22, 2022 were not being followed during recess or PE prior to October 24, 2022, but there were no accommodations/modifications for Student related to safety prior to his October 24, 2022 injury. She testified that Student received academic accommodations but not behavioral or safety accommodations or supports, because a student reported Student's October 24 injury instead of staff seeing it.

At the December 14 IEP Meeting, the team revised the IEP to include the following accommodations and modifications for Student: allow retake of any test/assignment scored below 70, allow alternative means of response (oral, email, power-point, etc.), offer social reinforcers (praise) for appropriate behavior, provide frequent review, use peer-mediated strategies (buddy system), simplify/shorten directions, visual schedule, social stories, use of nonverbal cues, reduce all writing assignments by at least 50%, reduce number of items on a task, frequent reminders to complete a task, have Student repeat directions, and special seating/grouping. At the February 3, IEP Meeting, Parent asked to add reduce the number of answer choices, use of parent/teacher weekly log, oral and visual instructions for assignments, small group testing, and extended time, and the team revised the IEP to include Parent's requested additions. At the February 23 IEP Meeting, the following accommodations were added to Student's IEP: reduced math and science assignments, frequent communications between teachers and parent, and an adult within close proximity of Student on the playground and on event days, check-in/check-out, reduced math and science assignments. At the April 18 IEP Meeting, the following accommodations and modifications were reviewed and agreed: allow alternative means of response (oral, email, power-point, etc.), offer social reinforcers (praise) for appropriate behavior, provide

frequent review, use peer-mediated strategies (buddy system), simplify/shorten directions, visual schedule, social stories, use of nonverbal cues, reduce all writing assignments by at least 50%, reduce number of items on a task, frequent reminders to complete a task, have Student repeat directions, and special seating/grouping. allow retake of any test/assignment scored below at 70 for up to 3 attempts, extended time of 300% (for math, science and writing), reduce math/science assignments by 50%, frequent communication via remind/email, adult within close proximity to Student on the playground and during event days. The team further added that Student's "absences will be excused with a doctor's note and he will be given the same amount of time he is absent to make those assignments up."

Parent testified she did not believe Student received the accommodations of allowing oral response, simplified directions, reduced writing assignments, reduced items/answers on a task, and extended time based the papers that Student brought home, but Parent admitted that she was never in Student's classroom during instruction. Assignments brought home did not appear to be reduced in Parent's opinion. She did not believe Student had special seating and grouping because Student told her peers mocked his speech impediment. She did not believe Student was checked for understanding because Student did not know how to do the work by himself and because Student needed to be sent out of class to work with the resource teacher. She did not believe Student received frequent review because she did not believe teachers did not have time to provide frequent review. She did not believe Student received extended time for work because Student was sent out of class to finish assignments. Parent restated that she was never in Student's classroom during instruction time and admitted she could not prove those accommodations were not being made. Parent admitted that she was aware that Special Education Teacher pushed into

Student's classroom. Parent also admitted she believed Student was given oral instructions.

Grandmother also testified she did not believe Student received any emotional support, behavioral support, or academic accommodations. Later, Grandmother testified she believed Student was provided the services in his IEP. Grandmother testified that she saw Student progress in reading and math while at the District.

District staff testified consistently, credibly, and in detail that Student was receiving accommodations/modifications as they appeared on any of the iterations of Student's IEPs during the 2022-2023 school year. Ast. Principal testified that the District put in place extra supervision for Student after October 24, 2022 and made staff aware of who Student was and what he needed. On October 25, 2022, the Behavior Interventionist documented her confirmation with the Special Education Teacher that Student was utilizing visual schedules, social stories, parent/teacher communication, peer escort, verbal cues and verbal and nonverbal prompts as set forth in Student's draft IEP, and Special Education Teacher reported that Student was utilizing all of those and was doing well. If Math Teacher noticed Student quiet or seeming zoning out, she would ask him if there was anything she needed to explain as redirection or a verbal prompt, and Student would always answer. Although Math Teacher could not recall all of Student's accommodations from two years ago, Math Teacher independently recalled that Student had accommodations of extended time, having an adult in close proximity to him at recess or in the gym, and retakes of exams if he made lower than 70. At the December 2 IEP Meeting, it was documented that Student was making progress with the accommodations/modifications in his current IEP, which included visual schedule, social stories, peer/teacher nonverbal cues and verbal reminders for tasks. Special Education Director testified that the Special Education Teacher makes weekly contact with

the general education teachers to ensure accommodations and modifications are being followed. Special Education Teacher testified she never saw Math Teacher or literacy teacher fail to provide an accommodation to Student when they should have during the time that she pushed in, and the teachers accommodated Student on their own many times. Special Education Teacher primarily modified Student's assignments, but sometimes the general education teachers would collaborate with her on modifying assignments. Special Education Teacher worked with general education teachers weekly to make sure Student's accommodations were being followed, such as creating a weekly math test with smaller numbers. P.E. Monitor was informed of a safety plan for Student in April of 2023, which included having staff in close proximity to Student and keeping an eye on him.

Special Education Teacher testified she pushed into Student's literacy classroom to help him with reading and writing assignments, as well as focusing. She broke down the math problems, showed Student how to do them one step at a time, and redirected him to keep him on task; Student did not require much redirection. Student could not write an essay on his own, but she could read him a story and ask questions to help vocalize answers. She pushed in every day to the best of her recollection.

Special Education Teacher testified she modified Student's weekly math test by reducing the number of problems he had to do, or she would allow him to give the answers orally and she would write the answers in for him. She allowed Student to use manipulatives and guided him toward figuring out the answers. At the beginning of the year in math, Student was not able to line up multi-digit problems, but he could line up the problems toward the end of the year. At the beginning of the year in writing, Student would seem confused when asked questions and take time to verbalize his answer, and he began to "spit

out his answers” by the end of the year. On Student’s behavior goal at the beginning of the year, Student zoned out and had to be redirected quite a bit, and then, he seemed to begin to redirect himself toward the end of the year. Special Education Teacher testified that Student grew in confidence and competence to carry out requested tasks over the course of the year.

The evidence is undisputed that Parent strongly opposed special education services for Student other than indirect services prior to the February 18 IEP Meeting, and Student’s IEP goals were implemented thereafter on or about March 14, 2023. Special Education Teacher testified that Student showed progress toward his goals between March 14 and May 31, 2023, which supports that Student was receiving the pull-out services.

Based on the above-described evidence, this Hearing Officer finds that Parent did not meet her burden in proving that the District failed to implement Student’s IEP accommodations/modifications, goals, or services, under any of the IEP iterations. In fact, the evidence supports that the District did provide Student’s with the accommodations and modifications, goals, and services pursuant to his IEPs. This Hearing Officer finds no denial of FAPE by the District in the implementation of Student’s IEPs.

CONCLUSION

This Hearing Officer finds that the Parent did not meet her burden of proving the District significantly failed to implement Student’s IEP. Further, this Hearing Officer finds that any allegations raised by Parent, but not directly addressed herein, did not constitute a significant denial of FAPE.

REMEDIES

Having determined that the Parent failed to prove that the District denied Parent meaningful participation in Student's education, failed to prove that the District did not provide Student with an IEP reasonably calculated for Student to succeed, and failed to prove that the District did not implement Student's IEP, there is no need for this Hearing Officer to perform an analysis of remedies.

CONCLUSION

As this Hearing Officer finds Parent failed to prove any procedural or substantive denial of FAPE by the District during the timeframe at issue in this matter, it is not necessary to conduct an analysis of Parent's requested remedies, and Parent's requested remedies are hereby denied.

FINAL CONCLUSIONS AND ORDERS:

Upon consideration of all the testimony and evidence, this Hearing Officer finds that Parent failed to meet her burden of proof and a preponderance of the evidence warrants the following:

1. This Hearing Officer finds no procedural or substantial denial of FAPE to Student or violations of IDEA by the District; therefore, Parents' requested remedies are denied; and
2. Parent alleged that the District violated FERPA, committed disability discrimination, retaliation, bullying, false reporting, negligence, failure to act, breach of duty, and negligent supervision alleged to §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a) or Title II of the Americans' with Disabilities Act, 42 U.S.C. § 12131-12165. This Hearing Officer has no jurisdiction over these claims or any other claims Parent may have alleged outside of IDEA. *See* ADE Spec. Ed. Rules §10.02.22.1. Therefore, to the extent Parent's due process complaints raise these claims or other claims outside of IDEA, 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.

/s/ Debby Linton Ferguson

HEARING OFFICER

5/13/2025

DATE