

ARKANSAS DEPARTMENT OF EDUCATION

Special Education Unit

[REDACTED]

PETITIONERS

VS.

NO. H-24-38

MAGNET COVE SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Magnet Cove School District (hereinafter “District” or “Respondent”) denied [REDACTED] (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between February 27, 2022 and February 27, 2024, in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”), by: (1) Dismissing Student from speech therapy without an evaluation; (2) failing to meet to review/revise and develop an IEP for Student for the 2023-2024 school year; and (3) failing to develop an appropriate IEP that would allow student to make progress in light of his individual circumstances for the 2021-2022, 2022-2023 and 2023-2024 school years.

Procedural History

On February 27, 2024, the Arkansas Department of Education (hereinafter referred to as the “Department” or “ADE”) received a request to initiate a due process hearing from [REDACTED] [REDACTED] (“Parents” or “Petitioners”), as the Parents of [REDACTED] (hereinafter referred to as “Student”), against the Magnet Cove School District (hereinafter referred to as “District” or “Respondent”). This case was numbered H-24-38. Parents requested the hearing because they believed the District failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”) and the regulations set forth by the Department by not providing Student with a free appropriate public education.¹ This case was initially assigned to a different hearing officer. This hearing officer does not have documentation of what occurred procedurally prior to this case being reassigned. On August 22, 2024, the ADE reassigned this case to this hearing officer. This case was then set to be heard on October 2-4, 2024.

The Prehearing conference was conducted via zoom on September 30, 2024.² Counsel for both the Parent and the District participated in the prehearing conference. During the prehearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.³

Thereafter testimony was heard in this case on October 2-4, 2024. At the end of the hearing on October 4, 2024, the parties had not completed their presentation of testimony, and the case was continued until October 9, 2024. On October 9, 2024, the parties had not completed

¹ See hearing officer File-Petitioner Complaint.

² Transcript, prehearing conference.

³ Id.

their presentation of testimony, and the case was continued until October 15, 2024.⁴ Testimony was completed on October 15, 2024, with all parties participating via zoom.

Present for the Hearing were Theresa Caldwell, attorney for the parents, Jay Bequette, attorney for the District, [REDACTED] Karen Harris, special programs coordinator (Magnet Cove School District), Danny Thomas, Superintendent, Jewel Harper, new hearing officer observing.

The following witnesses testified in this matter: Karen Harris, Jennifer Lee Eisert-Wilson, Audra Alumbaugh, Jeffery Eskola, Jessica Cornell, Dr. Mary Teresa “Tracy” Morrison, [REDACTED] Dr. Thomy Green, Kristen Mclaughlin, Karen Harris.⁵

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

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements. The post hearing briefs were due on November 8, 2024. On October 29, 2024, the parties agreed to a continuance and the post hearing briefs were due on November 25, 2024. Both parties timely submitted briefs in accordance with the deadline set by this Hearing Officer.⁶

Findings of Fact

1. Student is a fifteen-year-old boy who is in the 10th grade in the Magnet Cove School District (“District”).⁷

⁴ Transcripts, Vol. I-V.

⁵ Id.

⁶ See Hearing Officer File-post hearing briefs.

⁷ H-24-09 pg. 2.

2. In August of 2018 Student was diagnosed with autism spectrum disorder (“Autism”) without accompanying intellectual impairment, with accompanying language impairment and a specific learning disorder with impairment in reading, right eye entropia, status post and asthma.⁸
3. Student was reevaluated in 2021, and again diagnosed with autism spectrum disorder (“Autism”) level 1, without accompanying intellectual impairment, without accompanying language impairment, specific learning disorder with impairment in reading, Right eye entropia, status post and asthma. The evaluator also conducted the WISC-V which found Student’s full-scale IQ to be 101.⁹
4. On October 25, 2021 a notice of conference was sent to parents indicating an IEP meeting (phone conference) would be held on October 26, 2021, to determine initial or continued eligibility for special education services, review/revise the IEP, and annual review/speech evaluation results.¹⁰
5. The IEP team met by phone on October 26, 2021. Parent (mom) participated. The team discussed an outside psychological evaluation completed by South Arkansas Psychological Services and Student’s most recent speech evaluation. The team discussed extended school year services and determined Student did not qualify. Further Parent (mom) expressed her concerns that Student was struggling with comprehension and recommended that Student start to transition out of the Take Flight program (program for dyslexia) and more into understanding what he is reading. The Team agreed. The team added direct reading comprehension minutes.

⁸ Parents’ exhibits pg. 135.

⁹ District’s exhibits, pg. 5.

¹⁰ Id., pg. 7.

Further, the Team agreed to continue students speech services at 60 minutes per week and continued his co taught services within the area of literacy.¹¹ After reviewing the outside psychological evaluation provided by the parents from South Arkansas Psychological Services, it was determined that it did not include an achievement test. An achievement test is a requirement when doing a reevaluation on Student. Consent was given by parent for Taylor Garner to administer the K-TEA on Student.¹²

6. Student's 7th grade IEP set duration of services from October 26, 2021 to October 26, 2022.¹³ The IEP contains a present level of academic achievement and functional performance on Student.¹⁴ The IEP contains one goal in the area of reading comprehension with two objectives and one goal in speech with six objectives.¹⁵ Further the schedule of services indicate that Student will receive 118 minutes of co taught services in literacy per week in the regular classroom and 45 minutes of direct instruction in reading comprehension five times per week in the special education classroom.¹⁶ Mom stated that she felt Student was doing okay academically but she had concerns that Student did not have any friends.¹⁷
7. On October 26, 2022, the IEP team met for Student's annual review. The team reviewed Student's recent speech progress and agreed that continuing speech services at thirty minutes per week instead of sixty minutes per week would be most beneficial for Student. The team agreed to keep Student's co-taught literacy services for thirty-five minutes a day, but removed direct services Student was receiving for reading

¹¹ District Exhibits, pg. 22.

¹² Id., pg. 22.

¹³ Id., pgs. 10-21.

¹⁴ Id., at Pg. 11.

¹⁵ Id., at pgs. 15-16.

¹⁶ Id., at 17.

¹⁷ Id., at 10.

comprehension. The IEP team agreed to take off the “cool down time” accommodation, but Parent asked that this be revisited when the team met in the spring as Student was getting ready to transition to high school. Student speech goals were increased to 90% to match his progress and the team agreed to dismiss Student’s small group speech goal.¹⁸

8. On October 27, 2021, the Kaufman Test of Educational Achievement, Third Edition (K-TEA) was conducted on Student. The test showed Student scored average in every area except reading comprehension. Student scored below average and at a 4.3 grade equivalent and was in the seventh grade. Student tested more than two grade levels below where he should have been in reading comprehension.¹⁹
9. Student’s 8th grade IEP set duration of services from October 26, 2022 to October 26, 2023. The IEP contained a present level of academic achievement and functional performance on Student. The IEP contained one speech goal with six objectives and student had mastered three of the objectives at the time of the annual review. The IEP contained a second goal in Speech with five objectives all of which were continued. The IEP also contain one goal in English Language Arts (ELA) which was continued. The schedule of services stated that Student would receive co taught services in literacy thirty minutes four times per week in the regular classroom. Under related services Student was to receive speech services for thirty minutes one time per week. Parent participated and stated that she was concerned about Student’s reading, specifically in the area of reading comprehension. She asked about private tutoring in the area of reading comprehension over the summer. She stated that Student had

¹⁸ District’s Exhibits, pg. 44.

¹⁹ Id., at pgs. 25-33.

difficulty with the “why” in regards to comprehension. She further asked about speech services being made up and when she would receive an updated speech progress report.²⁰ Student’s Lexile range was 840L-990L. Student’s NWEA math assessment showed that operations and algebraic thinking is a strength. However, Students NWEA Map reading assessment showed that he was in the 3rd percentile for growth and 18th percentile for achievement. Student dropped eight points from his fall reading NWEA MAP assessment.²¹

10. The IEP team met on April 6, 2023, to discuss Student’s transition to high school and to look at Extended school year services and to amend the IEP.²² Student completed a dream sheet and expressed interest in becoming a veterinarian. The team put together post-secondary transition goals for Student. The team agreed to keep all of the current accommodations and to add the use of a calculator, provide a study guide for tests/quizzes and provided printed notes. The team determined Student did not meet the requirements for extended school year services. Student was to receive thirty minutes of direct service in literacy a week. Student was to continue to receive thirty minutes of co taught literacy four times a week until the end of his eighth-grade year. From April 6, 2023, until August 13, 2023, Student was to be in the general education classroom 90% of the time. Starting on August 14, 2023, until Student’s annual review on October 25, 2023, Student was to be in the general education classroom 97% of the time. All other information in Student’s IEP remained.²³ Parent once again stated her concerns about Student’s reading comprehension and inquired about

²⁰ Id., pgs. 46-62.

²¹ Id., pgs. 53-54.

²² Id., pg. 77.

²³ Id., pg. 83.

private tutoring over the summer for reading. Parent also inquired about Student's progress in speech and wanted to know when all of his speech time would be made up.²⁴

11. On August 25, 2023, the IEP team met to discuss whether Student continued to demonstrate a need for speech language services. Parent stated that she had spoken with Student and he was okay with Ms. Wilson (special education teacher) providing him with intervention in pragmatics. The team decided that Student would receive thirty minutes per week for social skills and behavior modification (specifically focusing on pragmatics). Student was to receive these interventions during his intervention period. This decision was based on Speech therapist input, parent input, student input and teacher input. There was no speech/language evaluation conducted on Student prior to his dismissal from speech services.²⁵
12. On September 5, 2023, the IEP team met to discuss Student's schedule and address concerns about his intervention class. Parent wanted Student removed from the intervention class for the first semester because it was a waste of time as he was not receiving intervention on a daily basis in reading and he was not receiving credit for the class. Ms. Wilson stated that she could pull Student more frequently during his English class and check on him more during his intervention class. Ms. Wilson also stated she could give Student additional practice to work on during his intervention class. The principal stated that a change could not be made to Student's schedule until the second semester. Parent disagreed with the team decision because she wanted Student removed from his intervention class and wanted his reading deficits

²⁴ Id., pg. 84.

²⁵ Id., pg. 93.

addressed.²⁶ Student's intervention class was analogous to a study hall. It was staffed by a paraprofessional and not a certified teacher.²⁷

13. On September 26, 2023, the IEP team met for Student's annual review. Parents stated they would like a more intensive, direct reading comprehension instruction delivered by a qualified reading instructor. Further, Parents were concerned that Student's IEP did not include his diagnosis of dyslexia. It was discussed that Student had all A's in his courses at that time. The team determined that it would benefit Student to have additional testing/screenings conducted in speech, dyslexia, and reading in order to develop a better plan for Student. Once those assessments were completed the team was to meet back to share the results and review and revise Student's IEP as needed.²⁸ Parents signed informed consent for the evaluations on September 26, 2023.²⁹
14. On the evening of September 26, 2023, Parent sent an email withdrawing her consent for the District to evaluate Student in speech and reading.³⁰ Further in this email Parent states that "no changes should be made to his IEP until my outside source (Licensed Professional) evaluates him".³¹
15. On October 5, 2023, the District sent out a notice of conference to the Parents and under the purpose of the meeting it was to update after the September 26, 2023, meeting. Parents did not attend and the District held the IEP meeting and determined that there would be no changes made to Student's IEP, per the Parents directions

²⁶ Id., pg. 98.

²⁷ Transcripts Vol. II pgs. 13-14, Vol. IV, pg. 87.

²⁸ Id., pg. 106.

²⁹ Id., pg. 109.

³⁰ Id., pg. 113.

³¹ Id.

(email) until the outside evaluations obtained by Parents were completed. The District also changed to notice of action from that September 26, 2023 meeting to reflect that the parents did not want the school to evaluate Student and that no changes should be made to the IEP until the outside evaluations were completed.³²

16. Student's MAP test scores indicate Student made minimal progress in Language Arts: Reading between fall of 2021 and Winter of 2023. Student's scores consistently put him at least two grades below .³³

Student's MAP Language Arts Scores

Spring 2021	RIT score 191	6 Percentile
Fall 2021	RIT score 201	21 Percentile
Winter 2022	RIT score 211	35 Percentile
Spring 2022	RIT score 208	26 Percentile
Fall 2022	RIT score 213	38 Percentile
Winter 2023	RIT score 205	18 Percentile

17. Student's MAP test scores in Math indicate Student grew at least one grade level between the fall of 2021 and the Winter of 2023. However, his scores in the Winter of 2023 indicate Student is still below grade level in Math.³⁴

Student's MAP Math scores:

Spring 2021	RIT score 241	85 Percentile
Fall 2021	RIT score 211	30 Percentile
Winter 2022	RIT score 221	43 Percentile

³² District Exhibits, pg. 118.

³³ Parent Exhibits, pg. 295.

³⁴ Id.

Spring 2022	RIT score 224	44 Percentile
Fall 2022	RIT score 219	38 Percentile
Winter 2023	RIT score 226	46 Percentile

18. A speech evaluation was conducted on Student by New Hope Therapy on November 15th and 17th, 2023. The evaluator, Natalie Norwood, MS, CCC-SLP, diagnosed Student with social pragmatic communication disorder. Ms. Norwood administered the Test of pragmatic language-second edition (TOPL-2) and the Clinical Evaluation of language Fundamentals-Fifth edition (CELF-5) Metalinguistics. The CELF-5 Metalinguistics gives a Meta Pragmatic Index score, which is made up of two subtests: Making inferences and conversation skills. In the making inferences subtest, Student’s reasoning occasionally contradicted the scenario given. Student’s noted errors included statements that were possible, but not likely, as well as illogical reasonings and failure to answer the “why” question. Student’s performance yielded an average score. However, Student displayed with difficulty in identifying motives and reasons behind the actions of others. In the conversation skills subtest, Student generated dialogue given a vague scenario. His errors included pragmatic deviations/awkward word usage, dialogue that did not match the picture, vague statements and incorrect word usage.³⁵
- The TOPL-2 produces a pragmatic language index score and requires the patient to answer questions that require solutions and rationale for the solutions in social situations. Student displayed with appropriate basic understanding of pragmatics in a given scenario. However, Student’s responses were occasionally vague or failed to

³⁵ District Exhibits, pg. 131.

answer the question asked. His responses also occasionally lacked consideration of other people's feelings in the scenario. While Student often offered logical solutions to problems, he did not consistently include appropriate elements such as apologies and explanations that are socially appropriate and fix problems with others in regard to their emotions.³⁶

The evaluation recommends that Student receive support in both academic and social settings, in order to increase awareness and use of his pragmatic knowledge functionally in day-to-day life. She also recommended that Student be reevaluated in 6-12 months by a speech language pathologist in order to monitor any progress or changes to his pragmatic language skills.³⁷

19. On December 28, 2023, South Arkansas Psychological Services, conducted a psychological evaluation on Student. The evaluator C. Alexander White, M.S., LPE-1, administered the Wechsler Individual Achievement Test, fourth edition (WIAT-4) which indicated current learning problems in the areas of Reading (Word reading, Reading fluency), compared to what would be expected given Student's nonverbal intellectual abilities. Student scored in the below average range in word reading and orthographic fluency. Additional deficits in oral reading fluency indicated reading fluency that measured too weak to assign a standard score. Based on these scores the evaluator diagnosed Student with a specific learning disability with impairment in reading. When discussing issues with reading comprehension Mr. White states that "problems related to inferring literary or humanistic messages is more likely related

³⁶ Id.

³⁷ Id.

to his Autistic deficits rather than a Bonafide program extracting information by reading paragraphs or passages. Additionally, Student's statement that he obtains information through "context clues" when others read passages to him is also more consistent with his current performance of deficits in word reading/fluency rather than reading comprehension." Mr. White recommends specific education programming with accommodations for students reading deficits and autism spectrum impairments (that will affect literary interpretation).³⁸

20. On January 24, 2024, Student was number one in his class of fifty-eight and had a grade point average of 4.0.³⁹
21. Around February 12-13, 2024, Parents provided District with copies of the speech evaluation conducted on November 15th and 17th, 2023 and the psychological evaluation conducted on December 28, 2023.
22. On February 27, 2024, Parents filed this Due process complaint.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. Before consideration of the Parents' claims, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*,

³⁸ District Exhibits, pgs. 133-136.

³⁹ *Id.*, pg. 341.

546 U.S. 49, 62 (2005). Accordingly, the burden of persuasion, in this case, must rest with the Parents.

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8th Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor discrepancies in the testimony were not material to the issues to be determined and, in any event, were not deemed to be intentionally deceptive.

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

Applicable Legal Principles

The IDEA requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Hendrick Hudson Central School District Board of Education v. Rowley*, 458 U.S. 176 (1982),

the U.S. Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed.

Districts meet the obligation of providing FAPE to eligible students through development implementation of an IEP that is “ ‘reasonably calculated’ to enable the child to receive ‘meaningful educational benefits’ in light of the student’s individual circumstance”. The U.S. Supreme Court considered the application of the *Rowley* standard, and it observed that an IEP “is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.” *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The IEP must aim to enable the child to make progress. The essential function of an IEP is to set out a detailed individualized program for pursuing academic and functional advancement in all areas of unique need. *Endrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09). The *Endrew* court thus concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 1001, 197 L.Ed.2d at 352.

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

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.' " *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child's "IEP Team," which includes teachers, school officials, the local education agency (LEA) representative and the child's parents. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement of the special education and related services to be provided to the child." *Id.* § 1414(d)(1)(A)(i). A free appropriate public education (FAPE), as the IDEA defines it, includes individualized goals, "specially-designed instruction" and "related services." *Id.* § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. *Id.* §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services "in conformity with the [child's] individualized education program," or "IEP." 20 U.S.C. § 1401(9)(D).

When formulating an IEP, a school district "must comply both procedurally and substantively with the IDEA." *Rowley*, at 206-07 A procedural violation occurs when a district fails to abide by the IDEA's safeguard requirements. A procedural violation constitutes a denial of a FAPE where it "results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010). A substantive violation occurs when an IEP is not "reasonably calculated to enable a child to make

progress appropriate in light of the child's circumstances," *Andrew F.* The IDEA further provides that if a parent refuses to consent to the receipt of special education and related services, or fails to respond to a request to provide such consent, "the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency request such consent." 20 U.S.C.

§1414(a)(1)(D)(ii)(III)(aa). Although a parent always retains the right to withhold consent, after consent is withheld, the school district cannot be held liable for denying a FAPE. Additionally, when parents waive their children's rights to services, school districts may not override their wishes. *Fitzgerald ex rel. S.F. v. Camdenton R-II School District*, 439 F.3d 773 (8th Cir. 2006); *Schoenfeld v. Parkway School District*, 138 F.3d 379 (8th Cir. 1998).

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

PROCEDURAL VIOLATION OF IDEA

Regarding the first inquiry, that of whether the District complied with the procedures set forth in the IDEA, this hearing officer notes that Parents allege the District violated the procedures set forth in IDEA. The issues raised are: (1) Whether the District violated IDEA by dismissing Student from Speech therapy without an evaluation; (2) Whether the District violated IDEA by failing to meet to review/revise and develop an IEP for Student for the 2023-2024 school year. In Parents' post hearing brief, they state that there are numerous procedural violations but fail to articulate with specificity specific procedures the District violated other than the two mentioned supra.

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

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

IDEA sets forth a long list of “procedural safeguards” that each participating state must establish and maintain to ensure a FAPE is provided to its students. See generally 20 U.S.C. 1415; see also *Rowley*, 458 U.S. at 205 (“When the elaborate and highly specific procedural safeguards embodied in 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in IDEA, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid”) Even if a school district violated IDEA procedures, it does not automatically follow that the school district has denied the child a FAPE. *K.E. v. Indep. Sch. Dist. 15*, 647 F.3d 795, 804 (8th Cir. 2011). Rather, a school district’s educational plan for a given student will only be set aside for IDEA procedural violations “if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the parent’s opportunity to participate in the formulation process or caused a deprivation of educational benefit.” *Id.* At 804-805. , 20 U.S.C. 1415(f)(3)(E)(ii).

I. Whether the District failed to appropriately evaluate Student before dismissing him from Speech therapy.

On August 25, 2023, the IEP team met and determined that Student no longer demonstrated a need for speech language therapy services.⁴⁰ The notice of conference states that the basis for the action was speech therapist input, parent input, student input, and teacher input. Prior to recommending dismissal from speech/language therapy services the IEP team should review the factors to consider in dismissal. According to the ADE document titled Factors to consider in dismissal from speech or language therapy services, the IEP team should have looked at:

1. DURATION OF SERVICES

⁴⁰ District Exhibits pg. 93.

a) What has been the duration of speech therapy service? b) What has been the duration of therapy for current goal(s)/objective(s)?

2. INTENSITY OF SERVICE

a) How frequently does the student receive such therapy? b) Have alternative intensity levels of treatment been utilized?

3. MODE OF SERVICE

a) Have alternative modes of service (individual therapy, group therapy, integrated therapy, etc.) been utilized to stimulate progress? b) Have various modes of service been used for a sufficient time period?

4. REVIEW OF EVALUATION DATA

a) Does review of the evaluation data reflect an accurate diagnosis? b) Were appropriate goals/objective established?

5. FOCUS OF SERVICE

a) Have treatment methods been appropriate for the diagnosed disorder? b) What has been the student's level of response to the treatment method(s)? c) Within the scope of the treatment program, has the student been able to progress to the next level of the program or a branch of that program? d) Has treatment been at an appropriate level for the child?

6. SETTING

a) Have a variety of therapy settings been utilized (individual, group, integrated)? b) What is the student missing in the regular classroom during speech therapy? c) Have alternative therapy times (different time of day, etc.) been tried? d) Is SLP working with regular and/or special education teachers to assure curricular and/or instructional modifications are implemented if they are needed?

7. INDIVIDUALIZATION

a) Has the SLP truly individualized instruction for the student?

8. PATTERN OF SERVICE DELIVERY

a) How has therapy been provided in the past? b) What has been the focus of therapy in the past? c) Have there been gaps in service? (Has child moved frequently? Frequent absences?)

9. CAPACITY OF STUDENT FOR CHANGE (LONGITUDINAL VIEW)

a) Has student been more responsive to therapy at times? Has there been a pattern of regression and/or progression? When has he/she been most responsive? b) How do other service providers regard the child's progress to date? His/her responsiveness to therapy?

c) Does therapy and/or the IEP provide motivational incentives? d) Has the SLP maximized therapy when progress is being achieved?

10. ANALYSIS OF DYNAMICS OF THE SITUATION

a) Is the SLP basing recommendation for dismissal on child's personality traits, etc.? b) Is the SLP dismissing child due to dislike of child, parent, situation with teacher, etc.? c) Have other situational dynamics influenced recommendation for dismissal?

11. SECOND OPINION

a) Has the SLP sought the assistance of another qualified provider to furnish a second opinion?

12. CONTINUITY

a) Are other service providers consistently reinforcing what the SLP is doing in therapy or is the SLP working in isolation?

Here the IEP team did not document discussion about any of the factors mentioned above. To the contrary, on the notice of action from the August 25, 2023, meeting where the IEP team decided Student no longer “demonstrated a need for speech language services”, under the

basis for the action the District lists Speech therapist input, parent input, student input and teacher input. There is no discussion about any type of evaluation having been conducted to determine Student's eligibility for Speech therapy services. Further, testimony, from both the special education director and the special education teacher was that they could not remember if a speech evaluation had been conducted but that they were sure that the speech therapist would have conducted one if it was warranted. There was no evidence presented that a speech evaluation was conducted or that there was a discussion about why Student no longer needed Speech therapy services prior to dismissing him from speech services. This Hearing Officer finds this to be a procedural violation of IDEA.

II. Whether the District failed to review/revise and develop an IEP for Student for the 2023-2024 school year

At the beginning of each school year, the District is required to have in effect, for each child with a disability in the District, an IEP, as defined in 34 C.F.R. §300.320 (ADE8.03.1). Further, the District must ensure that the IEP of a child with a disability is reviewed in accordance with 34 C.F.R. §300.320 through §300.324; and that a reevaluation of each student in accordance with 34 C.F.R. §300.304 through §300.311, is conducted if the District determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. In accordance with 34 C.F.R. §300.303(b) the reevaluation must occur at least once every three years unless the parents and the public agency agree that a reevaluation is unnecessary. If the parent or a child with a disability refuses to consent to the reevaluation, the

District may, but is not required to, pursue that evaluation by using the consent override procedures under 34 C.F.R. §300.507 through §300.516. However, the District does not violate its obligation under 34 C.F.R. §300.311 and §300.301 through §300.11 if it declines to pursue the reevaluation.

Here the IEP team met on September 26, 2023, and determined that in order to review and revise Student's IEP additional testing in speech, dyslexia and reading were warranted and that once these assessments were finalized the team would meet again to discuss the evaluation results and review and revise Student's IEP.⁴¹ Parent's provided their informed consent for these evaluations to be conducted.⁴² However, on the evening of September 26, 2023, Mom sent an email that stated, "I want the notice of action to state that I do not want the school to evaluate [Student] in speech and reading. No changes should be made to his IEP until my outside source (Licensed Professional) evaluates him".⁴³ On October 5, 2023, the District sent Parents a notice of conference form attempting to schedule an IEP meeting to update the September 26, 2023, meeting. On October 5, 2023, the District held an IEP meeting without the parents present, and acknowledged that parents had revoked their consent, and that no changes were to be made to Student's IEP until the outside evaluations parent secured were completed.

Parents' outside evaluations were completed the end of December of 2023, but it was until around February 12-13, 2024, that Parents provided District with copies of the speech evaluation conducted on November 15th and 17th, 2023 and the psychological evaluation conducted on December 28, 2023.⁴⁴ On February 27, 2024, Parents filed this Due process complaint. The

⁴¹ District Exhibits, pg. 106.

⁴² Id., pg. 109.

⁴³ Id., pg. 111

⁴⁴ Transcripts Vol. IV. pg. 117.

District did not have a opportunity to hold an IEP meeting to review Student's evaluation results or review and revise or develop Student's IEP for his 9th grade year.

Based on the above this hearing officer does not find the District procedurally violated IDEA.

Conclusion

Having considered Parent's allegations of procedural due process violations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that District procedurally violated the IDEA by failing to properly evaluate and consider necessary factors prior to dismissing Student from speech services. I further find that the District did not commit any procedural violations with regard to meeting to review and revise Student's 2023-2024 IEP.

SUBSTANTIVE VIOLATIONS OF IDEA

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District failed to properly evaluate and consider necessary factors prior to dismissing Student from speech services, it is now necessary to consider whether these procedural violations resulted in a substantive denial of FAPE to Student. Even if a school district violated IDEA procedures, it does not automatically follow that the school district has denied the child a FAPE. *K.E. v. Indep. Sch. Dist. 15*, 647 F.3d 795, 804 (8th Cir. 2011). Rather, a school district's educational plan for a given student will only be set aside for IDEA procedural violations "if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process or caused a deprivation of educational benefit." *Id.* At 804-805.

SPEECH SERVICES

As discussed above Student was dismissed from speech services without considering the necessary factors and without any type of evaluation. Parents agreed on August 25, 2023, because the IEP team stated Student no longer demonstrated a need for speech language services and that Student would receive thirty minutes per week of intervention provided by Ms. Wilson (special education teacher) in social skills and behavior modification (specifically focusing on pragmatics). Parent's outside speech evaluation on Student showed that Student doesn't qualify for speech services based on standardized scores, it goes on to state that Student's functional pragmatic language requires support and attention in order to ensure academic success and satisfaction in his personal relationships. Further the evaluation gives suggested supports for Student which include, peer model for student during large and small group settings; encourage structured, monitored group activities; practice "acting out" real life scenarios that are difficult for Student; Monitor Student during large group social settings; continue to provide examples and discuss the following pragmatic skills with Student: apologies, compliments, greetings, complaints, refusals, and request.⁴⁵ Without an evaluation or discussing necessary factors prior to dismissing Student from speech language services, the District seriously hampered the Parents' opportunity to participate in the formulation process. Parents could not make an informed decision regarding Student's need for speech language services or supports, or pragmatic language services based on the information provided by the District. I find this to be a substantive violation of IDEA.

⁴⁵ Parents exhibits, pgs. 129-132.

STUDENT IEPS

Turning to whether the District substantively denied FAPE to Student, i.e. whether the District failed to provide IEPs that were reasonably calculated to enable Student to make appropriate progress in light of his individual circumstances. Prior to March 22, 2017, Eighth Circuit law provided that if a student received “slight” or “de minimis” progress, then he or she was not denied educational benefit. *K.E.*, 647 F.3d at 810; *Paris Sch. Dist. v. A.H.*, 2017 WL 1234151 (W.D. Ark 2017). On March 22, 2017, however, the United States Supreme Court “rejected the ‘merely more than de minimis’ standard that had previously been the law of the Eighth Circuit.” *Paris Sch. Dist.*, 2017 WL at 4 (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, No. 15-827, 2017 WL 1066260, 580 U.S. ___ (2017), 137 S.Ct. 988 (2017)). In *Endrew F.*, the standard set forth by the Court is “markedly more demanding” as compared to the “merely de minimis” test outlined in *Rowley*. *Endrew F.*, 137 S. Ct. at 1000. The Court stated the following: It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom but is satisfied with barely more than de minimis progress for those who cannot. When all is said and done, a student offered an educational program providing “merely more than de minimis” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly . . . awaiting the time when they were old enough to “drop out.” *Endrew F.*, 137 S.Ct. at 1001 (citations omitted). The Court held that the IDEA requires, even demands, more. Specifically, the IDEA requires that students under the Act be provided with an “educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Id.* The IEP is the guiding document and primary method for providing

special education services to disabled children under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). “Through the development and implementation of an IEP, the school provides a FAPE that is ‘tailored to the unique needs of a particular child.’” *Paris Sch. Dist.*, 2017 WL 1234151, at *5 (citing *Endrew F.*, 2017 WL 1066260, at *1000). An IEP is not designed to be merely a form but, instead, a substantive document that is developed only after a district has carefully considered a student’s “present levels of achievement, disability, and potential for growth.” *Id.* (citations omitted). Pursuant to *Endrew F.*, a district “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 2017 WL 1066260, at *1000. For most students, to comply with this standard, providing FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.” *Id.* However, in the event that this is not possible, the education of a disabled child still needs to be “appropriately ambitious” in light of a student’s individual circumstances. *Id.* Every IEP, pursuant to the IDEA, is required to include the following: (1) a statement of a student’s present levels of academic achievement and functional performance; (2) a description of how a student’s disability affects his or her involvement and progress in the general education curriculum; (3) annual goals that are measurable, as well as a description as to how progress toward stated goals will be measured; and (4) a description of special education and related services provided to student. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV).

Here, Parents allege that District did not provide Student a FAPE between February 27, 2022 and February 27, 2024, by failing to develop appropriate IEPs that would allow student to make progress in light of his individual circumstances for the 2021-2022, 2022-2023 and 2023-2024 school years. Specifically, Parents allege that Student’s IEPs failed to address his learning

disability in reading, his below grade level performance in math and his pragmatics/social skills deficits.

2021-2022 IEP (7th grade)

Student's 2021-2022 IEP had duration of services between October 26, 2021, to October 26, 2022. Based on the evidence presented, it is the opinion of this Hearing Officer that Student's October 26, 2021 to October 26, 2022 IEP provided Student a FAPE. Here Student's IEP included an appropriate statement of his present levels of academic achievement and functional performance, appropriate accommodations, and an adequate description of how Student's disability affected his involvement and progress in the general education curriculum. Further, the IEP contained one goal in the area of reading comprehension with two objectives and one goal in speech with six objectives. The schedule of services indicated that Student would receive 118 minutes of co-taught services in literacy per week in the regular classroom and 45 minutes of direct instruction in reading comprehension five times per week in the special education classroom. Parent participated and stated that she believed Student was doing well academically but was concerned Student did not have any friends. Further, Student's NWEA MAP scores in language arts available on October 26, 2021, showed Student went from a RIT score of 191 and percentile ranking of 6 in the spring of 2021 to a RIT score of 201 and a percentile ranking of 21. And even though Student was still significantly behind in language arts, he was making progress according to the evidence available.

Based on the evidence presented this Hearing Officer finds that Student's 2021-2022 IEP provided him a FAPE.

2022-2023 IEP(8th grade)

Student's 2022-2023 IEP had duration of services between October 26, 2022 to October 26, 2023. As with Student's 2021-2022 IEP, Student's eighth grade IEP, the October 26, 2022-October 26, 2023 IEP included an appropriate statement of Student's present levels of academic achievement and functional performance, appropriate accommodations, and an adequate description of how Student's disability affected his involvement and progress in the general education curriculum. His October 26, 2022, to October 26, 2023, IEP, however, failed to provide appropriate annual goals and special education services to address Student's deficits.

Regarding the academic area of reading comprehension, Student's most recent reading level at the time that the October 26, 2022, IEP was developed was fourth grade, third month. Based on the data available, Student was at least two grade levels behind in reading comprehension. In addition the Kaufman Test of Educational Achievement, administered in October of 2021, indicated that although Student was above average in sound symbol composite (phonological processing), Oral Fluency composite (object naming facility), and average in nonsense word decoding, letter and word recognition, silent reading fluency, word recognition fluency, decoding fluency, reading vocabulary, associational fluency, written expression, oral expression, spelling, letter naming, writing fluency, math fluency and decoding fluency, Student's reading comprehension was consistently below average placing him in the fourth grade third month grade equivalent. This was consistent with Students NWEA scores in reading comprehension which at the development of the October 26, 2022 IEP, showed Student still at least two grade levels behind in reading comprehension. Further, Parent discussed her concerns that Student's reading comprehension was an issue and asked for additional help for Student. Even with this information, the IEP team decided to remove Student's direct services for reading

comprehension. There were no new goals to address Student's deficits in reading comprehension, as discussed above the IEP team decided to remove Student's direct instruction in reading comprehension. Although Student made minimal progress in reading on his NWEA testing and was maintaining good grades, his reading comprehension continued to be an issue, and he was consistently testing at least two grade levels below where he should have been. Further, Student carries a diagnosis of Dyslexia and previously completed the Take Flight program for dyslexia. This is in addition to his SLD in reading comprehension. As discussed above, Student's test scores support the conclusion that Student's October 26, 2022-October 26, 2023 IEP was not reasonably calculated to enable a child to make appropriate progress in light of his circumstances. At the time of the IEP development Student was more than two grade levels below in reading comprehension and the IEP team failed to address this deficit.

Regarding the academic area of math, Student's NWEA scores during his eighth-grade year show Student was close to a year behind in math but consistently made growth. Further, the KTEA-3 administered to Student on October 27, 2021, showed Student to be in the average category in math concepts and applications, math computation and math fluency. Testimony from both District personnel and Parents agreed that math is a strength of Student.

Here, Student's IQ was average. Yet his reading comprehension scores were woefully low. In fact, throughout the duration of Student's October 26, 2022, IEP Student was continually two grade levels below in reading comprehension. In light of Student's individual circumstances, i.e. average intelligence, Student's October 26, 2022, to October 27, 2023 IEP was not reasonably calculated to enable him to make appropriate progress in light of his circumstances in the academic area of reading comprehension. As such it is the opinion of this

Hearing Officer that Student's October 26, 2022 to October 26, 2023 IEP denied Student a FAPE and, therefore, resulted in a substantive violation of the IDEA.

2023-2024 IEP(9th grade)

In this case there was no IEP developed for 2023-2024 school year prior to Parents filing their due process complaint on February 27, 2023. Because the way the District does its annual reviews, Student's IEP annual reviews were held at the end of October annually and therefore there was an IEP in place when Student began his 9th grade year. Here the IEP team met on September 26, 2023, and determined that in order to review and revise Student's IEP additional testing in speech, dyslexia and reading were warranted and that once these assessments were finalized the team would meet again to discuss the evaluation results and review and revise Student's IEP.⁴⁶ Parent's provided their informed consent for these evaluations to be conducted.⁴⁷ However, on the evening of September 26, 2023, mom sent an email that stated, "I want the notice of action to state that I do not want the school to evaluate [Student] in speech and reading. No changes should be made to his IEP until my outside source (Licensed Professional) evaluates him".⁴⁸ On October 5, 2023, the District sent Parents a notice of conference form attempting to schedule an IEP meeting to update the September 26, 2023, meeting. On October 5, 2023, the District held an IEP meeting without the parents present (because parents refused to attend), and acknowledged that parents had revoked their consent, and that no changes were to be made to Student's IEP until the outside evaluations parent secured were completed. The testimony was that the District decided to keep Student's October

⁴⁶ District Exhibits, pg. 106.

⁴⁷ Id., pg. 109.

⁴⁸ Id., pg. 111

26, 2022 IEP in place and continue to provide services to Student until Parents outside evaluations were completed.

Around February 12-13, 2024, some forty five days after the evaluation were completed, Parents provided District with copies of the speech evaluation conducted on November 15th and 17th, 2023 and the psychological evaluation conducted on December 28, 2023.⁴⁹ On February 27, 2024, Parents filed this Due process complaint. The District did not have a opportunity to hold an IEP meeting to review Student's evaluation results or review and revise or develop a new IEP for Student's 2023-2024 ninth grade year.

Parents failed to provide sufficient evidence that the District denied Student a FAPE because it failed to develop an IEP after Parents withdrew their consent for Student to be evaluated, stated that no changes were to be made to Student's IEP until those outside evaluations were completed and refused to participate in an IEP meeting the District attempted to hold on October 5, 2023. However, because the District continued to implement Student's 2022-2023 IEP which this Hearing Officer found above violated Student's right to a FAPE, this Hearing Officer finds that the District failed to provide Student a FAPE from October 26, 2023 until the filing of their due process complaint on February 27, 2024.

In sum, Student's October 26, 2022, to October 26, 2023 IEP was not reasonably calculated to enable Student to make appropriate progress in reading comprehension. Essentially, Student's goals remained the same or similar from year to year and despite little to no progress and test scores that showed Student was continually two years behind in reading comprehension, Student's minutes for direct instruction in reading comprehension were removed. Further, as discussed above the District removed Student from speech services without appropriately

⁴⁹ Transcripts Vol. IV. pg. 117.

considering factors or completing a speech evaluation on Student, thereby seriously hampering the Parents' opportunity to participate in the formulation process. For these reasons, it is the opinion of this Hearing Officer that the District failed to provide FAPE to Student on his October 26, 2022-October 26, 2023 IEP and because Student's 2022-2023 IEP continued to be implemented from October 26, 2023 to the filing of this due process complaint on February 27, 2024, the Hearing Officer finds that the District substantively violated the IDEA from October 26, 2022 to February 27, 2024.

ORDER

The results of the testimony and evidence warrant a finding for the Parents. Specifically, Parents introduced sufficient evidence in the record to establish by preponderance of the evidence that the District denied Student a FAPE between October 26, 2022, and February 27, 2024, District is hereby ordered to take the following actions regarding Student:

1. On or before February 15, 2025, the District shall have Student comprehensively evaluated for the purpose of obtaining current information so as to determine Student's academic deficits. The comprehensive evaluation of Student must contain, at a minimum, testing to determine Student's intelligence, reading abilities (all facets including, but not limited to, basic reading skills, reading comprehension, reading fluency, and word and letter identification), phonological awareness and processing, writing skills (including spelling, punctuation, grammar), math skills, adaptive behavior, performance on classroom-based assessments and scales, and speech deficits. In addition, the comprehensive evaluation must include assessments aimed at

determining the extent to which autism may, if at all, contribute to Student's academic issues.

2. District is required to hold an IEP meeting for Student for the purpose of discussing the results of the comprehensive evaluation ordered in paragraph 1 by March 1, 2025. At this IEP meeting the District and Parents shall discuss all evaluation results and determine what special education programming is appropriate.

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

Finality of Order and Right to Appeal:

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

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

IT IS SO ORDERED.

Dana McClain

HEARING OFFICER

12/13/2024

DATE