

ARKANSAS DEPARTMENT OF EDUCATION

Special Education Unit

████████████████████
As Parents of
████████████████

PETITIONERS

VS.

NO. H-25-26

BATESVILLE SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Batesville School District (hereinafter “District” or “Respondent”) denied ██████████ (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between January 27, 2023 and January 27, 2025, in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”), by: (1) failing to assemble a transition team and failing to determine whether Student qualified for a kindergarten IEP. (2) failing to conduct an evaluation prior to determining Student was no longer eligible for special education services. (3) failing to consider Parents’ request for an IEP as a referral for special education services. (4) failing to hold a referral conference within seven (7) calendar days of parents’ referral. (5) failing to have all assessments required by ADE’s eligibility criteria and

program guidelines for the disability category of Other Health Impairment (OHI). (6) failing to do a comprehensive language screening and/or diagnostic measure of student's need for speech therapy. (7) failing to have all required IEP team members present for the October 4, 2024, IEP/referral conference meeting. (no special education teacher) and (8) failing to develop an IEP at the October 4, 2024, October 29, 2024, and November 18, 2024, IEP meetings.

Procedural History

On January 27, 2025, the Arkansas Department of Education (hereinafter referred to as the "Department" or "ADE") received a request to initiate a due process hearing from [REDACTED] ("Parents" or "Petitioners"), as the Parents of [REDACTED] (hereinafter referred to as "Student"), against the Batesville School District (hereinafter referred to as "District" or "Respondent"). This case was numbered H-25-26. 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 then set to be heard March 12-14, 2025.

The Prehearing conference was conducted via zoom on March 10, 2025.² Counsel for both the Parents 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 Additionally, Parents had filed a Notice of Relief Requested providing notice to the District that they would be

¹ See hearing officer File-Petitioner Complaint.

² Transcript, prehearing conference.

³ Id.

seeking reimbursement for Student's enrollment at the private school, Engage, including transportation costs, from the time Student was enrolled. Further, Parents sought cost of private school placement for Student at Engage for the remainder of the 2024-2025 school year, including the summer session of 2025 and for the 2025-2026 school year and each successive school year unless on or before June 1, 2025, the District offers Student an IEP reasonably calculated to provide him a FAPE.

Thereafter testimony was heard in this case on March 12, 13 and 14, 2025. At the end of the hearing on March 14, 2025, the parties had not completed their presentation of testimony, and the case was continued until April 1, 2, 3 and 4, 2025. On April 4, 2025, the parties had not completed their presentation of testimony, and the case was continued until April 9, 2025.⁴ Testimony was completed on April 9, 2025, with all parties participating via Zoom.

Present for the Hearing were Theresa Caldwell, attorney for the parents, Jay Bequette, attorney for the District, Linnie Gramling, Theresa Caldwell's assistant, [REDACTED] parent, [REDACTED] parent, Kristi Cox, special education supervisor Batesville School District., Jewel Harper, observing hearing officer.

The following witnesses testified in this matter: Kristi Cox, Tiffany Jones, Jennifer Harmon, Trish House, Michelle Spivey, Sonja Skelton, Lexi Shaw, Danielle Johnson, Laura Hance, Lance Hall, [REDACTED] and M. Tracy Morrison.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.

⁴ Transcripts, Vol. I-IX.

⁵ Id.

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements. Both parties submitted post hearing briefs in accordance with the deadline set by this Hearing Officer.⁶

Findings of Fact

1. Student is a six (6)year-old boy who is in kindergarten in the Batesville School District (“District”).⁷
2. In November of 2022, Student was evaluated for special education services. Speech and language evaluation indicated a mild to moderate delay in the area of language. Student exhibited a mild expressive language delay and a moderate delay in the area of receptive language. It was recommended that Student receive speech-language therapy 60 minutes weekly to help remediate deficits in the area of language.⁸ Further, the evaluation results indicated a severe delay in fine motor skill, gross motor skills, and cognition skills and a moderate delay in social emotional skills. The programming evaluation (Brigance) indicated a severe delay in self-help skills. These delays were felt to have an adverse effect on Student’s ability to use reasoning and understanding skills effectively, his pre-handwriting skills, his ability to move around the environment like peers, use independence skills effectively, play cooperatively with peers, and attend to requested tasks appropriately. The team determined that Student needed developmental therapy services to address the delayed areas of gross motor, fine motor, cognition, self-help and social/emotional. Student was identified for special education services under non-categorical ages 3-5 only and an IEP was

⁶ See Hearing Officer File-post hearing briefs.

⁷ See Parent Due Process Complaint.

⁸ Parents’ Exhibits, pg. 183. District Exhibits, pg. 32.

- developed.⁹ It was recommended that Student receive developmental therapy services 60 minutes weekly to address his delays in fine motor, gross motor, cognition, self help and social emotional skills.¹⁰
3. As of June 30, 2023, the North Central Education Services Cooperative ceased having any responsibility for the Batesville Early Childhood Program, and the district became solely responsible for providing Student a Free Appropriate Public Education. (FAPE).¹¹
 4. For the 2023-2024 school year, Student attended the district's preschool program where he had a preschool IEP.¹²
 5. In October of 2023, a psychological evaluation was conducted on Student by The Learning Center. Mike Davis, Ph.D., who conducted the psychological evaluation provided the following diagnoses:
 - 314.01 Attention-Deficit Hyperactivity Disorder, Combined Presentation
 - 315.32 Language Disorder (By Medical Record Reviews, Supported by Current Assessment)
 - R44.8 Other Symptoms and Signals Involving General Sensations and Perceptions (Sensory Processing Deficits) (By Medical Record Review, Supported by Current Assessment)
 - 315.4 Developmental Coordination Disorder (Fine Motor Deficits) (By Medical Record Review, Supported by Current Assessment)
 - Memory Deficits (Verbal-Mild, Nonverbal-Extreme)

⁹ District's exhibits, pg.33.

¹⁰ District pg. 32.

¹¹ Hearing Transcript, Vol. 1, pg. 14.

¹² Parents' Exhibits, pgs. 98-111.

- Processing Speed Deficits (Verbal-Mild, Nonverbal-Extreme)
 - Adaptive Behavior Deficits (Home Setting: Global-mild to Extreme)
 - Academic Deficits (Early, Global-Mild to Significant)
 - Frustration Tolerance Deficits (Mild)
 - Sleep Deficits (Onset and Maintenance, Low Need)
 - Appetite Deficits (Picky, Variable)¹³
6. On November 1, 2023, a notice of conference was sent stating an IEP meeting would be held on November 15, 2023.¹⁴
7. At the November 15, 2023, an IEP meeting was held, and a preschool IEP was developed with duration of services from November 15, 2023, to June 30, 2024. This IEP contained Present level of academic achievement and functional performance.¹⁵This IEP contained:
- Eight (8) EC language (SLP) goals. There are zero language objectives and progress toward these goals was to be measured by weekly data collection and therapist observation/discretion.¹⁶
- One (1) gross motor goal without any objectives and progress was measured by observation charts and checklists.
- Two (2) fine motor goals without any objectives and progress was to be measured by checklists and observation charts.¹⁷

¹³ Parents' Exhibits, pg. 167, District Exhibits, pg. 51.

¹⁴ Id., pg. 60.

¹⁵ Id., pg. 69.

¹⁶ Id., pg. 75-76.

¹⁷ Id.

One (1) cognition goal without any objectives and progress was to be measured by observation charts and checklists.¹⁸

Two (2) self-help goals without any objectives and progress were to be measured by observation charts and checklists.¹⁹

One (1) social emotional goal which contained three (3) objectives and progress were to be measured by observation charts and checklist.²⁰

Further the schedule of services indicated that Student would receive Direct instruction in EC Developmental Sixty (60) minutes two times per week in the regular classroom, and EC language thirty minutes two times per week in the therapy room.

8. On February 15, 2024, an occupational therapy re-evaluation was conducted by Danielle Johnson, MS OTR/L, at STARS Academy, where Student had been receiving outpatient Occupational therapy services from Ms. Johnson. Ms. Johnson concluded that Student had the following limitations:

- Moderate delays in visual-motor integrations (Body Function)
- Moderate delay in overall fine motor skills (Body Function)
- Recent ADHD diagnosis (Body Function)
- Moderate and severe difficulties in all sensory areas assessed (Body Function)
- Difficulty with social participation and etiquette (Activities and Participation)

Due to the nature and severity of Student's impairment, Ms. Johnson recommended 120 minutes of occupational therapy per week. Further she

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

suggested Student would benefit from a “sensory diet” established in the classroom environment. Student would also benefit from “heavy work and proprioceptive tasks, deep pressure tactile input tasks, as well as sensory tools and materials.”²¹

9. Parent notified the District via a waiver form dated April 24, 2024, that Student would be waiving kindergarten for the 2024-2025 school year.
10. On May 16, 2024, an IEP team meeting was held without the parents present. The evaluation programming conference decision form stated that although Student’s most recent speech evaluation (11/4/2022) indicated a receptive and expressive language delay, the team claimed that current information from progress monitoring data, progress toward his IEP goals and information from the classroom teacher indicated that Student no longer demonstrated a language impairment. The IEP team decided they did not need a speech and language evaluation and instead the IEP team recommended Student be dismissed from direct speech therapy services and thus from special education, without any input from the parents.²² At this meeting the IEP team, minus the parents, discussed Student’s speech and language progress and on the impact statement Ms. Harmon, MCD, CCC-SLP, stated, “while [Student’s] current speech and language evaluation indicates delays in receptive and expressive language skills, current data to include progress to date on language goals/objectives and programming data indicate that Student no longer demonstrates a language delay.”²³ However, when pressured during her testimony to provide data used to

²¹ Parents’ Exhibits, pg. 211. District’s Exhibits pgs. 143-152.

²² Id., pg. 113.

²³ Parents Exhibits, pg. 115.

- determine Student had met his IEP goals, Ms. Harmon had a difficult time looking at the objective data on progress monitoring sheets to conclude Student met several of his goals/objectives. Instead, Ms. Harmon stated she saw Student doing well and knew he met his goals and objectives because he performed well in speech therapy sessions according to therapist observation and discretion.²⁴
11. May 16, 2024, a notice of action was completed explaining that based on goals/objective progress, curriculum-based assessments, developmental and speech testing, Student no longer meets eligibility requirements and was dismissed from developmental and speech therapy services.
 12. Parents decided to enroll Student for kindergarten on August 13, 2024, the day before kindergarten was set to begin. Parents uploaded all of Student's special education records and believed Student would be starting kindergarten with an IEP, because they were unaware Student had been dismissed from services at that May 16, 2024, IEP meeting.²⁵ Parents uploaded documents into PowerSchool upon registering Student for kindergarten on August 13, 2024. However, the Special Education Department is not notified when students enroll using this platform.²⁶
 13. Student was assigned to Ms. Sonja Skelton's kindergarten classroom when school began.
 14. When school started Parent asked Ms. Spivy, the elementary school principal about Student's IEP transferring from preschool. Ms. Spivy contacted Mrs. Cox about Student's IEP transferring from preschool. Mrs. Cox responded that Student's IEP

²⁴ Hearing Transcript, Vol. II., pgs. 179-208.

²⁵ District Exhibits, pg. 602.

²⁶ Id., pg. 214.

- would not transfer from preschool, and parent responded that she needed to meet with Ms. Spivy. Around August 16, 2024, Parent met with Ms. Spivy told Ms. Spivy that Student needed an IEP and that he specifically need Occupationally therapy. Parent told Ms. Spivy that he had an IEP in preschool, and he is going to need the services now. Ms. Spivy said why don't we just wait and see.²⁷
15. On Saturday, September 14, 2024, Parent sent an email to the district outlining a written referral for special education services.²⁸
 16. On Saturday, September 14, 2024, Kristi Cox, the District special education coordinator responded to Parents, explaining the referral process and what the timeline was and then asked for any and all diagnoses, tests, and evaluations, etc.
 17. On September 15, 2024, a formal special education referral was made by the parents.²⁹
 18. On September 18, 2024, Kristi Cox, emailed the parents again explaining that she had just learned that parents can upload records in PowerSchool when they register their children and that she had located and printed Student's OT evaluations from STARS, and his psychological evaluation from the learning center in Jonesboro and the parents didn't need to provide additional copies of those.³⁰
 19. On September 23, 2024, Student was moved to Ms. Lexi Shaw's classroom due to Student's worsening behavior in Ms. Skelton's room.
 20. A referral conference was held on October 4, 2024. At this meeting the IEP team determined Student met the criteria for special education services under the IDEA

²⁷ Hearing Transcript, Vol. VII, pgs. 155-156.

²⁸ Id.

²⁹ Parents' Exhibits, pg. 3.

³⁰ District Exhibits, 217.

category of other health impairment (OHI) The team further determined that no additional evaluation components were needed. Additionally based on evaluations provided by the parents Student qualified for direct occupational therapy and special education services through the indirect model.³¹ The team stated that the IEP team had 30 days to construct and implement the IEP, and that the “draft” IEP would be ready for review by Monday October 7, 2024.³²

21. On October 17, 2024, the District conducted a Sensory Profile to gather up to date sensory information for Student.³³
22. Between October 4 -25, 2024, the district gathered data on Student and documented 49 instances of maladaptive behaviors.³⁴
23. On October 29, 2024, an IEP meeting was held, and Student’s IEP was amended. The IEP duration of services was from October 29, 2024, to October 3, 2025. The IEP contained Students present level of academic achievement and function performance. This IEP included five (5) goals for social skills with progress being monitored by student conferences, observation charts and data collection. This IEP also contained one (1) goal and fifteen (15) objectives for occupational therapy with progress being monitored by work samples and therapist observation. Additionally, the IEP contained a schedule of services that included:
 - Indirect services in Social/emotional skills for thirty (30) minutes three times per week to be provided in the regular classroom

³¹ Parents’ Exhibits, pg. 6.

³² Id., at pg. 7.

³³ Id., pg. 10.

³⁴ Id., pgs. 365-377.

- Occupational therapy thirty (30) minutes two times per week to be provided in the therapy room.³⁵
24. Parents did not receive a copy of the IEP at the meeting but received it by email later that same day October 29, 2024.
 25. After receiving their copy of Student's IEP, parents contacted Mrs. Cox to inquire why a sensory diet was left out of the IEP.
 26. The District scheduled an IEP meeting for November 18, 2024.³⁶
 27. On November 18, 2024, the IEP team met to discuss the Parents' concerns that a sensory diet be added to Student's IEP. Parents invited two individuals to speak to Student's need for a sensory diet. Danielle Johnson and Mary Hardin, explained Student's need for a sensory diet and how the lack of a sensory diet affected Student's behavior.³⁷ Johnson had prepared a sensory diet plan for Student.³⁸ Parents also asked that Johnson be permitted to come into the classroom to observe and the District rejected this request.³⁹
 28. Parents did not receive a copy of the IEP developed the day of the IEP meeting. Instead, Parents received a copy of the IEP on November 26, 2024.
 29. The District's occupational therapist, Lance Hall, believed that Student's behaviors were not sensory in nature but were oppositional defiant behaviors. Mr. Hall did not believe that a strict sensory diet would benefit Student and refused to commit the district's occupational therapy program to implementing a strict sensory diet for

³⁵ Id., pgs. 12-23.

³⁶ District's Exhibits, pg. 467.

³⁷ Hearing Transcript, Vol. V, pg. 35.

³⁸ Id., pg. 36, Parents' Exhibits, 215A-B.

³⁹ Id., at 49.

Student. The District did not conduct an occupational therapy evaluation on Student. The District adopted Student's outside occupational therapy evaluation conducted by Danielle Johnson but disagreed with her sensory findings.

30. Student's behavior continued to deteriorate. Between August 2024 and December 2024.
31. In January 2024, Student's behavior had deteriorated to the point that Student was being transferred into a new kindergarten classroom for the third time since August of 2024. Parents were told that that this was the last thing the district would try before sending Student to the Alternative Learning Environment (ALE).
32. On January 27, 2025, Parents filed their 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*, 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.' " *Endrew 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," *Endrew 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. *Endrew 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 failing to assemble a transition team and failing to determine whether Student qualified for a kindergarten IEP. (2) Whether the District violated IDEA by failing to conduct an evaluation prior to determining Student was no longer eligible for special education services. (3) Whether

the District violated IDEA by failing to consider Parents' request for an IEP a referral for special education services. (4) Whether the District violated IDEA by failing to hold a referral conference within seven (7) calendar days of Parents' referral. (5) Whether the District violated IDEA failing to have all assessments required by ADE's eligibility criteria and program guidelines for the disability category of other health impairment (OHI). (6) Whether the District violated IDEA by failing to do a comprehensive language screening and/or diagnostic measure of student's need for speech therapy. (7) Whether the District violated IDEA by failing to have all required IEP team members present for the October 4, 2024, IEP/referral conference meeting. (8) Whether the District Violated IDEA by failing to develop an IEP at the October 4, 2024, October 29, 2024, and November 18, 2024, IEP meetings.

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 several 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 procedurally violated IDEA by failing to assemble a transition team and failed to determine whether Student qualified for a kindergarten IEP?

Arkansas Department of Education Rules and Regulations at 21.02 states:

21.02 TRANSITION FROM EARLY CHILDHOOD SPECIAL EDUCATION PROGRAMS TO KINDERGARTEN

21.02.1 Applicability.

21.02.1.1 These regulations apply only to the transition of eligible children with disabilities from the Early Childhood Special Education Program to school-aged programs upon eligibility for school entry at age five (5).

21.02.1.2 Participation in the Early Childhood Special Education Program does not make a child with disabilities automatically eligible for special education and related services upon entry to a school-aged program

21.02.1.3 One purpose of the transition process is to determine the continued eligibility of a child with disabilities exiting the Early Childhood Special Education Program in order for the child to receive special education and related services in the school- aged program.

21.02.2 General.

21.02.2.1 Transition from the Early Childhood Special Education Program to the school-aged program will occur upon the child attaining the age of five (5) and becoming eligible for kindergarten enrollment.

21.02.2.2 A child with disabilities exiting the Early Childhood Special Education Program may receive special education and related services in the school-aged program only if the child is determined to be a child with a disability under the ADE's eligibility criteria governing school-aged programs.

21.02.2.3 The pre-transitional process will begin in January prior to the child enrolling in kindergarten.

21.02.2.4 Beginning in January of each year, the Early Childhood Special Education Program will notify each LEA of the preschool children with disabilities in the LEA's jurisdiction that will be eligible to enter kindergarten the following school year, in order to begin transition planning for each child.

21.02.2.5 Upon receipt of notice of a child's impending transition from the Early Childhood Special Education Program to the school-aged program, a transition team will

meet to define the activities that will take place throughout the transition process, the time frames in which these activities must be accomplished, and the person(s) responsible for carrying out these activities.

21.02.2.6 At a minimum, the transition team will consist of the following individuals -

- A. The parent(s);
- B. A representative of the Early Childhood Special Education Program; and
- C. A representative of the LEA where the child will enter the school-aged program.

21.02.2.7 Responsibility for implementing the transition guidelines established by the ADE is jointly shared by the Early Childhood Special Education Program and the LEA. Failure on the part of either party to implement the guidelines will result in a finding of non-compliance for the nonparticipating party.

In the present case, the district was responsible for the operation of Student's preschool program. Yet, the record is devoid of evidence that shows the Early childhood program notified the District's LEA that Student was a student with a disability and would be eligible to enter kindergarten the following school year. Further Parents are correct that there was no pre-transitional process started in January of 2024 as required under 21.02.2.3. Further, there is no evidence that there was a meeting scheduled between Student's preschool program, the District and the parents as required under 21.02.2.5 and 21.02.2.6. Had this process occurred and the parents been included and allowed to participate their indecisiveness about Student moving to kindergarten might have been avoided. The information provided in this pre-transitional and transitional conference could have provided Parents with valuable information that could have

been used to make informed educational decisions for Student. IDEA prides itself on parental involvement and making sure parents are included, informed and participating in the process.

This is a procedural violation of IDEA.

Parents further argue here that the District also failed to determine whether Student qualified for a kindergarten IEP. This hearing officer cannot agree that the District had an obligation to determine if Student qualified for a kindergarten IEP at this stage in the process. I can deduce that what the Parents are really arguing is that the District had a child find obligation.

"In order that all children with disabilities may receive a FAPE, the IDEA imposes a 'child find' obligation on school districts." Indep. Sch. Dist. No. 283 v. E.M.D.H. by and through L.H., 357 F.Supp.3d 876, 888 (D. Minn. 2019) (citing 20 U.S.C. § 1412(a)(3)) (aff'd in relevant part E.M.D.H., 960 F.3d at 1083). Pursuant to this obligation, districts have a duty to ensure that:

All children with disabilities residing in the State ... regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3)(A). This provision imposes an affirmative duty on school districts to "identify, locate, and evaluate all children with disabilities ... to ensure that they receive needed special-education services." Forest Grove Sch. Dist., 557 U.S. at 245 (internal quotation marks and brackets omitted). Fitzgerald ex rel. S.F. v. Camdenton R-III School District, 439 F.3d 773 (8th Cir. 2006).

Child find extends to children who are suspected of having a disability and in need of special education, even though they are advancing from grade to grade and performing on grade level. 34 C.F.R. §300.111(c)(1). Once a child is identified as potentially having a

disability, the school district "shall conduct a full and individual initial evaluation" to determine whether the child has a disability. 20 U.S.C. § 1414(a)(1)(A). Jacksonville N. Pulaski Sch. Dist. v. D.M., 4:20-CV-00256-BRW (E.D. Ark. May 21, 2021). "An unreasonable delay in complying with this duty 'may constitute a procedural violation of the IDEA.'" Krawietz by Parker v. Galveston Indep. Sch. Dist., 900 F.3d 673, 676 (5th Cir. 2018) (quoting D.K. v. Abington 696 F.3d 233, 249-50 (3d Cir. 2012)).

Here, the District ran the preschool program Student attended and received special education services from. The district was on notice that Student had a disability and may need special education services in kindergarten. Under child find the district had a continuing obligation to determine if student continued to be a student with a disability in need of special education services. The District failed to meet its child find obligation, when it failed to determine if Student continued to be a student with a disability in need of special education and related services for his upcoming kindergarten year.

This is a procedural violation of IDEA.

II. Whether the District procedurally violated IDEA when it dismissed Student from special education without conducting an evaluation?

20 U.S.C. 1414(c)(5)(A) states: "In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability."⁴⁰

⁴⁰ The exception provided in subparagraph (B) is if the student has graduated with a regular diploma from secondary school or if the student has exceed the age eligibility for a FAPE.

Here the IEP team met on May 16, 2024, without the parents present. There are numerous documents in the record that indicate that parents attended the May 16, 2024, meeting by phone. I find those documents to be inaccurate and conflicting with parents' testimony regarding the May 16, 2024, meeting. When discussing the May 16, 2024, meeting mom testified that:

"I did not know about that meeting. I just did not know about the meeting. I got a Facebook message, and I did not receive it until 9:00 o'clock the next morning. And my screenshots will show because it shows when the message was read. I received it at 9:00a.m. the next morning. It was sent at 2:00 o'clock the day before, saying, "are you coming to the meeting today?" And I responded at 9:00 a.m. The next morning, saying "can you call me," because I didn't even know about the meeting."⁴¹

This hearing officer finds the testimony of the parent credible and concludes that the parent was unaware of the meeting and did not attend the meeting conducted on May 16, 2024. I find the district's documents produced regarding the May 16, 2024, IEP meeting to be inaccurate and not credible. Further, it should be noted that Student's father is an employee of the Batesville School District. These are parents who are involved in their child's education and had been participants in the IEP process. Rather than schedule the IEP meeting at a time the parents could participate, the district proceeded with the IEP meeting on May 16, 2024, and summarily dismissed Student from special education services. The district's documents indicate in the notice of action for the May 16, 2024, meeting that the components utilized by the IEP team as the basis for the action were:

- Current IEP goals and documented progress

⁴¹ District Exhibits, pg. 173.

- Current IEP developmental goals/objectives progress-mastered the following goals:

Cognition 1/1 goal;

Social Emotional 1/1 goal; 1/3 objectives

Self Help/Adaptive 2/2 goal;

Gross Motor 1/1 goal

Fine Motor 2/2 goal

Further the Notice of Action states that the IEP team looked at classroom data, current services, extended school year services, and information from the parent and parent survey. Additionally, the Speech language annual review summary states that Student mastered 5/8 objectives, made progress on one objective to 50% and two of the objectives were not initiated. The speech language pathologist, when questioned about Student's progress on his speech language goals could not provide sufficient data to support that Student mastered his speech/language goals. At one point in her testimony, Student's speech/language pathologist stated that "Progress towards the goal will be measured by my weekly data collection: and that's not all, I also put in "therapist observation and discretion". If I feel like he is doing well in that area, which I'm sure that's probably what I based that on..."⁴² Student was given the CELF P2, which is a test, not a complete speech/language evaluation, and Ms. Harmon, MCD, CCC-SLP, determined that:

"While Student's current speech language evaluation indicates delays in receptive and expressive language skills, current data to include progress to date on language goals/objectives and programming data (CELF P-2) indicate that Student no longer demonstrates a language delay."⁴³

⁴² Hearing Transcript Vol. II, pg. 190.

⁴³ District Exhibits, pg. 179.

Trish House, Student's preschool developmental therapist testified that although Student met some of the objectives on his IEP, he had not met his goals. Although the paperwork from the May 16, 2024, meeting indicates that Student had met all his goals and most of the objectives. Ms. House's testimony showed that Student had not met, or there was no progress data indicating Student had met the goals and most of the objectives on his IEP.⁴⁴

There is no documentation to support the information contained in the Notice of Action for the May 16, 2024. Both testimony and documents indicate Student did not meet his IEP goals, and further, the IEP team chose to dismiss Student from both special education and speech without completing an evaluation. The only evaluation available to the IEP team on May 16, 2024, was the one conducted by the learning center in October of 2023. This evaluation diagnosed Student with the following:

- 314.01 Attention-Deficit/Hyperactivity Disorder, combined presentation
- 315.32 Language Disorder (By medical record review, supported by current assessment)
- R44.8 Other Symptoms and Signs involving General Sensations and perceptions (sensory processing deficits) (By Medical Record Review, supported by current assessment).
- 315.4 Developmental Coordination Disorder (Fine Motor Deficits) (By Medical Record Review, supported by Current Assessment)
- Memory Deficits (Verbal-Mild, Nonverbal-Extreme)
- Processing Speed Deficits (Verbal-Mild, Nonverbal-Extreme)
- Adaptive behavior Deficits (Home setting: Global-Mild to Extreme)

⁴⁴ Id., at pgs. 18-28.

- Academic Deficits (Early, Global-Mild to Significant)
- Frustration Tolerance Deficits (Mild)
- Sleep Deficits (Onset and Maintenance, Lo Need)
- Appetite Deficits (Picky, Variable)⁴⁵

The district's failure to conduct an evaluation prior to dismissing Student from special education services is a procedural violation of IDEA.

III. Whether the District procedurally violated IDEA by failing to consider Parents' request for an IEP as a referral for special education services?

Arkansas Department of Education Special Education Rule 4.01 states:

4.01 REFERRAL GENERALLY

4.01.1 If a child is suspected of having a disability which adversely affects educational performance and who by reason thereof, needs special education and related services, a referral may be made at any time to the local education agency by-

4.01.1.1 The child's teacher;

4.01.1.2 other educational personnel'

4.01.1.3 The child's parent(s);

4.01.1.4 The child; or

4.01.1.5 Other individuals with relevant knowledge of the child.

4.01.2 A referral is to be made in writing through the completion of the required Referral form and provided to the principal or designee of the school in which the child is enrolled. Where the referral originates from a parent, an individual not associated

⁴⁵ Parents Exhibits, pg. 167.

with the school, or other agency personnel, an employee of the local educational agency where the child is enrolled must complete the referral Form and forward it to the principal or designee of the school.

4.01.3 Informal data collection conducted pursuant to 4.02 of this part must be completed prior to any referral conference.

4.01.4 Where appropriate, a child's parent(s) must be informed of the referral and shall be offered an explanation of its purpose.

On August 13, 2024, Parents decided to enroll Student in Kindergarten for the 2024-2025 school year. Parents uploaded Student's evaluations and medical records into the district's portal system. Student started kindergarten in the District on August 14, 2024. At this point Parent was unaware that Student had been dismissed from special education services, she believed that Student's preschool IEP would transfer. Parents also believed that the District would have received all the information she uploaded. Parent had either an email exchange or text exchange with Ms. Spivey (Student's principal) about Student's preschool IEP transferring. Ms. Spivey let Parent know that she would reach out to Kristi Cox, special education coordinator, and get back with the parent. Ms. Spivey let Parent know that Student's IEP would not transfer. Parent met with Ms. Spivey on August 16, 2024, to discuss Student's need for an IEP. Parent testified to the following exchange with Ms. Spivey:

"I went to her office, I sat down with her, and she was like, "He is doing great, he is doing awesome, he ate in the cafeteria, he likes chicken patties," you know, dah, dah, dah, dah, dah. She is telling me all these things. And then I said, "I just want to make sure we go ahead and get his IEP in place." This is also at a point in time at which our schedule now has abruptly changed. We are no longer in preschool where I can just miss from 8:00 to 9:00 in the morning to take him to OT. I'm worried about him not getting his OT services because now we're in school and we're not going to OT in the morning. So I'm trying to figure out like how do we get -- how do we transfer all that in. And she tells

me, "Well, what does he need?" And I said, "Well, right now we do outpatient OT. For sure he needs that. But, I mean, he has an IEP -- he had an IEP in preschool." And she said, "Well, why do you think he needs that?" And I said, "Well, just because he is" -- "I think he is going to need the services." And she said, "Well, you know he can't have an IEP with just OT." And I said, "No, I wasn't aware of that." And I honestly took it for --took it for the gospel. I mean, I walked away saying, "Okay. Well, that's not going to work." And so, she said, "What about a 504?" And at that time, I was trying to process everything that was being told to me. And I'm also a researcher. So, I might take your word for it in the moment, but I'm going to go back and check and see. And so, I just said, "I don't really know if it's going to make a difference between a 504 and an IEP. I just know he had an IEP before and he is going to need the services." And she said, "Why don't we just wait and see?"⁴⁶

Here, when Parent reached out to Ms. Spivey and elucidated her concerns and explained Student's disabilities, and that he had an IEP in preschool, Ms. Spivey had an obligation to either complete a referral form or have someone in her special education department complete a referral form on Student. Instead, she just said 'let's wait and see'. It wasn't until Parent received advice from an advocate some 30 days later, when Parent made a written referral to Ms. Cox and the District acted. This was a procedural violation of IDEA.

IV. Whether the District procedurally violated IDEA by failing to hold a referral conference within seven (7) calendar days of Parents' referral?

Arkansas Department of Education Special Education Rule 4.03 NOTICE OF REFERRAL CONFERENCE states:

4.03.1 Within seven (7) calendar days of the date the local educational agency receives the written referral, the local educational agency must schedule a referral conference at a time and place agreed upon by the parent(s) and provide the

⁴⁶ Hearing Transcript Vol. VII., pgs. 155-156.

parent(s) with written notification of the referral and referral conference consistent with the notice requirements established in §9.04 of these regulations.

As discussed supra, Parent made a referral to Principal Spivey on August 16, 2024. The District had a duty to act and draft a referral at that point but failed to do so. Because of the District's failure to draft the written referral, it also failed to hold a referral conference within seven days of Parents' referral thereby procedurally violating IDEA.

V. Whether the District procedurally violated IDEA by failing to have all assessments required by the ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairment (OHI)?

The ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairments provides:

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Tourette's Syndrome, and sickle cell anemia; and adversely affects a child's educational performance. The list of chronic or acute health problems included within this definition is not exhaustive. Children with attention deficit hyperactivity disorder (ADHD) and attention deficit disorder (ADD) may be classified as eligible for services under the "other health impairment" category in instances where the ADD/ADHD is a chronic or acute health problem that results in limited alertness, which

adversely affects the child's educational performance resulting in the need for special education and related services. While it is recognized that the disorders of ADD and ADHD vary, hereafter, the term ADD will be used to encompass both disorders.”⁴⁷

Further, before identifying a Student under the category of Other Health Impairment, the district is required to have the following assessments:

III. SCREENING INFORMATION A.

A. Required

1. Hearing
- 2 .Vision

B. Recommended

1. Formal (Not applicable)
2. Informal
 - a. Behavioral observation (Conducted in a variety of settings)
 - b. Behavioral rating scales
 - c. Anecdotal records
 - d. School history (In particular, attendance)
 - e. Parent/teacher interviews

IV. REQUIRED EVALUATION DATA

- A. Social History (Emphasis on developmental, health and medical) I
- B. Individual Intelligence (One required)
- C. Individual Achievement (One required)
- D. Adaptive Behavior (One required)

⁴⁷ ADE eligibility criteria and program guidelines for the disability category of Other Health Impairment.

E. Communicative Abilities (Required as indicated below) A comprehensive language screening measure is required. Screening instruments must be established and validated for such use and assess areas of receptive and expressive language. These instruments cannot be single-word vocabulary measures only. Review of social, educational, and communication history and/or classroom observation of communicative abilities should also be utilized. If the student fails the screening or if language is identified as a problem area, a diagnostic measure is required.

F. Other

1. Medical (Required)

- a. Physical examination (To identify any concomitant conditions)
- b. Specialized, if indicated

Here the Parents argue that the district failed to conduct a comprehensive language screening and/or diagnostic measure of Student's need for speech therapy. As stated in E. above, a comprehensive language screening measure is required prior to identifying a student under the category of Other Health Impairment. On the notice of action from the October 4, 2024, IEP meeting/referral conference, the team noted that it reviewed the comprehensive evaluation completed by Dr. Davis at The Learning Center in Jonesboro in October 2023, as well as the OT and sensory profile evaluation conducted by STARS Academy in February of 2024. Further the team discussed anecdotal data/running records from Sonja Skelton and Lexi Shaw (Student's kindergarten teachers). Also, Student had a medical diagnosis of ADHD for which he is was taking medication.⁴⁸ The District did not have a comprehensive language screening measure at the October 4, 2024, IEP meeting prior to identifying Student for special education and related

⁴⁸ Parents' Exhibits, pg. 6.

services under the category of Other Health Impairment. Kristi Cox, Special education supervisor for the district, testified that the district has never done a speech/language or comprehensive evaluation on Student.⁴⁹ This was a procedural violation of IDEA.

VI. Whether the District procedurally violated IDEA by failing to have all necessary IEP team members present for the October 4, 2024, IEP meeting?

Arkansas Department of Education Rules and Regulations 4.04.2 states:

The referral conference must be attended by at least three (3) persons, including the principal or a designee and one teacher directly involved in the education of the child. The conference may also be attended by the child, if appropriate, and by other individuals at the discretion of the parents or agency.

The Parents argue that at the October 4, 2024 meeting the District was required to have a special education teacher present, and that the Referral Conference Decision form incorrectly listed Kristy Cox as a special education teacher.⁵⁰ As stated above ADE Rule and Regulation 4.04.2 states that the referral conference must be attended by at least three persons, including the principal or a designee and one teacher directly involved in the education of the child. Here, the following were present at the October 4, 2024, IEP meeting/referral conference:

- Brook Carter Occupational Therapist
- Kristi Cox Special Education Teacher, Assessment Personnel, Public Agency Representative
- [REDACTED] Father
- Sonja Skelton General Education Teacher

⁴⁹ Hearing Transcript Vol. I, pg. 26.

⁵⁰ Parents' Exhibits, pg. 5.

- [REDACTED] Mother
- Mychelle Spivey Principal
- Lexi Shaw General Education as of 9/23/2024
- Jace Dunegan Assistant Principal

The district is correct that there is no requirement that a special education teacher attend the October 4, 2024 IEP meeting/referral conference. The district had at least three people present and as required had the principal and at least one teacher directly involved in the education of Student. Even if IDEA required the presence of a special education teacher, Kristi Cox could have fulfilled that requirement.

Based on the above, I find that the district did not procedurally violate IDEA.

VII. Whether the District procedurally violated IDEA by failing to develop an IEP at the October 4, 2024, October 29, 2024, and November 18, 2024, IEP meetings?

On October 4, 2024, the IEP team met for an IEP meeting/referral conference. At this meeting the IEP team determined that Student qualified for special education and related services under the category of Other Health Impairment. The team agreed that an IEP would be developed. However, the district believed it had thirty (30) days to develop and implement an IEP based 34 C.F.R. 300.323(c)(1) which states:

- (c) Initial IEPs; provision of services. Each public agency must ensure that—
- (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Here Parents are not arguing that the district failed to develop and implement an IEP within thirty (30) days. The Parents are arguing that the district held an IEP/referral conference meeting on October 4, 2024, and failed to develop an initial IEP. The Parent cites ADE rule and regulations Initial IEPs; provision for services, 8.04.2.1 B which states:

Within thirty (30) calendar days of completing the administration of tests and other evaluation materials, an Evaluation/Programming Conference must be conducted by a group of qualified professionals and the parent of the child, as set out in §6.05.1.2 of these regulations and 34 CFR 300.321 for the purpose of determining the student's eligibility for special education and related services and the educational needs of the child and, if appropriate, develop an IEP for the child.

Neither the district nor the parents make a persuasive argument on this issue. The more pressing issue for this hearing officer is whether the Parents participated in the development of the IEP.

The notice of action for the October 4, 2024, meeting contains:

“Student will receive special education services through the indirect model for ninety (90) minutes per week. That ninety (90) minutes per week can be direct service with Student by special education and support personnel or assisting the general education teacher with programming in the general education setting or a combination of both. Student will receive sixty (60) minutes of direct occupational therapy per week in thirty (30) minute sessions two times per week. Student utilizes a sensory diet as provided by

his outpatient OT provider. The BSD OT staff will review the sensory diet and develop a plan to continue sensory input in the school setting.”⁵¹

Parents participated in the development of the information contained in Student’s IEP. I can find no requirement nor has either party provided me with any legal documentation/citation where IDEA requires the drafting of the actual physical IEP document at the IEP meeting or that a copy of the initial IEP be given to the parents at that IEP meeting. Here the IEP team met on October 4, 2024, and the draft IEP was provided to the team, including the parents on October 7, 2024. The parents participated in the information contained in the IEP and were able to make objections after the draft IEP was provided. I find that the district did not procedurally violate IDEA.

Parents then argue that the district held IEP meetings on October 29, 2024, and November 18, 2024, to revise the IEP, and once again Parents claim no IEP was developed and one was emailed to them. Parents cite ADE Special Education Rules and Regulations 8.04.3 which states:

8.04.3 Review and revision of IEPs. Each public agency must ensure that the IEP team-

8.04.3.1 Reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

8.04.3.2 Revises the IEP as appropriate to address -

A. Any lack of expected progress toward the annual goals described in 34 CFR 300.320(a)(2) and §8.08.1 of these regulations, and in the general education curriculum, if appropriate;

⁵¹ District Exhibits, pg 352.

- B. The results of any reevaluation conducted under 34 CFR 300.303 and §7.01, of these regulations;
- C. Information about the child provided to, or by, the parents, as described in 34 CFR 300.503(a)(2) and §6.05.1.1, of these regulations;
- D. The child's anticipated needs; or
- E. Other matters.

The district does not discuss the Parents' claims regarding the October 29, 2024, and November 18, 2024, IEP meetings in its post hearing brief. However, I find the Parents' reliance on section 8.04.3 for the notion that the physical IEP document must be developed and provided to the parents at the IEP meeting misplaced. 8.04.3 lays out what the IEP team must discuss when reviewing and revising a student's IEP. Here there is no evidence that these things were not discussed at the October 29, 2024, or November 18, 2024, IEP meetings.

I find that ADE Special Education Rules and Regulations 8.07.1.6 which addresses amendments to the IEP applicable here. 8.07.1.6 states in pertinent part:

Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph A of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

Here by the parents' own admissions the amended/revised IEP from the October 29, 2024, IEP meeting was provided by email later that same day.⁵² Further the amended/revised IEP from the November 19, 2024, meeting was provided by email to the parents on November 26, 2024.

Based on the above, I find the district did not procedurally violate IDEA.

⁵² District's Exhibits, pg. 440.

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 assemble a transition team and determine whether Student qualified for a kindergarten IEP; failing to conduct an evaluation before dismissing Student from special education services; failing to consider Parents' request for an IEP as a referral for special education services; failing to hold a referral conference within seven (7) calendar days of Parents' referral; and failing to have all assessments required by the ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairment (OHI).

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 assemble a transition team and determine whether Student qualified for a kindergarten IEP; to conduct an evaluation before dismissing Student from special education services; to consider Parents' request for an IEP as a referral for special education services; to hold a referral conference within seven (7) calendar days of Parents' referral; and to have all assessments required by the ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairment (OHI), 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.

There is no need to discuss each procedural violation separately here. The district's failure: to assemble a transition team and determine whether Student qualified for a kindergarten IEP; to conduct an evaluation before dismissing Student from special education services; to consider Parents' request for an IEP as a referral for special education services; to hold a referral conference withing seven (7) calendar days of Parents' referral; and to have all assessments required by the ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairment (OHI) have one very important thing in common. They all deprived the parents of the opportunity to participate in the formulation process. As discussed supra had the district met its responsibility to assemble a transition team in January of 2024, the parents would have had additional information regarding transitioning to kindergarten and may have been able to make a more informed decision about whether to waive kindergarten for the 2024-2025 school year. The Parents certainly would have and should have had more information about the transition process. When the district dismissed Student from special education services without conducting an evaluation, not only did they compromise Student's right to an appropriate education in his kindergarten year, but again they dismissed Student from special education services without the parents present and without explaining to the Parents that Student had been dismissed from special education services, whereby seriously hampering parents' opportunity to participate in the formulation process. Further the district's failure to hold a

referral conference withing seven (7) calendar days of Parents' referral; and to have all assessments required by the ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairment (OHI), also seriously hampered parents' opportunity to participate in the formulation process. Further, had the district treated parents' request for an IEP as a referral for special education services, Student's worsening behaviors might have been prevented or at a minimum addressed earlier. Instead, the District simply moved Student from one kindergarten teacher to another without appropriately addressing Students sensory deficits and maladaptive behaviors.

I find that the district substantively violated IDEA by: failing to assemble a transition team and determine whether Student qualified for a kindergarten IEP; failing to conduct an evaluation before dismissing Student from special education services; failing to consider Parents' request for an IEP as a referral for special education services; failing to hold a referral conference withing seven (7) calendar days of Parents' referral; and failing to have all assessments required by the ADE's eligibility criteria and program guidelines for the disability category of Other Health Impairment (OHI).

PARENTS' REQUESTED RELIEF

This case is unusual because of the procedural issue that arose regarding the remedy sought. When the Parents originally filed their due process complaint they were seeking the following remedies:

1. Conduct a comprehensive evaluation required under the ADE's eligibility and program guidelines for OHI, Autism, and specific learning disability.
2. Conduct OT and ST evaluations by evaluators of the Parents' choice.

3. Conduct functional behavior assessment done by a BCBA of the Parents' choice
4. Provide Student a full time one on one aide until the evaluations are completed.
5. Retain an occupational therapist agreed to by the parents to develop a sensory diet, to advise the IEP team on incorporating the sensory diet into Student's school day, to train district staff on implementation of the sensory diet, and to attend the IEP team meetings for the next 12 months to advise and revise the sensory diet.
6. Retain a BCBA agreed to by parents to conduct a functional behavior assessment, to advise the IEP team on development of an appropriate Behavior intervention plan (BIP), to train district staff on implementation of the BIP and to attend IEP meetings and consult with the district for 12 months.
7. Develop and revise Student's IEP consistent with the results of the ordered evaluations.
8. Provide Student compensatory Occupational therapy minute for minute with the OT not provided in conformity with Student's 2023-2024 and 2024-2025 IEPs.
9. Provide Student Extended school year services during the summers of 2025 and 2026 to address Student's academic and functional deficits during the 2023-2024 and 2024-2025 school years.⁵³

However, on March 10, 2025, parents filed a notice of relief requested and gave the district notice that they were seeking private school placement at Engage in Jonesboro, Arkansas. While reading the parties' post hearing briefs and drafting my decision I was alerted to an incident at Engage. In the district's post hearing brief on page 24, in footnote four, the note states:

⁵³ See parents due process complaint pg. 27-28.

“Recent news reports raise serious questions about whether Engage is a proper placement. On April 21, 2025, Tracy Morrison, the director of Engage, and three employees at Engage were arrested on charges of permitting child abuse after video of an incident described as a “makeshift child fight club” surfaced.

<https://jonesbororightnow.com/news/268862-jonesboro-school-director-given-250k-bond-accused-of-leading-makeshift-child-fight-club/>”⁵⁴

On May 23, 2025, this hearing officer sent an email to the parties asking if they wanted to reopen the record in this case for the purpose of discussing what had occurred at Engage. Both parties agreed to reopening the record for the purpose of discussing remedies in this case and on June 10, 2025, this case was reopened and testimony taken on possible remedies now sought by the parents. Both parties were present with counsel and Kristi Cox, [REDACTED] Danielle Johnson and Mary Katherine Hardin provided testimony on Jun 10, 2025. Private school was no longer an option and Engage was off the table. As such I do not address the issue of private school placement or the appropriateness of Engage for Student.

Parents do seek reimbursement for the time Student attended Engage and transportation costs. Parents further seek reimbursement for Student’s attendance at STARS Academy’s summer program. Reimbursement for private education costs are appropriate only when 1) placement in the school district is inappropriate because the school district has failed to provide the child with a FAPE; and 2) the private school placement is appropriate. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Florence County School Dist. Four v. Carter*, 510 U.S. 7 (1993). As discussed above Parents introduced sufficient evidence that the district failed to provide a FAPE to Student, but I find that the Parents failed to present sufficient evidence that

⁵⁴ See District’s post hearing brief pg. 24.

Engage or STARS Academy's summer program are appropriate placements to meet Student's unique needs. Therefore, Parents' request for reimbursement is denied.

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 January 1, 2024, and January 27, 2025. District is hereby ordered to take the following actions regarding Student:

1. On or before July 20, 2025, the District is required to conduct a comprehensive evaluation in accordance with the ADE's Eligibility Criteria and Program Guidelines. These evaluations must include, at a minimum, assessments required under the ADE's Eligibility Criteria and Program Guidelines for Other Health Impairment, Autism, Specific Learning Disability, and dyslexia. This list is not exhaustive; if the IEP team determines that additional evaluations are necessary, those should also be completed following the ADE's Eligibility Criteria and Program Guidelines for the relevant disabilities. These evaluations shall be conducted by an independent evaluator who is not an employee of the school district. Furthermore, this evaluator must be agreed upon by both the district and the parents.
2. On or before July 20, 2025, the District is required to conduct an occupational therapy evaluation on Student. This evaluation must be performed by an independent evaluator who is not an employee of the school district. The selection of this evaluator must be mutually agreed upon by both the district and the parents.

3. On or before July 20, 2025, the District is required conduct a speech-language evaluation on Student. This evaluation shall be performed by an independent evaluator who is not employed by the school district. The evaluator must be mutually agreed upon by both the district and the parents.
4. On or before August 15, 2025, the Individualized Education Program (IEP) team will convene to review the results of the evaluations referenced in sections 1-3 above, along with any other assessments/evaluations or tests deemed necessary by the IEP team to formulate an appropriate program for Student. All independent evaluators who have conducted assessments of Student shall be invited to this meeting to discuss their findings and contribute to the development of a suitable IEP for Student.
5. On or before September 15, 2025, the District must secure the services of a Board Certified Behavior Analyst (BCBA) to perform a functional behavior assessment and provide guidance to the IEP team in developing an appropriate Behavior Intervention Plan for Student. The BCBA shall be an independent professional, not employed by the District. The selection of the BCBA must be mutually agreed upon by both the District and the parents. The BCBA shall train the District staff on the implementation of the Behavior Intervention Plan and shall be a participant of Student's IEP team for the 2025-2026 school year.
6. On or before July 20, 2025, the District will engage an occupational therapist, mutually agreed upon by both the district and the parents, to create a sensory diet for Student. This occupational therapist will be independent and not employed by the school district. Additionally, the occupational therapist should have experience with sensory deficits similar to those exhibited by Student.

7. If Student qualifies for occupational therapy, the district shall contract with an independent occupational therapist to provide these services. Lance Hall, the district's occupational therapist, shall not serve as Student's occupational therapist. Occupational therapists, excluding Mr. Hall, who have worked with the student, evaluated the student, and possess extensive training in sensory deficits, concur that Student has significant sensory deficits that should be addressed through a sensory program. Given Mr. Hall's opinion, without conducting an evaluation of Student, that Student's behavior is defiant rather than sensory-related, it is believed that Mr. Hall may not be able to provide suitable services to address the student's sensory deficits.

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

6/18/2025

DATE