

**ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit**

IN RE:

**XXXXXXXXXXXXXXXXXXXXXXX, Parents of
XXXXXXX, Student**

PETITIONER

VS.

CASE NO. H-25-22

Fountain Lake School District, District

RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Fountain Lake School District (hereinafter "District" or "Respondent") denied XXXXXXXX (hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE") between January 7, 2023 and January 6, 2025 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 the District provided Student an IEP that was reasonably calculated to allow Student to make appropriate progress in light of his individual circumstances from January 7, 2023 to January 6, 2025;
- (2) whether the District allowed parents to meaningfully participate in Student's educational planning during the timeframe at issue;
- (3) whether the District provide Student FAPE in the LRE during the timeframe at issue;
- (4) whether compensatory education should be provided to the Student.

PROCEDURAL HISTORY:

On January 7, 2025, Petitioner filed a request for a due process hearing pursuant to the Individuals with Disabilities in Education Act ("IDEA") from XXXXX ("Father") and XXXXXX ("Mother") XXXXXX (hereinafter jointly referred to as "Parents" or "Petitioners"), the Parents and legal guardians of Student. 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). Thus, the time period from January 7, 2023 to January 6, 2025 is at issue.

Parents filed the Complaint in this matter alleging that District failed to comply with the IDEA and regulations and failed to provide Student with appropriate supports and services to address Student's deficits in reading, math, and behavioral skills, as well as appropriate evaluations, IEPs and FAPE in the LRE. *See* Complaint P. Ex. 1-24. Parents sought to return Student to the regular education environment, re-evaluation, a Functional Behavior Assessment and Behavior Intervention Plan, and compensatory education as a remedy. *Id.* The District denied violating IDEA in its response.

In response to Parents' request for hearing, the Department assigned the case to this impartial Hearing Officer who initially scheduled the due process hearing in Case H-25-22 for February 10-12, 2025. On February 5, 2025, prior to the prehearing conference, Petitioner moved for a continuance due to the need to complete a hearing in another matter, and Respondent did not object. See P. Ex. p. 61-63. This Hearing Officer granted the continuance for good cause shown, and in consultation with the parties, the matter was rescheduled for May 19-20, 2025. On May 9, 2025, the parties jointly moved to continue the hearing dates and requested that the hearing be rescheduled no earlier than 60 days out to allow time for the completion of evaluations. See P. Ex. p. 75-77. Again, this hearing officer granted the continuance for good cause shown. After further consultation with the parties, the hearing was rescheduled for September 10-12, 2025 with a prehearing conference scheduled for September 8, 2025.

After filing the Complaint in this matter, Parents then filed an Expedited Hearing Complaint (EH-25-30 or the "Expedited Hearing") alleging that the District violated IDEA procedures by unilaterally changing Student's placement to ALE. See P. Ex. p. 25-38. In the Expedited Hearing, Parents sought to return Student to the regular education environment, and the District again denied violating the IDEA and that Parents were entitled to the relief they sought. On or about March 20, 2025, Parents and District reached a settlement in the Expedited Hearing, which included most of the claims and relief sought in the current matter including Student's return to Fountain Lake Middle School, an IEP meeting, an FBA by a Board-Certified Behavior Analyst ("BCBA") of Parent's choice. See D. Ex. 532-35; P. Ex. p. 39-59. The only issue reserved was the issue of compensatory education. *Id.*

On August 2, 2025, counsel for Petitioner moved to withdraw, citing a disconnect with Parents requiring her withdrawal and stating that Parents are prepared to proceed with the assistance of an advocate. See P. Ex. p. 65-71, 393-396. Finding no regulation to order counsel to remain and finding counsel's grounds for withdrawal to be good cause, this Hearing Officer granted the motion of Petitioner's counsel to withdraw. Luther Sutter appeared on behalf of Parents on September 3, 2025.

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. The hearing began as scheduled on September 10, 2025, and testimony was heard that day. District and Parents agreed that the only remaining issue was compensatory education; however, as the District denied any violation of IDEA in the settlement agreement, this Hearing Officer heard evidence regarding whether there had been a violation of IDEA by the District as necessary to determine whether or not compensatory education was appropriate.

Parents were represented by Luther Sutter, and District was represented by Phillip Brick. Also, present for the hearing were both Parents, Marilyn Debow ("Advocate"), and Darin Landry (Superintendent"). The following witnesses testified in this matter: Advocate, Father, Mother, Sarah Mushrush ("Former LEA"), Adam Stage ("Principal"), Sara Weaver ("Special Ed. Teacher"), Ellen Webb/Dailey ("ALE Special Ed. Teacher"), Heather Adams ("School Counselor"), Stephen Campbell ("LEA"), and Superintendent. Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements, and both parties submitted a timely brief for consideration.

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 each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; discrepancies in the testimony were not deemed to be intentionally deceptive. Any inconsistencies were minor and did not play a role in this hearing officer's decisions. The weight accorded the testimony, however, is not the same as credibility. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided.

The findings of fact were made as necessary to resolve the issues; therefore, not all of the testimony and exhibits were explicitly cited. Documents and testimony prior to the timeframe at issue were considered for background purposes only, and documents and testimony after the timeframe at issue were not considered. *See Albright as Next Friend of Doe v. Mountain Home Sch. Dist.* 926 F.3d 942 (8th Cir. 2019). Further, issues not raised in the complaint or issues that were previously settled are not addressed, such as whether there was a failure to provide a comprehensive evaluation, speech therapy, or occupational therapy. In reviewing the record, all other documents and testimony were thoroughly considered in issuing this decision, as were the parties' post hearing briefs.

1. As of the date of the hearing in September of 2025, Student was a 13-year-old male (born in April 2012) in the eighth grade that lives in the District. See P. Ex. p. 1-16.

2. In June of 2018, at age 6, Student received outpatient mental health services at Methodist Family Health due to concerns regarding defiant behavior at home and school. See D. Ex. p. 167. Student received a diagnosis of Oppositional Defiant Disorder (“ODD”) and a “mixed mood disorder” from Methodist outpatient clinic, and the treatment team diagnosed Student with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. See D. Ex. p. 165, 168. In November of 2018, Student was discharged, and Mother reported noticeable improvements in his emotional regulation and interpersonal interactions at home. See D. Ex. p. 168. Services were discontinued, but Student was to be monitored by the school counselor and PCP. See D. Ex. p. 168. However, there is no documentation or testimonial evidence that Parents informed the District of these diagnoses prior to filing the Complaint in this matter.

3. Student was not on grade level and struggled prior to school closure due to covid-19 in the spring of 2020, and he was receiving intervention prior to the covid closure. See Tr. p. 287-288. Mother testified Student started to slide in second grade, and then covid hit. Id.

Third Grade (2020-2021 School Year)

4. When school resumed in the fall of 2020, Student’s third grade year, intervention resumed for Student, but Student continued to struggle. See D. Ex. p. 131.

5. On October 7, 2020, the District convened a meeting in response to Parent’s request for testing to determine if Student was eligible to receive services in light of his weaknesses in reading and math and seeing little growth despite intervention, particularly in Reading Comprehension, and Parents consented to evaluation. See D. Ex. p. 137-47.

6. On December 9, 2020, Student received a comprehensive evaluation. See D. Ex. p. 226-244; see also P. Ex. p. 187-194. The results indicated that his Fluid Crystallized Index

(SS=87 and 19th percentile) was in the lower side of the average range, as measured by the Kaufman Assessment Battery for Children, Second Edition. See D. Ex. p. 241-243. His academic achievement scores, measured by the Kaufman Test of Educational Achievement Third Edition ("KTEA-3") were in the below average range, except for his average scores in Reading Comprehension and Math Computation. See D. Ex. p. 242. His weaknesses were in Written Expression and Spelling. D. Ex. p. 242-244. He was performing below grade level in all areas. See D. Ex. p. 243. Student's teacher and Mother completed rating scales for Student's Behavior Assessment for Children-Third Edition ("BASC-3"). See D. Ex. p. 238-240. His teacher rated Student in the Clinically Significant range for Learning Problems (97th percentile) and reported that Student had significant difficulty comprehending and completing schoolwork in a variety of academic areas. See D. Ex. p. 238-239. She reported that he always gave his best effort and has many friends, but he has a short fuse and takes a bit to calm down. See D. Ex. p. 238. Parent rated Student in the At-Risk range for Externalizing Problems, Hyperactivity, Aggression, and Attention Problems. See D. Ex. p. 240. Student's results on the Test of Auditory Processing Skills (TAPS-3) were in the average range (SS 9). See D. Ex. p. 242. Student's language skills were measured on the Clinical Evaluation of Language Fundamentals-Fourth Edition (CELF-4), and Student met the criterion cut-off reflecting that a speech-language evaluation was not needed at that time. See D. Ex. p. 243; P. Ex. 193. Student's visual motor integration skills were measured by the Beery Developmental Test of Visual-Motor Integration-5th Edition (VMI), and Student's scores were in the low average range (SS 85) and consistent with Student's cognitive assessment. See D. Ex. p. 243. The examiner noted that Student had a weakness in short-term memory, and his written expression deficit was largely due to his inability to

understand the directions where he had to form his own sentence or begin a sentence when the ending was given to him. See D. Ex. p. 243. He struggled with mechanics such as punctuation and capitalization, and his writing was illegible along with spelling challenges, which made it difficult to read. See D. Ex. p. 243. The examiner stated that Student would likely be a slow learner, could benefit from structured and step by step instruction at a slower pace than peers. See D. Ex. p. 243. He may require repeated practice and rehearsal of new information and may have trouble generalizing information to new situations, he may demonstrate slow processing of information and take some time to answer questions, he may show limited ability to problem solve, his handwriting may look typical of a younger person, and he would likely be a whole word learner rather than a phonetic learner. See D. Ex. p. 243-244. Student did not exhibit the deficits to qualify for a learning disability using the severe discrepancy model. See D. Ex. p. 133. Student's inability to sustain focus and attention was a concern. See D. Ex. p. 244.

7. On January 4, 2021, the IEP team convened to consider placing Student in a more intensive intervention, to gather more data, and to look at placing Student in special education based on lack of response to intervention. See D. Ex. p. 131 and P. Ex. p. 183-186. Student's teacher expressed that Student was attentive and worked hard at the beginning of the year but seemed to have "given up." See D. Ex. p. 131. Parents expressed that Student might have ADD/ADHD, and Mother stated that she would contact Student's PCP. Id.

8. In January 8, 2021, a physician diagnosed Student with ADD/ADHD and prescribed Focalin, and Parents provided documentation to the District. See D. Ex. p. 159-163, 226; P. Ex. p. 195, 407-408.

9. On January 22, 2021, Student's IEP team reconvened in light of his ADD/ADHD diagnosis, and the team determined that Student qualified for special education services under the category of Other Health Impaired ("OHI"). See D. Ex. p. 125-127. The Notice of Decision states Student needed specialized instruction in math to address deficits in math concepts and computation, in reading for letter/word recognition and reading comprehension, written expression, and spelling. See D. Ex. p. 127. Student's IEP provided direct services for math at 150 minutes weekly and literacy at 225 minutes weekly in the special education classroom and states that Parents were happy that he would be receiving those direct service minutes. See D. Ex. p. 73-89, 125; see also P. Ex. p. 196-216. His modifications and accommodations were step-by-step directions for tasks, frequent checks for understanding of tasks, extended time for assignments and testing, no penalty for handwriting, and small group testing with reading allowable portions and extra time. See D. Ex. p. 76. Student's Reading goal was "Given an appropriately leveled text, [Student] will work to raise his current reading level of 14/H to at least a 28/M by the end of this IEP cycle." See D. Ex. p. 78. Student's Reading Fluency goal was "When given appropriately leveled texts, [Student] will raise his fluency score from 20 words per minute to at least 50 words per minute on a first-time reading by the end of this IEP cycle." See D. Ex. p. 79. Student's Written Expression goal was "When given proper materials and instruction, [Student] will write 5 dictated sentences with 70% accuracy in capitalization, punctuation and spelling by the end of this IEP cycle." See D. Ex. p. 80. Student's first Math goal was "When given proper materials and instruction, [Student] will demonstrate his ability to add and subtract up to 3-digit numbers with or without regrouping with 80% accuracy by the end of this IEP cycle." See D. Ex. p. 81. Student's second Math goal was "With proper materials and instruction,

Student will solve real-world word problems using basic addition, subtraction and multiplication with 80% accuracy by the end of this IEP cycle.” See D. Ex. p. 82. Student’s third Math goal was “When given proper materials and instruction, [Student] will demonstrate the ability to solve 70 one-digit mixed multiplication problems in a timed setting by the end of this IEP cycle.” See D. Ex. p. 83. Student’s Behavior Goal was “Given a situation that would arouse anger or annoyance, [Student] will continue to demonstrate appropriate behavior 4 out of 5 consecutive days (or in the case of Virtual Friday- 3 out of 4 consecutive days) each week by the end of this IEP cycle.” See D. Ex. p. 84.

10. In May of 2021, on the ACT Aspire, Student’s English Language Arts (“ELA”) scale score (“SS”) was 412 on the ACT Aspire (in need of support). See D. Ex. p. 406; P. Ex. p. 96-97. His Reading readiness level was SS 407 (in need of support). See D. Ex. p. 406; P. Ex. p. 96-97. His Science readiness level was SS 408 (19th percentile and in need of support). See D. Ex. p. 406; P. Ex. p. 96-97. His Math readiness level was SS 409 (17th percentile and close). See D. Ex. p. 405; P. Ex. p. 96-97. His English readiness level was SS 412 (26th percentile and close). See D. Ex. p. 405; P. Ex. p. 96-97.

Fourth Grade (2021-2022 School Year)

11. On January 21, 2022, Student’s IEP team met for an annual review. See D. Ex. p. 60. Parents participated via phone and were proud of his progress. See D. Ex. p. 60. Student mastered all of his previous goals by or before the date of the annual review, and progress was tracked in the Progress Reports. See D. Ex. p. 78-84. Student’s NWEA scores for the fall of 2021 were 167 in Literacy (Grade level expectancy was 196.7), 179 in Language (Grade level expectancy was 197.3), 174 in Math (Grade level expectancy was 199.5). See D. Ex. p. 61; P. Ex. p. 87-88. His reading level on December of 2021 was N, and Grade level expectancy

was Q/R. Id. It was reported that Student did well with comprehension, but his biggest struggle is focusing, staying engaged, and staying on task. Id. He needed frequent reminders to stay focused. Id. Student's new Reading goal was "[Student] will improve his reading by increasing his reading level from a level N (DRA:30/Lexile: 600) to a level S (DRA 40/Lexile 700) or higher by his next annual review," and Progress Reports reflected that Student achieved a 40/S by 5/26/2022. See D. Ex. p. 64 and see also P. p. 165-182. Student's Written Expression goal was "Given instruction and practice, [Student] will produce clear and coherent writing in which the development and organization are appropriate to task, purpose, and audience with 80% or higher accuracy as measured by a rubric quarterly," and Progress Reports reflected that he achieved 50% by 5/26/2022 and 60% by 10/19/22. See D. Ex. p. 65. Student's new Math goal was "Given instruction and practice, [Student] will show progress toward mastery of grade level math skills by maintaining a 70% of above in math each nine weeks through his next annual review," and Progress Reports reflected he achieved 80% by 3/11/22, 93% by 5/26/22, and 60% by 10/19/22. See D. Ex. p. 66. For the remainder of fourth grade, Student would receive direct instruction in the special education classroom of 240 minutes weekly for literacy and 120 minutes weekly in math. See D. Ex. p. 67. When Student began fifth grade, Student would receive direct instruction in the special education classroom of 225 minutes weekly (45 minutes daily) for literacy and 225 minutes weekly (45 minutes daily) for math. See D. Ex. p. 67. He was in the regular class setting 80% or more because he needed small group instruction to acquire skills, his behavior impedes his learning and that of others, and he needed a more structured environment. See D. Ex. p. 69. The accommodations in the IEP were small group testing/extended time (300%)/text to speech, but the Notification to Personnel included

accommodations of seating close to teacher, asking Student to repeat directions to ensure understanding, 300% extended time, text to speech/read allowable portions, and small group testing. See D. Ex. p. 70-72. Student's assessment for Extended School Year reflected it was not needed for Student, as of January 2022. See D. Ex. p. 122. There was no behavior goal. See D. Ex. p. 60-72.

12. In May of 2022, Student's ACT Aspire Writing scale score was 411. See D. Ex. p. 405; P. Ex. p. 94-96. His Science scaled score was 407 (7th percentile and in need of support). See D. Ex. p. 404; P. Ex. p. 94-96. His Reading scale score was 407 (10th percentile and in need of support). Id. His Math scaled score was 407 (2nd percentile and in need of support). See D. Ex. p. 403; P. Ex. p. 94-96. His English scaled score was 409 (5th percentile and in need of support). Id.

Fifth Grade (2022-2023 School Year)

13. On January 20, 2023, Student's IEP team met for his annual review. See D. Ex. p. 116. Father participated via phone, was pleased with Student's progress, but stated he would speak to Student about his behavior. See D. Ex. p. 46. It was noted that Student is struggling in Art because he forgets to turn in assignments on time. See D. Ex. p. 116. He is tardy often and tends to have more behavior issues on those days. See D. Ex. p. 116. He was caught cheating in class, and he ran around the classroom mocking a substitute teacher and throwing ceramic footballs. See D. Ex. p. 116. Student's NWEA scores were: Math: Fall 179 and Winter 183 (2nd percentile in January, 2023); Reading: Fall 192 and Winter 192 (14th percentile in January 2023). See D. Ex. p. 47, 391-393; P. Ex. p. 83-84. It was noted that Student continued to perform below grade level in each area but that he had also made improvements in each area. See D. Ex. p. 47. His modifications and accommodations

remained seating close to the teacher, asking Student to repeat directions to ensure understanding, extended time (300%), text to speech/read allowable portions, and small group testing. See D. Ex. p. 48. His continued to be easily distracted, and he was beginning to “show out” on some days to appeal to others. See D. Ex. p. 47. Student’s new Reading goal was “When presented with a reading passage, [Student] will create a written summary of the passage including main idea, theme, setting, characters, events, solutions with 80% accuracy by the end of this IEP cycle,” and Progress Reports reflected that Student mastered the goal by 12/22/2023. See D. Ex. p. 51. Student’s new first Math goal was “When presented with multi-digit math problems, [Student] will determine the correct operation and answer the problems correctly with 80% accuracy by the end of the IEP cycle,” and Progress Reports reflected mastery by 12/22/2023. See D. Ex. p. 50. Student’s second math goal was “With proper materials and instruction, [Student] will solve real-world word problems using basic addition, subtraction and multiplication with 80% accuracy by the end of this IEP cycle,” and Progress Reports reflected mastery of this goal by 12/23/2023. See D. Ex. p. 53. Student had previously mastered this second math goal on 1/21/2022. See D. Ex. p. 53, 82. Student’s Written Expression goal was “When given proper materials and instruction, [Student] will write 5 dictated sentences with 70% accuracy in capitalization, punctuation and spelling by the end of this IEP cycle,” and Progress Reports reflected mastery of this goal by 12/22/2023. See D. Ex. p. 52. This goal was also repeated, and Student had shown mastery by 1/21/2022. See D. Ex. p. 52, 80. Direct special education instruction in math (45 minutes daily) and literacy (45 minutes daily) for one class period per day were continued. See D. Ex. p. 54, 116. The assessment reflected and the team agreed that Student was not in need of Extended School Year services (“ESY”). See D. Ex. p. 116, 119. He was in the regular class setting 80%

or more, but he needed small group instruction to acquire skills and a more structured environment. See D. Ex. p. 56. There was no behavior goal. See D. Ex. p. 46-59.

14. Notification to District personnel of Student's IEP modifications completed on January 20, 2023 reflected that Student should be seated close to the teacher, asked to repeat directions to ensure understanding, receive extended time (300%), permitted to utilize text to speech/read allowable portions, and utilize small group testing. See D. Ex. p. 118.

15. For Student's fifth grade third quarter grades (spring 2023), Student received an 85 in Language Arts, 82 in Math, 75 in Science, and 81 in Social Studies. See D. Ex. p. 413; P. Ex. p. 247-255. In the fourth nine weeks of fifth grade (spring 2023), Student received an 87 in Language Arts, a 92 in Math, a 69 in Science, and a 72 in Social Studies. See D. Ex. p. 413; P. Ex. p. 247-255.

16. In April of 2023, on the ACT Aspire, Student's scaled score was 414 for Writing, 412 in Science (15th percentile and in need of support), 410 in Reading (16th percentile and in need of support), 413 in Math (19th percentile and close), and 416 in English (18th percentile and close). See D. Ex. p. 402-403; P. Ex. p. 93-94.

17. From January to May of 2023, Student was absent 4 days and received in-school suspension ("ISS") for 2 days. See D. Ex. p. 446-447; P. Ex. p. 243-246.

18. During fifth grade, the 2022-2023 school year, Student had nine behavior incidents from November of 2022 to May of 2023 including disorderly conduct, bullying, disruptive conduct, and insubordination. See P. Ex. p. 217.

Sixth Grade (2023-2024 School Year)

19. In the first quarter of sixth grade (fall 2023), Student received a 91 in Language Arts, 88 in Math, 60 in Science and 63 in Social Studies. See D. Ex. p. 412; P. Ex. p. 247-255.

In the second quarter of sixth grade (fall 2023), Student received an 88 in Language Arts, 86 in Math, 61 in Science, and 75 in Social Studies. Id.

20. On November 17, 2023, Student's IEP team met to conduct an existing data review as part of his re-evaluation and because there were concerns about Student's first nine weeks grades. See D. Ex. p. 107-112. The team agreed to re-evaluate Student for placement and programming purposes, and Parents provided written consent for evaluation via email. See D. Ex. p. 107-108.

21. On January 12, 2024, the District re-evaluated Student for placement and programming purposes, particularly noting concerns about his first quarter grades in sixth grade. See D. Ex. p. 226; see P. Ex. p. 341-351. The examiner noted that his scores could be considered a representative sample of his academic behavior, and Student passed the vision and hearing screener on 10/23/2023. See D. Ex. p. 227. On the Wechsler Intelligence Scale for Children-Fifth Edition ("WISC-5"), Student's Verbal Comprehension was in the Very Low Range (5th percentile), his Visual Spatial Skills were in the Low Average Range (14th percentile), his Fluid Reasoning was in the Very Low Range (8th percentile), his Working Memory was in the Low Average Range (16th percentile), his Processing Speed was in the Low Average Range (18th percentile), his Full Scale Intelligence Quotient was in the Very Low Range (5th percentile and SS 76), and his General Ability (which is less compromised by neurological disorders such as ADHD) score was in the Very Low Range (5th percentile), although his Nonverbal skills were measured in the Low Average Range (12th percentile). See D. Ex. p. 228-230. On the KTEA-3, Student received a Low score in Math Composite (SS 77), a Below Average score in Math Concepts and Applications (SS 81), a Low score in Math Computation (SS 75), a Below Average Reading Composite (SS 88), Average score in Letter-

Word Recognition (SS 92), and a Below Average Score in Reading Comprehension (SS 88), a Low score in Written Language (SS 70), a Very Low Score in Written Expression (SS 69), a Low Score in Spelling (SS 74), and a Low score for his Academic Skills Battery (SS 76). See D. Ex. p. 230. The examiner compared Student's 2020 KTEA-3 scores with his 2024 KTEA-3 scores and noted that his 2020 Academic Skills Battery standard score of 77 is commensurate with his 2024 score of 76, his Spelling score remained in the Low range, his Letter/Word Recognition moved up from Below Average in 2020 to Average in 2024, but his Math and Written expressions scores were slightly lower in 2024. See D. Ex. p. 234. The re-evaluation included the completion of an adaptive behavior rating using the BASC-3 for Student by three sources: Mother, Special Education Teacher English, and General Education Teacher Hutchinsin. See D. Ex. p. 230-234. Student was rated as clinically significant in Hyperactivity and Aggression by all raters, and his General Education Teacher also rated him clinically significant in Learning Problems and Executive Functioning, which indicate Student has challenges with planning, organization, and behavior initiation and might benefit from guided notes, assignment notebooks to organize homework assignments, or pointed questions prior to reading assignments to improve comprehension. See D. Ex. p. 236. The examiner recommended the team consider Student's eligibility under the category of Other Health Impairment, due to his medical diagnosis of ADHD on file in his educational record. See D. Ex. p. 236. The examiner agreed with the prior examiner that Student is very capable of learning, but he needs structured support, repeated practice and rehearsal of new information, and continues to have difficulty in generalizing information from one situation from another. See D. Ex. p. 234. The evaluation did not reflect speech concerns.

22. On January 23, 2024 (rescheduled from 1/18/2024 due to weather), Student's IEP team convened to review/revise his IEP, to consider extended school year services, and for his annual review. See D. Ex. p. 105. Mother had planned to attend but was unable because she had to attend to a sick child at home. See D. Ex. p. 45, 102-104. The team determined that Student continued to need services due to significant hyperactivity and distractibility that requires one-on-one time. See D. Ex. p. 38, 104. The IEP contains the notations that Student is easily distracted and requires constant reminders to stay on track and that Student's "behavior affects his performance academically throughout the day." See D. Ex. p. 38. Student's first semester grades in sixth grade (fall 2023) were: Tech Essentials-90%, Science-61%, Art-73%, Music-100%, Social Studies-69%, PE-100%, Enrichment-96%, Language Arts-90%, Math-87%. Id. Student had mastered his math and language arts goals. See D. Ex. p. 38. His NWEA scores were noted as Language Arts: Fall 192, Winter, 192, Spring 187 (Grade Level was 210), and in Math, Fall 179, Winter 183, Spring 187 (Grade Level was 218). See D. Ex. p. 38. Student's Modifications and accommodations were small group instruction, read as allowable, extended time, text-to-speech, time to cool off-outside of classroom, and study guides. See D. Ex. p. 39. Positive behavioral interventions to address behavior were provided in the "Positive Action Plan" sheet that was to be attached to the IEP, which was not located in evidence, and Mr. Murphy would be utilized for a quieter place/one-on-one. See D. Ex. p. 39. Student's Math goal was "When given everyday math problems, [Student] will show improvement on his math skills by setting up the equation and solving correctly with 85% accuracy by his next annual review," and Progress Reports reflected mastery at 88% by 12/20/2024. See D. Ex. p. 41. Student's English goal was "When given a writing assignment, [Student] will show improvement of his writing skills by making a draft,

editing, and writing a final written page/essay with 80% accuracy by next annual review,” and Progress Reports reflected 83% mastery by 12/20/2024. See D. Ex. p. 41. As of January of 2024, Student continued to receive direct special education instruction in math (45 minutes daily) and literacy (45 minutes daily) for one class period per day. See D. Ex. p. 54. He was in the regular class setting 40-79% because he needed small group instruction to acquire skills. See D. Ex. p. 43. ESY was determined not necessary. See D. Ex. p. 40. There was no behavior goal. See D. Ex. p. 37-45.

23. Special Education Teacher Weaver testified that Student made progress on his IEP goals for English and Math during his time with her in the fall of 2024. See T. p. 187-188. ALE Special Education Teacher Webb/Daily testified Student made progress on his IEP goals when she was providing his services at ALE from November of 2024 to the date of the Complaint. See T. p. 211. ALE Special Education Teacher monitored that progress in English with rubrics and in math by checking accuracy. See T. p. 211.

24. On February 6, 2024, Student’s IEP team convened again with Mother in attendance in person and Father in attendance via Google Meet to review Student’s evaluation, his IEP, grades and ESY. See D. Ex. p. 98-100. Mother agreed with all prior decisions but requested to add a behavior goal to the IEP, and teachers were designated to develop one. See D. Ex. p. 98. Mother reported that Student was not on medication for ADHD at that time. See D. Ex. p. 98.

25. In the third quarter of sixth grade (spring 2024), Student received an 85 in Language Arts, 83 in Math, 67 in Science, and 68 in Social Studies. See D. Ex. p. 412; P. Ex. p. 247-255. In the fourth nine weeks of sixth grade (spring 2024), Student received an 85 in Language Arts, a 78 in Math, a 60 in Science, and a 62 in Social Studies. Id.

26. On the ATLAS, in April of 2024, Student received a SS of 1016 (Lexile of 550L); he was below mastery in reading fundamentals and vocabulary, reading informational text, reading literary text, and writing and language. See D. Ex. p. 258, 401. See In April of 2024, Student was at/near mastery in geometry, measurement, statistics and probability, but below mastery on number concepts and computations and proportional relationships and algebra. See D. Ex. p. 260, 401.

27. During the 2023-2024 school year, Student was absent 17 days, received ISS for 7 days. See D. Ex. p. 438-443; P. Ex. p. 243-246. Student had 11 behavior incidents including disruptive behavior, disorderly conduct, insubordination, missing assignments, and confrontation that year. See P. Ex. p. 218-229.

28. Both Parents testified Student was behind in elementary, but in Middle School, he started falling farther behind. See Tr. p. 157, 288. He did not understand the topics and was embarrassed. See Tr. p. 157-158, 288. He did not want to be at school and started getting in trouble more. Id.

Seventh Grade (2024-2025 School Year)

29. Special Education Teacher Weaver is certified to teach special education from grades K-12, and she began working with Student in August of 2024. See Tr. p. 176. She was on Student's IEP team but was not at the November 13, 2024 IEP meeting and was not consulted about his move to ALE. See Tr. p. 176-177. She did not provide services to Student while he was at ALE. See Tr. p. 177. Prior to going to ALE, Student was with her for 225 minutes weekly for ELA and 225 minutes weekly for Math in the resource room setting. Id. The Progress Reports on Student's IEP's reflect her tracking his progress on his IEP goals.

See Tr. p. 186-187. Special Education Teacher Weaver has seen Student progress in English and Math and progress on his IEP goals in English and Math. See Tr. p. 186-187. He can now write a personal narrative, and he is asking for input and asking good questions. See Tr. p. 187; D. Ex. p. 266-277. Student's essays done for Special Education Teacher Weaver regarding the "Tell Tale Heart" and the "Cultural Revolution" appear in the record, but there was no testimony regarding how much support Student was provided to draft these. See D. Ex. p. 266. In Math, she testified Student is answering questions and helping other students with their work. See Tr. p. 187. Based on his grades, her observations, google documents, graphic organizers, and writing samples from other classes, Weaver believes Student is on track to reach his goals. See Tr. p. 187-188. Student is not on grade level, but Special Education Teacher Weaver believes Student is capable of being on track for standard graduation, not on the alternative placement track. See Tr. p. 190-193. LEA Campbell testified that Student's Atlas ELA score rising from 1016 in 2024 reflected he was reading at a 3rd grade level in 2024. See D. p. 401, P. Ex. p. 110; Tr. p. 277-279. However, State assessment scores do not reflect when students can do in life; the District's job is to push students toward their goals. See Tr. p. 146. Former LEA Mushrush testified that Student's progress on goals might be different from his Atlas testing if he did not test well that day or if his effort was low that day. See Tr. p. 135. Special Education Teacher Weaver reviewed his Atlas testing, and she testified Student's scores do not reflect his abilities well. See Tr. p. 182. Special Education Teacher Weaver knew Student was not at grade level and did not know off the top of her head how far behind he was. See Tr. p. 199-201. To Special Education Teacher Weaver, test scores are important but are not "the end all be all." See Tr. p. 184. Father acknowledged Student's test taking can vary because of his ADHD. See Tr. p. 172.

30. During his 7th grade year, between August 12, 2024 and November 8, 2024, Student accumulated 9 disciplinary incidents at the District, including skipping class, disorderly conduct, insubordination, verbal altercations with staff, and physically pushing other students. See D. Ex. 166, 288-293; P. Ex. p. 230-242. During that time, Student was absent for 3 days, received ISS for 11 days, and was suspended out of school for 4 days. See D. Ex. p. 288, 291, 419-423; P. Ex. 243-246. Advocate testified that Student was missing special education minutes when he was in in-school suspension; however, her statement was based on the belief there was no one to deliver the minutes. See Tr. p. 98. Principal Stage testified that Asst. Principal Freeman would pull Student from ISS to go for special education minutes, and Special Education Teacher Weaver confirmed she provided Student services every time he was in ISS. See Tr. p. 148, 188-189. This Hearing Officer finds that Student did receive his special education minutes when he was in ISS.

31. Parent's alleged Student was bullied, and Father testified that Student was bullied at the District and at ALE and that the bullying was reported to Asst. Principal Stephen Freeman or Principal Stage. See Tr. p. 158, 166-169. In response, Father stated the District would look into it and would find that it was Student's actions, both parties were at fault, or other students would get ISS or lunch detention. See Tr. p. 158, 166-169. The investigations would find there was no video coverage to substantiate the claim, or both students were found to be at fault. See Tr. p. 167. Behavior documentation in evidence reflected Student acting out, not being picked on by one Student, with the exception of one draft behavior contract, which resulted in Student and the other student being told to stay away from each other. See D. Ex. p. 296-296; P. Ex. p. 217-242. Father also had discussions with the Fountain Lake police chief but did not make a report. See Tr. p. 161-162. Father stated things have

been better since Student returned from ALE, and Student is not being bullied for having gone to ALE. See Tr. p. 161. Student had not reported bullying to his counselor, Counselor Heather Adams or Former LEA Mushrush. See Tr. p. 122, 226. Advocate testified about bullying but without personal knowledge or statements made by Student. See Tr. p. 42-44.

32. On or about November 11, 2024, an Alternative Education Environment ("ALE") placement packet was completed for Student. See P. Ex. p. 261-312. The ALE packet cites Student's 20 behavior referrals during the prior year, states that the District had offered behavior support and intervention, and states that the interventions were not successful to address Student's academic and behavior needs. See P. Ex. p. 265. The District hoped that the additional services, small class size, and access to counseling onsite at ALE would give Student the support needed. Id.

33. On November 13, 2024, Student's IEP team convened to review Student's programming, progress and disciplinary infractions, and the team amended Student's IEP. See D. Ex. p. 37, 96. District Ex. 1 is the amended IEP with the handwritten notes that is the same as the amended IEP that was put in the computer system at Parent Ex. p. 155. See Tr. p. 195. The team recommended referring Student for a Functional Behavior Assessment ("FBA"). See D. Ex. p. 96. Additionally, based on his disciplinary infractions, IEP, teacher reports, and parent input, the Notice of Actions states, "it was agreed to complete a referral to the Alternate Education campus." See D. Ex. p. 96. In addition to many tardies, Student had received 11 days of ISS with special education services provided and 4 days of out of school suspension. See D. Ex. p. 96 and 224. Student had 20 disciplinary referrals for behaviors including: disrespect, disrupting classroom instruction, arguing with staff, failing to complete assignments, putting hands on peers leading to physical altercations, taunting

and bowing up against peers to instigate fights, fighting, and skipping class. See D. P. 224. Teachers previously attempted to find things that motivate positive behaviors for him, redirected him, created a temporary safety plan for him, and escorted him during transitions on the main campus. See D. p. 223-224; P. Ex. p. 103. Student's IEP reflects that it was amended on November 13, 2024. See D. Ex. p. 37-45. Changes included that Mr. Murphy was no longer a designated quiet space, and Student's direct instruction in special education were reduced to 120 minutes weekly in English from 225 and to 120 minutes weekly in Math from 225. See D. Ex. p. 39, 42. Although a Safety Plan was created for Student, Student was not provided a Behavior Intervention Plan ("BIP"). See Tr. p. 49, 84. Parents signed the Amended IEP, although Mother testified that she did not know she could refuse to sign the IEP until she began the due process hearing and that no one told her that signing signified agreement. See D. Ex. p. 42, 45; Tr. p. 295.

34. At the hearing, there were differences in testimony with regard to whether there was agreement to send Student to ALE. Principal Stage did not admit or deny that the decision to send Student to ALE was made prior to the meeting; he testified that in the meeting he told Parents that he felt ALE was best for Student and that Student would benefit from ALE. See Tr. p. 145, 141-155. Principal Stage admitted he was very passionate about Student going to ALE. See Tr. p. 145-146. Principal Stage testified he did not say Parent's opinions did not matter. See Tr. p. 145. He did not recall Former LEA Mushrush stating any opposition to sending Student to ALE, but he did not think he would ignore her opinion. See Tr. p. 146-147, 149. Principal Stage explained Steve Freeman is the Middle School Asst. Principal. See Tr. p. 141. Father was at the November 13, 2024 IEP meeting and testified Principal Stage told the group Student was going to ALE at the meeting. See Tr. p. 158-159.

Father testified he told Principal Stage “no” explaining that would not be good for Student, and Principal Stage said there was no choice and the decision had already been made. See Tr. p. 158-189. Mother also testified that ALE was not her choice. See Tr. p. 291-292. She recalls being called into the meeting on November 13, 2024 with Principal Stage and Asst. Principal Freeman, who said they were looking at sending Student to ALE. See Tr. p. 291-292. Parents responded, “no” and stated that the change would be detrimental to Student, and Parents were told to meet with Former LEA Mushrush the next day. See Tr. p. 291-292. Principal Stage and Asst. Principal Freeman said the decision had been made and there was no choice. Id. Father testified there was a discussion that Student’s special education services had to be reduced to accommodate the shorter instruction time at ALE because of all the bussing. See Tr. p. 159-160. Father told them ALE did not make sense because if Student had a shortened day, he would be losing resources, and he would not be getting the same education he would have had at the main campus. Id. Father was told ALE taught all students there as if they had an IEP, and all students got the same education. Id. Former LEA Mushrush was LEA for the District from 2017 to 2025, she recalled a phone call from Steve Freeman in administration wanting to move Student to ALE and discuss the change with Parents, and she was present at the November 13, 2024 meeting. See Tr. p. 123-124. Consistent with the November 11, 2024 ALE packet date, Former LEA Mushrush testified that the decision to send Student to ALE was made prior to the IEP meeting. See Tr. p. 123-124, 133. Former LEA Mushrush did not approve of Student being moved to ALE or think it was best for him, but she stated she was not given a choice. See Tr. p. 118-119. She corroborated that Parents did not agree to move Student to ALE. See Tr. p. 116-117. Parents should have had an equal seat at the meeting, but they did not. See Tr. p. 124. Based on the November 11, 2024 ALE

packet date and the testimony of Parents and Former LEA, this hearing officer finds that the District unilaterally decided to move Student to ALE prior to the IEP meeting held on November 13, 2024.

35. At ALE, it was documented that Student failed to attempt classwork, didn't follow staff directions, made disruptive comments multiple times between November 19, 2024 and January 6, 2025. See D. Ex. p. 286-287.

36. On December 9, 2024, Student's IEP team reconvened at the request of Parents to discuss their concerns, as reflected in the Notice of Action, and Parents were accompanied by an advocate at the meeting. See D. Ex. p. 94. This was the first of Student's IEP meeting that Advocate attended. See Tr. p. 21. Student had been sent home from ALE for googling inappropriate music that included the phrase "ready to die," and the team overturned the suspension for this infraction. See D. Ex. p. 94. The suspension should have been run through the school prior to implementing it. See D. Ex. p. 94. It was noted that Student took Vyvanse for his ADD diagnosis, and Parents had begun the intake process for weekly counseling through RPI. Id. The team would reconvene after the FBA was completed to review it. Id. Student wanted to remain in band and basketball. Id.

37. Based on interviews and observations that occurred between December 10 and December 18, 2024, an FBA was completed by Lea Myers, Ed. S. Educational Specialist and Behavior Consultant on December 26, 2024, after a referral by the District due to concerns with Student's off-task, aggressive, and disruptive behaviors. See D. Ex. p. 205-225; P. Ex. p. 353-379. Myers reported that Student stated he preferred going to ALE to Fountain Lake because it is a smaller group, and he gets along with everyone at ALE. See D. Ex. p. 208, 214. Student's teachers and Mother rated Attention and Escaping a demand as the functions of

his behaviors. See D. Ex. p. 208-211, 224. Student's primary reinforcer is peer approval and secondary is independent rewards. See D. Ex. p. 224. The FBA recommendations were to consider: a behavior contract, a reinforcement system with rewards accessed at home, a check in/check out system to provide frequent feedback to Student during the day, teaching functional replacement behaviors to allow him to continue to access motivating factors such as peer attention using socially appropriate behavior, implement a safety plan to address his fighting behaviors, individual counseling for Student and consider adding group counseling, teach appropriate social skills in the moment, implement social skills lessons daily, consider daily exercise first thing in the morning to address his ADHD symptoms, allow scheduled breaks during the day, allow access to stress balls or fidgets during academic lessons, teach calming techniques, utilize close proximity and supervision of Student, increase positive reinforcement and feedback, and ignore negative attention seeking behaviors. See D. Ex. p. 224-225.

38. While attending ALE, Student had to ride a bus to the District to catch the bus to ALE, which left at 7:50 a.m., it was a fifteen-minute drive to ALE, and he also left ALE an hour early to get on the bus to go back to the District. See Tr. p. 289-291. At noon, the bus would drive 15 minutes to take him back to the main campus for basketball and band, then he would ride 15 minutes back to ALE, then 15 minutes to get back to the District, and then 30 minutes to get home. Id. Mother estimated Student was on the bus approximately 2.5 hours daily. Id. Father testified Student felt branded by going to ALE. See Tr. p. 162-163. Father also stated peers made comments to Student about going to ALE, tormented him, and called him a "re***d." Id. Things have been better for Student since coming back from ALE. See Tr. p. 168-169. Student has already missed out, and Father did not want him to fall farther behind.

See Tr. p. 165. Student received counseling at ALE at school once per week, and Parents would go for to ALE counseling and different meetings. See Tr. p. 170-171.

39. While at ALE, Student received the special education minutes prescribed in the amended IEP dated November 13, 2024 from Special Education Teacher Webb/Daily, who was certified to teach special education. See D. p. 42; Tr. p. 125, 170, 205-206, 209-211, 290. Special Education Teacher Webb/Daily's qualifications also included including language therapy for dyslexia, K-12 special education licensure, and Take Flight training. See Tr. p. 136. Father was aware Student had Special Education Teacher Webb/Daily for special education at ALE; Father met with her once or twice while Student was there. See Tr. p. 170. Special Education Teacher Webb/Daily testified Student's minutes were decreased when he came to ALE because he went from small group to one-on-one services with her, but she did not know if that was appropriate. See Tr. p. 206. The handwritten notes on Student's IEP as amended on November 13, 2024 reflect data she kept on Student's progress toward his IEP goals, and the underlying data was kept on Spedtrack. See D. p. 41 and Tr. p. 127, 207-208, 210-217. She worked with Student on grade level curriculum for math and for ELA and kept data on his accuracy, she worked on his written expression goal and tracked progress with a rubric, and Student mastered all his goals by December 20, 2024. See D. Ex. p. 41, Tr. p. 209-211. She does not know his grade level. See Tr. p. 209. She does not recall missing any minutes with Student. See Tr. p. 217. Advocate testified that Student missed special education minutes while at ALE because she thought there was no special education teacher there to render the services, and she then testified she did not know if Student received special education while at ALE, thinking that Special Education Teacher Webb/Daily was not certified and was "on a waiver" and only went over the ALE course work. See Tr. p. 98-99.

Based on the testimony of Special Education Teacher Webb/Daily and the lack of personal knowledge by Advocate, this Hearing Officer finds that Student received the special education minutes prescribed in the November 13, 2024 IEP while at ALE.

40. For seventh grade, Student's first nine weeks (fall 2024) grades were 76 in Language Arts, 82 in Math, 73 in Science, and 71 in Social Studies. See D. Ex. p. 408-411; P. Ex. 247-255. Student's second nine weeks grades (fall 2024) on the ALE report card were 91 in Special Education Reading, 89 in Special Education Math, 92 in Science, and 94 in Social Studies. See D. p. 408-411. However, Student's Fountain Lake report card for seventh grade reflects Student's grades for the second nine weeks (fall 2024) were 77 in Language Arts, 95 in Math, 21 in Science and 44 in Social Studies for the second nine weeks. See D. p. 408. This discrepancy was not explained during the hearing.

41. Parents filed the complaint in this matter on January 7, 2025, and Student remained at ALE at that time. See P. Ex. p. 1-16; Tr. p. 293.

42. In the hearing, Parents requested District provide staff training. See Tr. p. 33. Former LEA Mushrush agrees the District needs training on compliance with IDEA and categories of disabilities. See Tr. p. 137-138. LEA Campbell agreed that training on compliance with IDEA would be helpful. See Tr. p. 267. Principal Stage stated he would benefit from training on behavior that arises from disabilities. See Tr. p. 144.

43. Parents also requested four years and eight months of compensatory education in the form of private tutoring with Misty Sullivan, who charges \$40 per hour. See Tr. p. 7, 60, 95. Mother stated Parents were requesting private tutoring instead of summer school due to the privacy of at-home tutoring and the bussing for summer school. See Tr. p. 296. Mother further testified that Student did not want to be in school and would significantly

benefit from one-on-one tutoring over the summer. See Tr. p. 289, 296. Student receives counseling from Next Step, and Parents believe it is sufficient. See Tr. p. 289. LEA Campbell testified compensatory education is education for learning loss, and to his knowledge, no compensatory education was due, especially not for the time since LEA Campbell has been with the District. See Tr. p. 265. Former LEA Mushrush first testified that Student should receive compensatory education just for his time in ALE but later agreed that four years and eight months was reasonable. See Tr. p. 113, 126, 132. The compensatory education would for the District's failure to provide FAPE during his time in ALE. See Tr. p. 114-115. Although reimbursement for other items was mentioned during the hearing, no sufficient evidence was submitted regarding any other expenses incurred.

CONCLUSIONS OF LAW AND DISCUSSION:

I. Provision of FAPE

A. Procedural FAPE

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 procedures set forth in IDEA. *Id.* If procedural inadequacies are found, for a child to be denied a FAPE, any procedural inadequacies must (1) impede the student's right to an appropriate education,

(2) seriously hamper the [Guardian]'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)

In 2005, 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 IDEA simply by failing to grant a parent's request. *Id.*

B. Substantive FAPE

After determining whether procedural inadequacies exist, the hearing officer must next determine whether a student's IEP was reasonably calculated to enable the student to make appropriate progress in light of his individual circumstances. *Paris Sch. Dist. v. A.H.*, 2017 WL 1234151, 4 (W.D. Ark 2017). (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, No. 15-827, 2017 WL 1066260, 580 U.S. 386 (2017), 137 S.Ct. 988 (2017)). 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). In 2017, the United States Supreme Court "rejected the 'merely

more than *de minimis*' standard that had previously been the law in the Eighth Circuit." *Paris Sch. Dist. v. A.H.*, 2017 WL 1234151, 4 (W.D. Ark 2017). (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, No. 15-827*, 2017 WL 1066260, 580 U.S. 386 (2017), 137 S.Ct. 988 (2017)). In *Endrew F.*, 137 S. Ct. at 1000. The Court stated the following:

It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot. When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all."

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

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

"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). The IEP is the guiding document and primary method for providing special education services to disabled children under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). “Through the development and implementation of an IEP, the school provides a FAPE that is ‘tailored to the unique needs of a particular child.’” *Paris Sch. Dist.*, 2017 WL 1234151, at *5 (citing *Endrew F.*, 2017 WL 1066260, at *1000). 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).

Pursuant to *Endrew F.*, a district “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 2017 WL 1066260, at *1000. For most students, to comply with this standard, providing FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.” *Id.* However, in the event that this is not possible, the education of a disabled child still needs to be “appropriately ambitious” in light of a student’s individual circumstances. *Id.* A review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.* Functioning below grade level may not evidence a denial of FAPE if a student is showing progress on an appropriate curriculum. *Albright as Next Friend of Doe v. Mountain Home Sch. Dist.* 926 F.3d 942 (8th Cir. 2019).

20 U.S.C. §1414(d)(3)(B)(i) sets forth behavior as a special factor to be considered by the IEP team in stating: "in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." In *Albright as Next Friend of Doe v. Mountain Home Sch. Dist.* 926 F.3d 942 (8th Cir. 2019), the Eighth Circuit determined that the school district had provided a FAPE to a student with behavior issues because there was a Behavior Intervention Plan ("BIP") in place for the student, and the school district continued to revise it to address the student's changing needs and behaviors.

To review Student's circumstances, as detailed above, during the timeframe at issue Student had a diagnosis of ADHD, and his distractibility, impulsiveness and hyperactivity were noted as concerns throughout Student's time at the District. Student was also diagnosed with ODD in 2018; however, there is no evidence that the District was notified of that diagnosis prior to these proceedings. At the time of the 2020 evaluation, Student's intelligence was assessed to be on the lower ranges (87 in 2020 and 76 in 2023), and Student was performing below grade level in all areas. The language screener given in 2020 reflected that a full speech language evaluation was not needed because Student was above the cut-off that would indicate it was necessary. The examiner noted that Student would likely be a slow learner and could benefit from structured and step by step instruction at a slower pace. Student's intelligence assessment was consistent with his achievement, so Student did not qualify as learning-disabled under the severe discrepancy model.

After receiving Student's ADHD diagnosis from a physician in January of 2021 and due to Student's academic struggles, Student's IEP team appropriately determined that he qualified for special education under the category of Other Health Impaired, and Student

began receiving special education services for language and math during the spring of his third-grade year. Student's 2021-2022 IEP also contained a behavior goal of responding appropriately to situations that could arouse anger or annoyance.

1. FAPE in the January 2022 IEP

Student's IEP written January 21, 2022 ("January 2022 IEP"), midway into Student's fourth grade year, falls within the timeframe of this matter only for the school days occurring between January 7, 2022 to January 20, 2023. At his annual review in January of 2022, Student was doing well, had mastered all of his goals, and there is no allegation that his language or math goals were not appropriate. Student had progressed, including in reading levels and math, but he continued to achieve below grade level as assessed by NWEA testing. The educator's concern about Student's rate of progress is evidenced by their increase in Student's minutes in literacy and math to 225 for each subject at the beginning of his fifth-grade year, consistent with 20 U.S.C. § 1414(d)(4)(A)(ii)(I) (IEP team shall revise IEP to address lack of expected progress.). The District appropriately added minutes in an attempt to improve Student's rate of progress.

Unfortunately, the District's IEP revision did not address Student's underlying problem, which was his interfering ADHD related behavior. As noted in the IEP, Student's biggest struggle was focusing, staying engaged, and staying on task, and he needed frequent reminders to do so. There was no behavior goal in the January 2022 IEP, and there was no explanation for discontinuing Student's behavior goal. Neither do the accommodations and modifications of seating close to the teacher appear to adequately address Student's ADHD related behaviors. This Hearing Officer concludes that the January 2022 IEP was not reasonably calculated for Student to progress in light of his circumstances because of the

absence of a behavioral goal or other behavioral supports. However, there were no behavioral incidents noted during this time, and this Hearing Officer finds there could have been little to no educational deprivation to Student during the few days that Student operated under the January 2022 IEP within the timeframe, particularly in light of the District's attempt to improve Student's progress by increasing his special education minutes. Thus, this Hearing Officer concludes there was no substantive denial of FAPE during this timeframe.

2. FAPE in the January 2023 IEP

Student's IEP written midway through Student's fifth grade year on January 20, 2023 ("January 2023 IEP") is the first IEP that falls entirely within the timeframe. Student's special education minutes were maintained for the spring of fourth grade, and in the fall, for fifth grade, Student's minutes were increased to 45 minutes daily (225 minutes weekly) for reading and 45 minutes daily (225 minutes weekly) for math. Oddly, two goals that Student had mastered in January of 2022 were repeated on Student's January 2023 IEP, but they were accompanied by new reading and math goals, which were revised to provide for Student's growth. For that reason, this Hearing Officer does not find the January 2023 IEP reading and math goals to be insufficient. Further, Parents' focal argument is that Student's January 2023 IEP was insufficient because it failed to address his disability related behaviors, and this Hearing Officer agrees.

Student's behavior prior to the January 2023 IEP meeting, should have been a red flag to the District that Student needed more behavior support. January 2023 documentation reflects Father was pleased with Student's progress but would speak to Student about his behavior. The January 2023 IEP noted that Student was struggling in Art

because he forgot to turn in assignments on time. He was tardy often and tended to have more behavior issues on those days. He was caught cheating in class, and he ran around the classroom mocking a substitute teacher and throwing ceramic footballs. He was beginning to “show out” to impress classmates in his fifth-grade year. Student’s IEP modifications remained that Student should be seated close to the teacher, asked to repeat directions to ensure understanding, receive extended time (300%), permitted to utilize text to speech/read allowable portions, and utilize small group testing, which did not sufficiently address his ADHD related behaviors. During the 2022-2023 school year, Student had nine behavior incidents from November of 2022 to May of 2023 including disorderly conduct, bullying, disruptive conduct, and insubordination, and two days of ISS. Yet, his January 2023 was not revised to contain a behavior goal, a Behavior Intervention Plan (“BIP”), or other measures sufficient to address Student’s ADHD related behaviors. The absence of behavioral support in the January 2023 IEP is a procedural violation of IDEA, as the IEP was not reasonably calculated to enable Student to make appropriate progress in light of his circumstances, which were increasingly challenging ADHD related behaviors.

As discussed above, Student’s grades dropped during the fifth grade. In the fall of 2023, he barely passed Science (1st quarter 60 and 2nd quarter 61) and Social Studies was only slightly better (1st quarter 63 and 2nd quarter 75). District staff were appropriately concerned about Student’s first nine weeks grades, and Student’s IEP team met and agreed to re-evaluate Student for placement and programming purposes.

Student’s January 12, 2024 evaluation reflected that Student’s intelligence was in the very low range, although his nonverbal skills were in the low average range. Student’s academic skills in math, reading and written language on the KTEA-3 ranged from Below

Average to Very Low, with a composite score of 77, which was one point above his KTEA-3 composite score of 76 in 2020, which suggests Student was maintaining the same rank in comparison to other Students his age and not falling farther behind at this time. Notably, Student's adaptive behavior rating using the BASC-3 reflected that Student was rated clinically significant in Hyperactivity and Aggression by all raters, and his General Education Teacher also rated him clinically significant in Learning Problems and Executive Functioning, which indicate Student has challenges with planning, organization, and behavior initiation and might benefit from guided notes, assignment notebooks to organize homework assignments, or pointed questions prior to reading assignments to improve comprehension. The examiner recommended the team consider continuing Student's eligibility under the category of Other Health Impairment, due to his medical diagnosis of ADHD. These evaluation results were a second red flag that Student needed additional behavior support.

Despite his increasing maladaptive behaviors, the evidence reflects that Student continued to progress under the January 2023 IEP. Student did not miss any special education minutes or substantial general education time with only two days of ISS. With the increased special education minutes, Student mastered his January 2023 reading and math goals prior to his 2024 IEP revision. Student's grades were stable in the spring of 2023, although he barely passed Science and Social Studies in the fall of 2023. In April of 2023, Student's ACT Aspire percentiles were all in between 15th and 19th for Writing, Science, Reading, Math, and English.

Determining whether progress was adequate in this matter is made challenging by attempting to compare Student's results on the different tests given during the timeframe. Although Student's low Science and Social Studies grades in the fall of 2023 raised concerns,

Student's comparable NWEA scores and ACT Aspire scores evidence to this Hearing Officer that Student was maintaining his slow steady progress during this period. Student's slow progress was not unreasonable in light of his lower range intelligence assessment, and the examiner's expectation that Student would be a slower learner. Therefore, in light of Student's receipt of his special education minutes and substantially all of his general education time, Student's mastery of the 2023 IEP goals, his remaining at a similar scores on the 2023 KTEA-3 to the 2020 KTEA-3 despite increasingly difficult test content for his age, his grades in Language Arts and Math, and his percentile ranks on the ACT Aspire, this Hearing Officer finds there was no educational deprivation resulting from or during the time of Student's January 2023 IEP, and thus, there was no substantive violation of IDEA during this time period.

3. FAPE in the January 2024 IEP

On January 23, 2024, Student's IEP team reviewed and revised his IEP ("January 2024 IEP") without Parents present because a child was sick, but the IEP team continued Student's services at the same rate and appropriately revised Student's Math and English goals to provide for progress. This Hearing Officer does not find that meeting was a denial of parental participation due to efforts to include Parents and because the IEP team met again on February 6, 2024 to review Student's IEP with Parents. At the February 6 meeting, Mother agreed with all prior decisions, but the Notice of Action from that meeting reflects Mother did request to add a behavior goal. Teachers were designated to develop one; however, there was no evidence that the IEP was amended to add the requested behavior goal.

The team appropriately determined that Student continued to need services due to significant hyperactivity and distractibility, and the IEP details that Student was easily

distracted and needed constant reminders to stay on track. The IEP contained the notation that Student's "behavior affects his performance academically throughout the day." The District did begin to attempt to address Student's behavior in his modifications and accommodations. In addition to his accommodations of small group instruction, read as allowable, extended time, text-to-speech, and study guides, the January 2024 IEP provided the accommodation of "time to cool off-outside of classroom." The January 2024 IEP also provided that Positive Behavioral Interventions to address behavior were provided in the "Positive Action Plan" sheet that was to be attached to the IEP; unfortunately, the Positive Action Plan could not be located in documentary evidence. Mother's request for a behavior goal, along with all the documentation of how Student's behaviors were affecting his academic performance, was a third red flag missed.

Unfortunately, the District's added accommodations of a cool down room and positive behavior supports in the January 2024 IEP were not sufficient behavioral support for Student. This is evidenced by his many behavior incidents and discipline in 2024. During the spring semester of his sixth-grade year in 2024, Student had 4 behavior incidents including one incident of missing assignments and 3 incidents of disorderly conduct, and he received detention or ISS. During his 7th grade year, between August 12, 2024 and November 8, 2024, Student accumulated 9 disciplinary incidents at the District, including skipping class, disorderly conduct, insubordination, verbal altercations with staff, and physically pushing other students. During that time, Student received ISS for 11 days, and was suspended out of school for 5 days. This Hearing Officer found that Student did receive his special education minutes when he was in ISS; however, he was missing general education instruction time due to receiving ISS or out of school suspension for his behavior.

This Hearing Officer finds the January 2024 IEP was not reasonably calculated to provide Student with reasonable progress in light of his circumstances in light of Student's increasing behavior issues and the absence of a behavior goal or BIP in the January 2024 IEP. Student needed behavior supports to access his education. Providing a cool down time and a positive action plan was not sufficient behavior support for Student, which should have been apparent to the District based on Student's increasing behavior incidents. When the "Positive Action Plan" did not curb the behavior incidents, IDEA required the District to reconvene to create a new strategy to support Student in light of his behavior challenges. Yet, although Student's 2024 IEP was drafting in January, the District did not adapt Student's IEP until Student was moved to ALE in November of 2024.

For the period of the January 2024 IEP, this Hearing Officer additionally finds that Student's insufficient January 2024 IEP resulted in educational deprivation to Student in the spring of his sixth-grade and fall of his seventh-grade years, due to missed educational time resulting from ISS and out of school suspensions. This Hearing Officer did find Special Education Teachers Weaver and Webb/Daily credible in their testimony that Student continued to progress toward and master his goals in English and Math in the fall of 2024. However, Student's grades in the spring of 2024 continued to decline with even Language Arts and Math dropping into the "B" range (Language Arts at 85 3rd quarter and 85 4th quarter, Math 83 3rd quarter and 78 fourth quarter), and Student barely passing Science (67 3rd quarter and 60 4th quarter) and Social Studies (68 3rd quarter and 62 4th quarter). In addition, although his NWEA math continued to rise slowly during this period (Fall 179, Winter 183, Spring 187 (Grade Level was 218)), his scores for Language Arts stagnated and decreased during this period: Fall 192, Winter 192, Spring 187 (Grade Level was 210). On

the ATLAS, in April of 2024, Student received a SS of 1016 (Lexile of 550L), which LEA Campbell testified was a third-grade level.

In light of the absence of behavioral supports in the January 2024 IEP, Student's high level of behavior incidents, and Student's missing educational time due to behavior incidents, this Hearing Officer finds that Student's January 2024 IEP was not reasonably calculated for Student to make appropriate progress. Further, as Student missed education time resulting from ISS and out of school suspension due to his behaviors, Student's lower grades, Student's stagnated reading scores on the NWEA and Atlas, this Hearing Officer finds that Student made insufficient educational gains during this time and that Student was deprived FAPE and educational benefit in the timeframe of the January 2024 IEP.

4. Whether Bullying Denied Student FAPE

Parent's alleged Student was bullied, denying him FAPE under the IDEA. OSEP Guidance state that bullying can constitute a denial of FAPE under IDEA if it results in a student with a disability failing to receive meaningful educational benefit. *See OSEP Dear Colleague Letter: Bullying of Students with Disabilities (Aug. 20, 2013), p. 2-3.*

This Hearing Officer finds the evidence in this matter insufficient to support Parents' claim that Student was denied FAPE due to bullying. Only Father and Advocate testified that Student was bullied at the District, and they had no personal knowledge to base their testimony on. If Student was bullied, the evidence supports appears that incidents were reported to Asst. Principal Stephen Freeman or Principal Stage, that investigations were conducted, and appropriate actions were taken.

5. FAPE in the November 2024 IEP Amendment

a. Whether the November 2024 IEP was Predetermined

The U.S. Supreme Court held that a school district cannot refuse to consider parent concerns when drafting an IEP and cannot predetermine the educational program for a disabled student prior to meeting with parents/guardians. *See Schaffer v. Weast*, 546 U.S. 49, 53 (2005). Predetermination could deprive parents/guardians 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 guardian's request.

Although it may have been well intentioned, this Hearing Officer finds the District inappropriately predetermined the special education and related services to be included on Student's November 2024 IEP ("November 2024 IEP"), in moving Student to ALE and in reducing Student's minutes. Student's ALE Packet was completed on November 11, 2024, two days before the November 13, 2024 IEP meeting. Both Parents and Former LEA testified that Principal Stage told them at the meeting that the decision had already been made for Student to go to ALE. To his credit, Principal Stage made no statements denying that the ALE Packet had been completed in advance or that the decision had already been made, and he

admitted being passionate about ALE for Student in the meeting. The November 13, 2024 NOA states that Parents agreed to ALE, but Parents testified credibly that they opposed ALE at the meeting, which was corroborated by Former LEA Mushrush. Parents did sign the November 2024 Amended IEP, but Mother testified she did not know she could refuse to sign or that her signature indicated agreement. Student was moved to ALE despite the objections of Parents. Further, Student's special education minutes were reduced from 225 minutes weekly in reading and 225 minutes weekly in math to 120 minutes weekly in reading and 120 minutes weekly in math, and Father also testified credibly that he opposed the reduction in minutes during the November 13, 2024 IEP meeting. The improper predetermination significantly hampered Parents' opportunity to participate in the decision-making process regarding the provision of FAPE to Student.

Moreover, the November 2024 IEP was still not reasonably calculated to provide Student appropriate progress because it still did not provide Student with a behavior goal or a BIP. Student had so many behavior incidents in the fall of 2024 that the District decided to place Student in ALE, but the District still failed to correct the insufficient behavior supports in Student's IEP. The District did have an FBA conducted for Student, but even after the FBA was completed in December of 2024, a BIP was not created for Student.

b. Whether the November 2024 IEP Resulted in a Substantive Denial of FAPE

This Hearing Officer finds the District's predetermined November 2024 IEP resulted in educational deprivation for Student. This Hearing Officer found that Student received his prescribed 120 minutes weekly in math and 120 minutes weekly in reading; however, it was undisputed that Student's minutes were reduced from 225 minutes weekly in reading and 225 minutes weekly in math. Witnesses agreed that the minutes were reduced because

Student was moving to ALE where there was a shorter instructional day, but no one suggested that Student no longer needed the same level of services and support. Although there was some testimony that one-on-one special education might have been more effective for Student than the group setting and Student mastered his reading and writing goals at ALE, there was no testimony that suggested that Student received the same benefit from 120 minutes in math and 120 minutes in reading in a one-on-one special education as he did from 225 minutes weekly in math and 225 minutes weekly in reading in a small group setting. When questioned on that point, the educators simply stated that the benefit would depend on the student, and that they did not know.

Student also lost general education instructional time while attending ALE. Mother stated Student lost about 2.5 hours per school day of instructional time while attending ALE due to the time spent in bussing him back and forth. Student's educational deprivation during this time is evidenced by his Fs in Science and Social Studies when Student returned from ALE.

Although there was evidence of mastery of Student's IEP goals, this Hearing Officer does not find that to be sufficient evidence of reasonable growth for Student in light of his circumstances. In light of the lost special education minutes and general education instructional time, and as evidenced by Student's grades of Fs in Science and Math for his second quarter of seventh grade on his District report card, this Hearing Officer finds that the Student's predetermined November 2024 IEP resulted in educational deprivation for Student, which constitutes a substantive denial of FAPE. 20 U.S.C. §1415(f)(3)(E)(ii)(I), (III).

c. Whether ALE was the Least Restrictive Environment

IDEA requires that students with disabilities be educated in the least restrictive environment pursuant to 20 U.S.C. §1412(a)(5). There is a “strong preference in favor of disabled children attending regular classes with children who are not disabled,” resulting in a “presumption in favor of public-school placement.” See *CJN ex rel. SKN v. Minneapolis Public School*, 323 F.3d 630, 641 (8th Cir. 2003). However, the IDEA “significantly qualified the mainstreaming requirement by stating that it should be implemented to the ‘maximum extent appropriate.’” *Pachl v. Seagren*, 453 F.3d 1064, 1067 (8th Cir. 2006); see also 20 U.S.C. §1412[a](5). A disabled student should not be separated from his or her peers unless the services that make segregated placement superior cannot be “feasibly provided in a non-segregated setting.” *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983). The requirement to mainstream is not applicable when it “cannot be achieved satisfactorily.” See *Pachl*, 453 F.3d at 1068. It is permissible to remove a disabled child from a mainstream environment when he or she would not benefit from mainstreaming or when the “marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting.” See *Roncker*, 700 F.2d at 1063.

Here, the District moved Student from spending most of his day in general education with special education minutes in the resource room to receiving his general education curriculum and special education minutes at ALE. However, under IDEA, “placement” does not change when a student’s IEP and classes remain substantially similar. See *Weil v. Bd. of Elem. & Secondary Educ.*, 931 F.2d 1069, 1072 (5th Cir.1991). Changing the location of services does not change the student’s placement where the “new setting replicates the educational program contemplated by the student’s original assignment.” See *A.W. v. Fairfax*

Cnty. Sch. Bd., 372 F.3d 674, 682 (4th Cir. 2004). In this case, the evidence reflected that Student did receive his prescribed but reduced special education minutes at ALE, but there was little to no evidence about the general education instruction he received at ALE or whether he was with general education peers while at ALE. Thus, this Hearing Officer finds the evidence insufficient to support that the District violated Student's right to be educated in the least restrictive environment.

II. Remedies

Having determined that the District denied FAPE to the Student during the period at issue in this case, this Hearing Officer must determine the appropriate remedy.

1. Compensatory Education

The purpose of compensatory education is "restorative," and damages are "strictly limited to expenses necessarily incurred to put Student in the education position [he] would have been had the District appropriately provided a FAPE." *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1085 (8th Cir. 2020). This Hearing Officer found Student was deprived of educational benefit in the period between the January 2024 IEP and the filing of the Complaint on January 7, 2025. Parents have requested four years and eight months of compensatory education, which this Hearing Officer finds to be outside the timeframe of this matter and also unwarranted in light of the time period of a year in which Student was denied FAPE. Parents also requested compensatory education in the form of private tutoring with a particular tutor.

Although a private tutor was not requested as a remedy in the Complaint, a hearing officer has broad discretion regarding the remedy granted in cases where a student is denied FAPE by a school district. It is always challenging to quantify the time that a student would

need to be put back in the position he would have been, in this case if the District had implemented behavior goals or a BIP in January of 2024. However, this Hearing Officer takes into consideration Parents' requests and the period of educational deprivation in this matter, and this Hearing Officer finds that compensatory education in the form of private tutoring is appropriate for Student, as it would be in addition to Student's school day, would support Student in any class needed, and would move Student toward the position he would have been in absent the District's violation of IDEA.

For these reasons, this Hearing Officer finds that the District should reimburse Parents for private tutoring for Student with a tutor of Parents choice at a rate of \$40 per hour for two hours weekly when school is in session and four hours weekly during the summer break from the date of the entry of this Order to the date that the District dismisses for Christmas break in December of 2026. This Hearing Officer refrains from prescribing a particular schedule for tutoring or a particular tutor, as a tutor's availability may change or Student's availability may change.

2. Training

As an addition awarding of compensatory education, this Hearing Officer grants Parents' request that the District undergo training to provide staff with the knowledge needed to better provide for Student and other students who have disabilities that result in behavior incidents in the future. District administrators and staff missed several red flags in this case, and they were appropriately receptive to receiving some training, particularly on topics pertinent to this case. Thus, this Hearing Officer finds that, as a form of compensatory education, all District administrators, special education administrators, and special education teachers should undergo an in-person and mandatory training of at least eight

hours that covers the topics of IDEA compliance in crafting IEPs for students whose disabilities impact their behavior, providing appropriate behavior supports for students whose disabilities impact their behavior, and applying discipline procedures with regard to students whose disabilities impact their behavior.

FINAL CONCLUSIONS AND ORDERS:

Upon consideration of all the testimony and evidence, this Hearing Officer finds that a preponderance of the evidence warrants the following:

1. This Hearing Officer finds the District denied Student FAPE during the periods of the January 2024 IEP and the November 2024 IEP for failing to provide necessary behavior supports, in predetermining the November 2024 IEP services, and in unilaterally placing Student in ALE, which resulted in the deprivation of education benefit for Student, and for other violations of IDEA detailed above between January 7, 2023 through January 6, 2025.
2. This Hearing Officer orders the District to reimburse Parents for private tutoring for Student with a tutor of Parents' choice at a rate of up to \$40 per hour for two hours weekly when school is in session and four hours weekly during the summer break from the date of the entry of this Order to the date that the District dismisses for Christmas break in December of 2026. The District should reimburse Parents within 30 days of Parents' production of an invoice or receipt from the tutor to the Superintendent or his assistant and reimbursement should be requested monthly.
3. This Hearing Officer orders the District to provide all administrators, special education administrators, and special education teachers with an in-person and mandatory training of at least eight hours that covers the topics of IDEA compliance in crafting IEPs for students whose disabilities impact their behavior, providing appropriate behavior supports

for students whose disabilities impact their behavior, and applying discipline procedures incidents involving students whose disabilities impact their behavior. This training should occur no later than September 1, 2026.

4. Parents also alleged that the District's conduct constitutes disability discrimination in the Consolidated Case pursuant 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, along with other claims outside this Hearing Officer's jurisdiction. *See* ADE Spec. Ed. Rules §10.02.22.1. Therefore, to the extent Parents' due process complaint raised disability discrimination claims or other claims outside this Hearing Officer's jurisdiction, 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

DATE: 10/20/2025