

**ARKANSAS DEPARTMENT OF EDUCATION**

**Special Education Unit**

[REDACTED]

**As Parent of**

[REDACTED]

**PETITIONER**

**VS.**

**NO. H-26-01**

**LAVACA SCHOOL DISTRICT**

**RESPONDENT**

**HEARING OFFICERS FINAL DECISION AND ORDER**

**ISSUES PRESENTED:**

Whether the Lavaca School District (hereinafter “District” or “Respondent”) denied [REDACTED] (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between March 24, 2024 and July 3, 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 its child find obligation under IDEA. (2) failing to implement Student’s Oklahoma IEP or develop a new IEP when Student transferred into the District. (3) unilaterally placing Student in an alternative learning environment classroom without holding an IEP meeting or providing the Parent prior written notice. (4) failing to provide appropriate speech/language therapy evaluation. And (5) failing to develop an appropriate IEP.

### **Procedural History**

On July 3, 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] (“Parent” or “Petitioner”), as the Parent of [REDACTED] (hereinafter referred to as “Student”), against the Lavaca School District (hereinafter referred to as “District” or “Respondent”). This case was numbered H-26-01. Parent requested the hearing because she believed the district failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”) and the regulations set forth by the Department by not providing Student with a free appropriate public education.<sup>1</sup> This case was then set to be heard August 13-15, 2025. Shortly after the case was set for hearing, Mr. Luther Sutter made his appearance as counsel for [REDACTED] Parent.

The Prehearing conference was conducted via zoom on August 11, 2025.<sup>2</sup> Counsel for both the Parent and the District participated in the prehearing conference. During the prehearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.<sup>3</sup>

Thereafter testimony was heard in this case on August 13, 2025.

Present for the Hearing were Luther Sutter, attorney for the Parent, Jay Bequette, attorney for the District, [REDACTED] Parent, and Danielle Lyle, special education director for Lavaca School District.<sup>4</sup>

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

<sup>2</sup> Transcript, prehearing conference.

<sup>3</sup> Id.

<sup>4</sup> Hearing Transcript.

The following witnesses testified in this matter: Danielle Lyle (Condray), Mario Beshears, Stephanie Butcher, Sarah Gann, Lindsay Simpson (Cagle), Jeanna McKee, Jamie Patterson, Elinor Weaver, Johnna Morgan, Marilyn Debow, Sherri Plumlee, and [REDACTED]<sup>5</sup>

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.

The trial transcript in this case was delayed and the parties agreed to extend the due date for post hearing briefs, and thus the date for the decision in this case moved to September 25, 2025. Both parties submitted post hearing briefs in accordance with the deadline set by this Hearing Officer.<sup>6</sup>

### **Findings of Fact**

1. Student is an eight (8)year-old boy who is in the second grade in the Lavaca School District (“District”).<sup>7</sup>
2. Student enrolled in the Lavaca School District on March 25, 2024.<sup>8</sup>
3. Medical records from a primary care physician for the Student were provided by the Parent, which showed that as recently as February 2025, the Student was being treated for anxiety disorder, mood disorder, attention deficit hyperactivity disorder, impaired impulse control, oppositional defiant disorder, and autism spectrum disorder. There was a recommendation that further autism testing be conducted.<sup>9</sup>

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<sup>5</sup> Id.

<sup>6</sup> See Hearing Officer File-post hearing briefs.

<sup>7</sup> See Parent Due Process Complaint.

<sup>8</sup> District Exhibits, pg. 259.

<sup>9</sup> Id., pg. 177.

4. When Student enrolled in the District Parent provided the District a copy of Student's IEP from Oklahoma.<sup>10</sup>
5. Student was identified for special education services under the category of speech/language impairment in the Oklahoma IEP.<sup>11</sup>
6. There were no meetings held between the Parent and the District regarding the IEP from Oklahoma.
7. Upon Student's enrollment in the District in March 2024, the Parent requested an IEP meeting. There was no IEP meeting held.<sup>12</sup>
8. At the start of the 2024-2025 school year, the Student began exhibiting behavioral concerns. The Parent subsequently contacted the District to inquire about the Student's IEP and requested a meeting to address these maladaptive behaviors and her concerns. However, no IEP meeting was convened.<sup>13</sup>
9. Student began receiving speech services commiserate with the Oklahoma IEP in the fall of 2024.<sup>14</sup> No IEP meeting was held.
10. On October 7, 2024, Student was referred to Western Arkansas Counseling & Guidance Center for mental health Services. This referral was made because the teacher sent Student to speak with the school counselor because he was crying and stated that he did not have any friends. Parent then told the counselor that Student had an IEP since pre-K and that he was on medication for ODD and OCD.<sup>15</sup>
11. There was no IEP meeting held at the beginning of the 2024-2025 school year.

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<sup>10</sup> Id. Pgs. 1-14.

<sup>11</sup> Id. Pg. 3.

<sup>12</sup> Transcript, pgs. 272-274.

<sup>13</sup> Id., pgs. 273-274

<sup>14</sup> District exhibits, pgs. 238-251. Transcript. Pgs. 76-77.

<sup>15</sup> Id., pg. 15.

12. On March 6, 2025, the Student had a doctor's appointment during which the doctor informed the Parent about the Greenwood School District's ALE program as a potential option for the student. The Parent expressed interest in learning more about the program. Upon inquiry, the District clarified that they did not currently have an ALE program but stated they would develop one.<sup>16</sup>
13. On March 17, 2025, a Student Action Plan was formulated in conjunction with a referral to the ALE. The plan identified behavioral indicators of student dysregulation, including yelling, crawling under tables, leaving the classroom, and expressing an intent to leave school premises. The action plan specified interventions such as avoiding verbal outbursts during instruction, complying with teacher directives after a single prompt, and remaining in the classroom during instructional and assessment periods.<sup>17</sup>
14. The alternative learning environment placement conference decision form indicated that the referral was made due to the Student's behavior in the regular education classroom, eloping, and reported threats of self-harm. Additionally, the form noted that the Student was under a 504 plan, although such a plan is not documented in the record.<sup>18</sup> Subsequently, Student was placed in the Alternative learning environment.
15. On March 20, 2025, Student was referred for special education services.<sup>19</sup>
16. On April 1, 2024, a referral conference was held and the committee determined that special education testing was needed and that Student would receive a comprehensive

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<sup>16</sup> District Exhibits, pg. 45.

<sup>17</sup> Id. Pg. 20.

<sup>18</sup> Id., pg. 21.

<sup>19</sup> Id., pg. 29.

- evaluation.<sup>20</sup> Under basis for action, the committee listed evaluation results, observations, and teacher/parent input. Nowhere in the document does the committee discuss Student's IEP from Oklahoma or that Student received special education services prior to enrollment in the District.<sup>21</sup>
17. On April 16, 2025, Parent filed a formal complaint with the Arkansas Department of Education.
  18. On April 23, 2025, a speech language evaluation was conducted on Student by Stephanie Butcher, MS, CCC-SLP, and Ms. Butcher recommended that Student no longer receive speech language therapy because Student displayed speech language skills that were age appropriate at the time of his evaluation.<sup>22</sup>
  19. Between April 1, 2025- April 21, 2025, there are behavior incident reports that reflect Student's maladaptive behaviors consisted of elopement, wishing himself death, discussions of suicide, locked himself in the bathroom more than once stating he was going to kill himself.<sup>23</sup>
  20. On May 22, 2025, a psychoeducational evaluation was completed on Student by Johnna Morgan, M.S. for the District. Student demonstrated average overall intellectual ability with consistent average performance across verbal comprehension, visual spatial and working memory domains. Further Student's cognitive profile revealed a relative strength in fluid reasoning, indicating strong critical thinking and problem solving abilities compared to same age peers. However, achievement testing results indicated that Student is below average in basic reading, oral reading fluency,

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<sup>20</sup> Id., pgs. 37-38.

<sup>21</sup> Id.

<sup>22</sup> Id. Pg. 65.

<sup>23</sup> Id., pgs. 39-60.

reading comprehension, and sentence comprehension. Student's math achievement, oral language, and spelling fell within the average ratings. The BASC-3 showed Student has clinically significant concerns in externalizing problems and behavioral symptoms that reflect challenges with aggression, hyperactivity, and conduct. Student also showed difficulties with behavioral regulations, including defiance and rule breaking. The consistency between what was reported by the Parent and what was reported by the District suggests a persistent pattern of challenging behaviors across settings.<sup>24</sup> Further there was a level II dyslexia screener administered, and the examiner suggested the committee review the results of the screener to determine if Student exhibits characteristics of dyslexia, and what services if any are appropriate.<sup>25</sup>

21. The Parent submitted a State Complaint to the Arkansas Division of Elementary and Secondary Education Office of Special Education on April 16, 2025. Office of Special Education completed its Administrative Complaint Investigation Report ("Report") on June 15, 2025.
22. On June 20, 2025, an Evaluation/Programming Conference was facilitated by the Arkansas Special Education Mediation Project with participation from the Parent and District staff. The evaluation data indicated the presence of a disability as defined by state and federal regulations under IDEA. The IEP team identified OHI as the appropriate disability category, which had an adverse effect on educational

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<sup>24</sup> District Exhibits, pgs. 66-79.

<sup>25</sup> Id. Pg. 79, 82-83.

performance, and determined that the Student required special education and related services.<sup>26</sup>

23. On July 3, 2025, Parent filed this due process hearing request.

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## **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 (8<sup>th</sup> Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4<sup>th</sup> Cir. Va. 2008). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor 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

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<sup>26</sup> Id., pg. 93



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 (8<sup>th</sup> Cir. 2006); *Schoenfeld v. Parkway School District*, 138 F.3d 379 (8<sup>th</sup> Cir. 1998).

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412(a); 34 C.F.R. §300.300(a). In 1982, in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, the U.S. Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by courts and hearing officers in determining whether a school district has failed to provide FAPE as required by federal law. 458 U.S. 176, 206-07 (1982). Pursuant to *Rowley*, the first inquiry that a court or hearing officer must make is that of whether the State, i.e., local educational agency or district, has complied with the procedures set forth in the IDEA. Thereafter, it must be determined whether the IEP(s) developed pursuant to IDEA procedures was reasonably calculated to enable the Student to make appropriate progress in light of his specific circumstances. *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 failed its child find obligation under IDEA. (2) Whether the District failed implement Oklahoma IEP or develop a new IEP. (3) Whether the District unilaterally placed Student in an alternative learning environment classroom without holding an IEP meeting or providing the Parent prior written notice. (4) Whether the District failed to provide appropriate speech therapy evaluation. And (5) Whether the District failed to develop an appropriate IEP.

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 (8<sup>th</sup> Cir. 2011). Rather, a school district's educational plan for a given Student will only be set aside for IDEA procedural violations "if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the Parent's opportunity to participate in the formulation process or caused a deprivation of educational benefit." Id. At 804-805., 20 U.S.C. 1415(f)(3)(E)(ii).

**I. Whether the District procedurally violated IDEA by failing to satisfy “child find” obligation under IDEA?**

"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, Student enrolled in March 2024 with an existing Oklahoma IEP identifying a speech/language impairment. Parent promptly provided the IEP and consistently requested an IEP meeting. Despite this, the District failed to convene an IEP meeting, review, or adopt the Oklahoma IEP, consider further evaluation, or determine Student's eligibility for services

This is a procedural violation of IDEA.

## **II. Whether the District failed to implement or develop an IEP upon Student's transfer?**

34 C.F.R. 300.323(f) states:

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the Parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

When a child with a disability transfers between states, the new district must, in consultation with the Parent, provide a free appropriate public education ("FAPE") through services comparable to those in the prior IEP, until such time as the district either (1) conducts

any necessary evaluations and (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(f).

Here, when Student enrolled on March 25, 2024, the District received a copy of the Oklahoma IEP. Nevertheless, despite repeated requests by the Parent, the District did not provide comparable services, consult with Parent, conduct an evaluation, or develop a new IEP for at least a year.

The District's failure to comply with § 300.323(f) constitutes a procedural violation of IDEA.

**III. Whether the District procedurally violated IDEA by unilaterally placing Student in an alternative learning environment classroom without holding an IEP meeting or providing the Parent prior written notice?**

34 C.F.R. § 300.116 Placements states:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

**(a)** The placement decision—

**(1)** Is made by a group of persons, including the Parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

**(2)** Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

**(b)** The child's placement—



- (1) Is determined at least annually;
- (2) Is based on the child's IEP; and
- (3) Is as close as possible to the child's home;
- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

As laid out above IDEA requires that placement decisions be made by a group including the Parents and individuals knowledgeable about the child and placement options, and that such decisions be based on the child's IEP, consistent with the least restrictive environment ("LRE") provisions. 34 C.F.R. § 300.116.

In March 2025, a physician suggested that an ALE program in the Greenwood School District might be appropriate for Student. Upon receiving this information, District explained to Parent that although Lavaca School District did not currently have an ALE, they would develop one and place Student in that classroom. Further the alternative learning environment placement conference decision states multiple times that Student had a 504 plan (no evidence that Student ever had a 504 plan) but failed to mention an IEP. This decision was not made by a group of persons, including the Parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. Further, there is no evidence in the record that suggests the decision was made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118. The District just held a meeting and determined to move

Student to the ALE. I do find that Parent was in attendance at that meeting but the evidence is unclear whether Parent understood the process of moving Student to the ALE or her rights under IDEA. There is never mention that Parent was ever provided her rights under IDEA.

Although I cannot find that the District unilaterally moved Student to the ALE, the District did fail to follow the requirements under 34 C.F.R. § 300.116 Placements and thus procedurally violated IDEA.

#### **IV. Whether the District failed to provide appropriate speech therapy evaluation?**

34 C.F.R. 300.304 states:

§ 300.304 Evaluation procedures.

**(a) *Notice.*** The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

**(b) *Conduct of evaluation.*** In conducting the evaluation, the public agency must—

**(1)** Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

**(i)** Whether the child is a child with a disability under § 300.8; and

**(ii)** The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

**(2)** Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

**(3)** Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

**(c) *Other evaluation procedures.*** Each public agency must ensure that—

**(1)** Assessments and other evaluation materials used to assess a child under this part—

**(i)** Are selected and administered so as not to be discriminatory on a racial or cultural basis;

**(ii)** Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

- (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
- (6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided

The Parent argues that the Speech evaluation conducted by the District on April 23, 2025, is not appropriate because it lacked standardized scores, omitted pragmatic language, and included another child's data. This hearing officer disagrees. The Speech evaluation included the following evaluation components:

- **Goldman Fristoe Test of Articulation-3**

The GFTA-3 is a systemic means of assessing an individual's articulation of the consonant and consonant cluster sounds of Standard American English in

children, adolescents, and young adults, ages 2-years through 21 -years, 11 months.

- **Clinical Assessment of Articulation and phonology-2**

Was administered to assess the production of consonants in the initial and final positions of words and the production of vowels in words. The test yields a percentile and standard score.

- **Preschool Language Scales-Fifth Edition**

Was administered to comprehensively assess receptive and expressive language skills. The PLS-5 is an individually administered test used to identify a language delay or disorder in children from birth to 7 years, 11 months.

- **Expressive one word picture vocabulary test**

The EOWPVT is an individually administered, norm referenced test designed for use with individuals ages 2-years through 18-years, 11 months. It offers a quick and reliable measure of an individual's English-speaking vocabulary.

- **Receptive one word picture vocabulary test**

The ROWPVT is an individually administered, norm referenced test designed for use with individuals ages 2-years through 18-years, 11 months. It offers a quick and reliable measure of an individual's understanding of English-speaking language.

Further the evaluator conducted an informal evaluation of Student's fluency and that indicated normal rate, rhythm, and inflection. The Parent did not identify any particular testing protocols that may have been inappropriate, nor did she submit evidence challenging the accuracy of the administered test results. The Parent raised concerns about potential inaccuracies

in the evaluation data; however, Stephanie Butcher, MS, CCC-SLP, the evaluator, responded to these concerns and provided clarification during her testimony when questioned she testified:

“Q That's right. And then, to make matters worse, you made an error on the initial template, did not you?

A My first report?

Q Yes.

A That was not meant for anybody's eyes but Danielle's. I was so unaware -- I was so floored when I realized that there was a team of people that had reviewed that. I had no idea that it was going to be looked at other than just Danielle to glance at it real quick.

Q Okay.

A I just have to say, if you do not mind.

Q Sure.

A I write reports all the time. And I have just gotten used to coming into the school system and doing -- and holding these meetings, or attending a meeting for a child. And when I am about -- and I knew I was responsible for [REDACTED] meeting then. So, I knew I would be the one to call the meeting and schedule it.

Q Right.

A That's why it never even occurred to me that this was going to be seen by somebody because I

had not called the meeting yet. I did not realize there was a whole bunch of other stuff going on with Special Ed.

Q I see.

A And so, that is why I never even -- until I like got added into a thread a few weeks before we met afterwards did I realize that my final report had not been used, it was this one that I was just -- it was just one that I had started just to get it on and in the system in my computer so I kind of had some fresh data when I went back to finish it.”<sup>27</sup>

Based on the evidence presented I do not find the District procedurally violated IDEA.

#### **V. Whether the District failed to develop an appropriate IEP?**

Student enrolled in the District on March 25, 2024, and provided the District an IEP from Oklahoma. The District failed to hold an IEP, and failed for an entire year to evaluate Student, hold an IEP meeting, develop an appropriate IEP, and implement an appropriate IEP.

Per the evidence and the law *supra* this is a procedural violation of 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: (1) failing its child find obligation under IDEA. (2) failing to

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<sup>27</sup> Transcript pgs. 77-78.

implement Oklahoma IEP or develop a new IEP. (3) failing to follow the requirements under 34 C.F.R. § 300.116 for placements. And (4) failing to develop an appropriate 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: its child find obligation under IDEA; to implement Oklahoma IEP or develop a new IEP; to follow the requirements under 34 C.F.R. § 300.116 for placements; and, to develop an appropriate IEP. 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 (8<sup>th</sup> Cir. 2011). Rather, a school district's educational plan for a given Student will only be set aside for IDEA procedural violations "if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the Parent's opportunity to participate in the formulation process or caused a deprivation of educational benefit." *Id.* At 804-805.

There is no need to discuss each procedural violation separately here. The District's failure to meet its child find obligation under IDEA; to implement Oklahoma IEP or develop a new IEP; to follow the requirements under 34 C.F.R. § 300.116 for placements; and to develop an appropriate IEP have two very important things in common. They all deprived the Parent of the opportunity to participate in the formulation process and compromised the Student's right to an appropriate education. As discussed, *supra* Student enrolled in the District on March 25, 2024, and the District had knowledge that Student was a Student with a disability identified under the category of speech/language impairment and arrived at the District with a current IEP

from the state of Oklahoma. Yet the District was derelict in its duty to hold an IEP meeting. Even after the Parent asked numerous times for the IEP team to meet, and to develop a new IEP. Instead the District in the fall of 2024 began providing Student speech services per the expired Oklahoma IEP but still failed to hold an IEP meeting. There was no IEP in place when Student began the 2024-2025 school year. When Student's maladaptive behaviors increased, instead of holding an IEP meeting, or referring Student for an evaluation, the District provided an inconsistent behavior program which failed to address Student's suicidal ideation and failed to provide training on how to appropriately implement the plan. The Parent consistently sought an IEP meeting and an IEP throughout Student's 2024-2025 school year to no avail. Student's maladaptive behaviors increased and even when Parent provided the District with multiple diagnosis which by themselves may have suggested a need for further investigation/evaluation to determine if Student was eligible for special education services, the District still failed to meet any of its obligations under IDEA.

Student enrolled on March 25, 2024, with an IEP from Oklahoma and it was not until March 20, 2025, that a referral for special education services was made regarding Student. For an entire year Student continued to deteriorate behaviorally, and although Student did receive speech therapy starting in October of 2024, it was based on an expired IEP. The Parent certainly would have and should have had more information about the transition process from Oklahoma. These continued failures by the District seriously hampered Parent's opportunities to participate in the formulation process and compromised the Student's right to an appropriate education. There were no IEP meetings for Parent to participate in, there were not IEPs developed to provide Student an appropriate program. Parent participated in "meetings" with the school and the District says that the Parent was a decision maker in the ALE decision, but that decision was



not made in an IEP meeting nor was it conducted under the requirements of IDEA. Instead the paperwork stated Student was under a 504 plan(which there is no evidence to support) and made no mention that Student had an IEP when he transferred to Lavaca from Oklahoma. There is no evidence that Parent was ever provided her rights under IDEA or that she understood what those rights were when the District denied developing an IEP. Parent believed that once she provided the IEP from Oklahoma Student would have an IEP at Lavaca. Further, had the District treated the Oklahoma IEP as it was required to do under 34 C.F.R. 300.323(f) Student's worsening maladaptive behaviors might have been prevented or at a minimum addressed earlier, and Student's suicidal ideation could have been addressed much earlier. Instead, the District simply moved Student from general education to an ALE classroom without supports and services in place and failed for an entire year to provide Student an appropriate IEP, thereby seriously compromising Student's right to an appropriate education.

I find that the District substantively violated IDEA by: (1) failing its child find obligation under IDEA. (2) failing to implement Oklahoma IEP or develop a new IEP. (3) failing to follow the requirements under 34 C.F.R. § 300.116 for placements. And (4) failing to develop an appropriate IEP.

### **ORDER**

The results of the testimony and evidence warrant a finding for the Parent. Specifically, Parent introduced sufficient evidence in the record to establish by preponderance of the evidence

that the District denied Student a FAPE between March 25, 2024, and July 3, 2025. District is hereby ordered to take the following actions regarding Student:

1. The District will convene an IEP team meeting on or before October 17, 2025, to review all current evaluations pertaining to the Student and assess the necessity for any additional assessments or evaluations. The team shall consider all available evaluations, parental input, relevant assessments, and other pertinent data to determine the Student's eligibility for special education services. If the Student is found eligible as a Student with a disability requiring special education services, the IEP shall be developed using all available evaluations, parental input, relevant assessments, and other pertinent data to ensure the formulation of an appropriate Individualized Education Program (IEP).
2. On or before October 24, 2025, the District shall engage an independent behavior specialist, to conduct a functional behavior assessment (FBA) of Student and assist in developing a comprehensive behavior plan to address Student's maladaptive behaviors. The behavior specialist will also provide training to District personnel on implementing the behavior plan and will serve as a member of the IEP team for the remainder of the 2025-2026 school year to address Student's maladaptive behaviors and ensure the behavior plan is implemented with fidelity.
3. Within 10 days after the behavior specialist has completed the functional behavior assessment and behavior plan, the District shall convene another IEP meeting, including the Parent, to review the FBA and proposed behavior plan.

4. The District shall conduct IEP meetings every 60 days throughout the 2025-2026 school year to monitor Student progress and ensure that the Parent remains informed and is provided with meaningful opportunities to participate in the development process.
5. No later than November 30, 2025, the District shall provide staff training conducted by an Arkansas Department of Education (ADE) representative, covering IDEA requirements in the areas of child find, Students transferring into the District, placement decisions, and evaluation requirements. If the District submits sufficient documentation to fulfill corrective actions 1 and 2 from the Arkansas Department of Education state complaint investigation, this will satisfy the training requirements for child find and Student transfers. Consequently, the only remaining required training will pertain to placement and evaluation requirements.
6. The district will provide the Student with compensatory education consisting of twenty hours of reading tutoring and twenty hours of math tutoring, to address the denial of services during the 2024-2025 school year. These tutoring sessions shall be allocated throughout the 2025-2026 school year, with scheduling arrangements based on the Student's capacity for additional instructional services.

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**

9/25-2025  
**DATE**