

ARKANSAS DEPARTMENT OF EDUCATION

Special Education Unit

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

PETITIONERS

VS.

NO. H-26-37

FAYETTEVILLE SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Fayetteville School District (hereinafter “District” or “Respondent”) denied ██████████ (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between August 19, 2025 and February 27, 2026, 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”). There are two issues before this hearing officer: (1) Whether the District violated IDEA’s Stay Put provision. (2) Whether the District denied Student a FAPE between August 19, 2025, and February 27, 2026, specifically by failing to return Student to the placement from which she was removed after the Manifestation

Determination Review (“MDR”) determined that Student’s behavior on August 13, 2025, was a manifestation of her disability.

Procedural History

On February 27, 2026, 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 Fayetteville School District (hereinafter referred to as “District” or “Respondent”). This case was numbered H-26-37. 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 set to be heard on April 15-17, 2026.

The Pre-hearing conference was conducted via Zoom on April 13, 2026.² Counsel for both the Parent and the District participated in the prehearing conference. During the pre-hearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.³

Thereafter, testimony was heard in person in this case on April 15-16, 2026, and April 20, 2026, by Zoom.

This is the second due process hearing involving these same parties. The first due process hearing was H-26-03 and was heard over ten days and involved the testimony of several

¹ See hearing officer File-Petitioner Complaint.

² Transcript, prehearing conference.

³ Id.

witnesses and voluminous documents. The parties agreed to incorporate the entire record from H-26-03 into this case.

Present for the Hearing were Theresa Caldwell, attorney for the Parents, Cody Kees, attorney for the District, Claire Wilkinson (via Zoom) attorney for the District, [REDACTED], parent, [REDACTED] parent, Audra Alumbaugh, advocate (via Zoom), Mary Kate Cain, intern, Carla Curtis, special education director, LEA.⁴

The following witnesses testified in this matter: Jason Edwards, SOAR academy (district ALE), principal, Michelle Hayward, executive director for elementary and middle school education for the District, Jennifer Fairchild, principal, Carla Curtis, director of special services for Fayetteville public schools, John Mulford, Superintendent, [REDACTED], parent, [REDACTED] parent.

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.

Due to the voluminous amount of testimony and records in this case the parties sought an extension of the deadline for submitting the post-hearing brief. Consequently, the decision date for this case was rescheduled to June 29, 2026. Both parties provided comprehensive post-hearing briefs.⁵

⁴ Hearing Transcript.

⁵ See Hearing Officer File-post hearing briefs.

Findings of Fact

1. Student is a seven (7) year old girl who is in the second grade in the Fayetteville School District (“District”).⁶
2. Student received IDEA services during pre-k setting the category of developmental delay, with services provided under an Individualized Education Program (IEP) by the Northwest Arkansas Educational Service Cooperative.⁷
3. On March 15, 2023, a transition conference from pre-k to kindergarten was held. The conference was attended by both parents, student’s pre-k teacher, a speech pathologist, the District’s school psychology specialist, and the District special education designee.⁸
4. The transition team reviewed the preschool transition input form which indicated Student exhibited aggressive maladaptive behaviors including, aggression, yelling, being mean, and wanting to hurt people. Although Student met four plus age benchmarks and appeared academically very smart, she also exhibited problems with social cues, sitting for short or long periods of time, and was not generally ready and able to function in a regular kindergarten classroom. The form also indicated that the parents were aware and seeking information and help for Student.⁹ It was at the transitional meeting that the parents made the district aware that they had concerns about Student having autism and were trying to get into the Schmieding Clinic, for an evaluation.¹⁰ However, even with Student’s behavior concerns and the fact that the

⁶ See Parent Due Process Complaint.

⁷ H-26-03, District Exhibits, pgs. 203-212.

⁸ Id., pg. 193.

⁹ Id., pgs. 194-195.

¹⁰ H-26-03, Transcript Vol. Eight, pg. 47.

- team believed Student was unable and ready to function in a regular classroom and that the parents had concerns about Student having autism, Student was removed from special education services, and the team determined that no additional school age evaluations were necessary at that time.¹¹
5. In July of 2023 Parent informed the District that Student's pediatrician suspected she had Autism and referred her for an Autism evaluation.¹²
 6. The District initiated a Section 504 referral on August 11, 2023, because of concerns for Student related to transitions, sensory sensitivity, loud noises, and anger outburst towards others.¹³
 7. Student started kindergarten at Butterfield Trail Elementary in the Fayetteville School District on August 14, 2023.¹⁴
 8. Student's section 504 eligibility determination concluded Student did not require specially designed instruction at that time, but did qualify for Section 504 plan, which was implemented on August 25, 2023.¹⁵
 9. The Section 504 plan developed on August 25, 2023, included the following accommodations:
 - a) use of a visual schedule and visual timer.
 - b) access to a calm down corner for Student to use when she was feeling frustrated.
 - c) access to headphones during loud noises or when she was overwhelmed.
 - d) encourage student to use the restroom every 1.5-2 hours.

¹¹ H-26-03, Transcript Six, pp. 32-34, 46.

¹² H-26-03, Parent Exhibit pg. 305, Transcript Vol. Ten, pp. 155-156.

¹³ H-26-03, District Exhibits, pg. 69.

¹⁴ H-26-03, Parent Exhibits, pg. 470

¹⁵ H-26-03, Id., pgs. 68-C-68-E.

e) movement breaks that allow for helping the teacher or delivering supplies.

The plan did not include a behavior intervention plan.¹⁶

10. On September 8, 2023, Student crawled forward from the back row to the second row and hit another student with her water bottle during dismissal time. Student did not want to put her water bottle in her backpack and until they distracted Student with watching a cartoon. Student only left the water bottle in the backpack for 5-10 minutes when Ms. Smith noticed she had taken it back out.¹⁷
11. On September 12, 2023, Student had a “fit” and “screamed and screamed” because she didn’t want to clean up her center before going to PE. Student appeared to calm down but was squeezing another student’s pinky finger and pulling it back. During recess, the same day Student was trying to play with another student and got upset grabbing the student to keep her from leaving.¹⁸
12. On September 20, 2023, Parent referred Student for special education services because of Student’s behavioral difficulties due to possible autism diagnosis. It was also noted that Student’s Parent provided Student’s private occupational therapy and physical therapy evaluations and medical information prior to the referral conference.¹⁹
13. On September 25, 2023, the District held a referral conference, to review the information provided by the Parents, Parent input and teacher input and consider evaluation within the Fayetteville Public School or possible special services eligibility. The referral team decided to conduct a comprehensive evaluation

¹⁶ H-26-03, Parent’s Exhibits, pg. 68-C.

¹⁷ H-26-03, Id., pg. 516.

¹⁸ H-26-03, Id., pg. 517.

¹⁹ H-26-03, Id., pg. 139

(including speech therapy evaluation) and specialized evaluations in occupational therapy and physical therapy.²⁰

14. On October 16, 2023, the district held an IEP meeting because during the evaluation time, Student had a behavioral episode which led to a two-day suspension. Parents requested the meeting to discuss a functional behavior assessment (FBA) and asked to have more details about daily behavior intervention for counseling and physician appointments.²¹
15. The District completed the comprehensive evaluation on October 28, 2023. The evaluation included the following: vision and hearing screenings; social history; parent interview; medical records; curriculum based assessment; Young Children's Achievement Test, 3rd Edition (YCAT-3); Differential Ability Scales (ASRS); Childhood Autism Rating Scale, 2nd Edition (CARS-2); and observations.²² The evaluator found that the data suggested that Student displayed age appropriate skills in reading, writing, and math. Student's cognitive ability was within average range for her age. Student displayed good skills in verbal ability, nonverbal reasoning, and spatial ability. However, Student displayed weakness in adaptive behavior. Student displayed a high level of autism spectrum characteristics. Student had significant difficulty with self-regulation and adapting to changes and transitions. Student displayed limited skills with appropriate social interactions with adults and peers. Further Student displayed anxiety and fear across settings, and she often became stuck on things and did not accept explanations or help from adults to move on. She

²⁰ H-26-03, Parent exhibits, pgs. 141-142.

²¹ H-26-03, Id., pgs. 147-148.

²² H-26-03, Id., pg. 298.

could be upset for a long duration, and it was difficult to get her to calm down.²³ The evaluator opined that Student qualified for special education services under the category of Autism. The evaluator noted that a speech/language evaluation was reported separately and should be referred to, and a functional behavior assessment on Student was ongoing and would be reported separately with a behavior support plan. Goals should be aligned with the IEP to best support Student. The evaluator stated that Student would benefit from as much time with general education peers as possible to aid in social skill acquisition, communication, and adaptive behavior skills. Further, the evaluator made the following recommendations for classroom strategies, accommodations and modifications:

- Identify and provide reinforcement for Student for desirable behavior.
- Use visuals to help Student adjust to the routines of the school environment as well as classroom. Make sure expectations are clear and consistent. Remind Student of the rules and routines in order to help her remember and refer back to them.
- Student needs space when she is upset. Do not negotiate or argue as she is not able to reason when she is escalated.
- Provide adaptive behavior supports that are oriented toward self-regulation on task behavior and class participation, positive social interactions, and transitioning appropriately from preferred to non-preferred tasks.
- Give Student advanced warning before unexpected changes in routine.
- Keep oral directions short and simple

²³ H-26-03, Parent's Exhibits, pg. 305.

- Give Student time to respond to directives. She is able to follow directions but does not often do so immediately. Build routines and avoid over stimulating environments (loud noises).
 - Give Student a script to follow in problem situations. Consider the use of social stories to support understanding social expectations and routines.²⁴
16. The District completed a speech evaluation on November 7, 2023. The evaluator found that Student's test indicated significant pragmatic/social language weaknesses, atypical dysfluencies when speaking and weak oral narrative language skills. The evaluator further found that improved communication skills might be beneficial for Student's academic success and speech language therapy was an appropriate educational consideration.²⁵
17. The District completed an occupational therapy evaluation on Student on November 27, 2023. The evaluator reported regarding social skills that Student will put hands on others (squeezes a peers face when standing in line-not out of anger), hugs others when it's unwanted, conversation is limited, does not read the room (e.g. at carpet time students are all quiet and listening and Student will walk up and yell "HELLO!").²⁶ Although direct occupational therapy was not recommended, the evaluator found Student had the following needs with direct impact on education:
- Safety associated with elopement
 - Executive function deficits with difficulties in social emotional regulation

²⁴ H-26-03, Parents' Exhibits, pgs. 298-306.

²⁵ H-26-03, Id., pgs. 340-348.

²⁶ H-26-03, Id., pg. 384.

- Sensory processing in auditory and touch processing as well as maladaptive behavior responses.²⁷

To address Student's Auditory processing issues the evaluator suggested the District consider:

- Shake things up with unpredictable auditory input like a rap or a song to help Student notice.
- Call Student's name when giving a directive.
- Auditory timer for starting and stopping work/activities-specific tune or song to indicate time is up or transition. Student liked a duck timer with both auditory and visual input.
- Pair auditory and visual instruction whenever possible
- Allow Student to work in a quiet area away from peers if necessary.
Student likes the library area in the classroom and might be offered that space with specific expectations for work completion while in the space.

For Student's Visual processing issues the evaluator suggested the District consider:

- Placing Student's desk near peers but not at the table with them where distractions can be kept to a minimum.
- Sit Student facing away from transition areas.
- Provide a screen (cardboard foldout) for Student's desk when she is having a tough day and is easily distracted or frustrated.
- Keep the room visually organized, decrease clutter (wall and ceiling hangings)

²⁷ H-26-03, Parent's Exhibits, pgs. 377-384.

For Student's touch process issues the evaluator suggested the District consider:

- Teach with social stories and role play regarding appropriate personal space. Can use a small hula hoop or hold a playground ball to provide a visual for appropriate distance.
- Use transition or fidget objects (Student likes small doll toys) when standing in line and transitioning.
- Resistive fidgets (links, counters, putty or playdoh), various textured fabric at her desk during work and/or transitions.
- Be first or last when standing in line.
- Snug compression sport type shirt worn under clothing for constant touch pressure throughout the day-this is calming and organizing to the nervous system.
- Sharpen pencils with a manual pencil sharpener or electric. Heavy work and vibration are good for touch body awareness, movement and calming.
- Always tell her what you are about to do and ask permission.

For movement processing issues the evaluator suggested the District consider:

- In General Student might benefit from some heavy work first thing in the morning to feed and organize her system. A weighted walk to school, chair pushups, heavy hopping in place.
- Activities in her seat such as seat pushups, arm stretches, isometric hand and arm exercises. The entire class can take a minute to do these.
- Turn the chair around backwards so that the front of her trunk is leaning on the back of the chair providing heaving input.

- Continue alternative seating-stool, disc.
- Allow Student to stand to work at her desk.

For behavior issues the evaluator suggested the District consider:

- Allow Student to ask for a break when needed (non-contingent)
- If Student looks distressed, ask her if she needs a break
- Work up to a work break schedule or use of a penny chart to earn a preferred item.
- Give choices whenever possible such as “do you want to do your coloring first or your cutting?”
- Visual schedule on her desk-one for morning and one for afternoon. Have Student review it with an adult and check off items as they are completed.
- Big changes in routine should be discussed the day before at school and at home the night before, when possible, to give Student time to process the change and talk through any concerns.
- Ask Student where she is most comfortable during instruction and allow her choice of placement whenever possible.²⁸

18. On December 7, 2023, the District held an IEP team meeting to review evaluation results. Parents were in attendance. The IEP team determined Student was eligible for special education services under the category of Autism.²⁹
19. The IEP developed on December 7, 2023, included the following special education services: Direct instruction in Adaptive behavior for sixty (60) minutes per week in

²⁸ H-26-03, Parents’ Exhibits, pgs. 377-384.

²⁹ H-26-03, Id., pg. 152.

- the regular education classroom. The IEP also included the related services of speech/language therapy services for 180 minutes per month in the therapy room.³⁰ Modifications and accommodations listed on Student's IEP included: frequent breaks; do not negotiate or argue, as she is not able to reason when she is escalated; provide access to calm down corner for Student to use when she is feeling frustrated or needing a break; movement breaks that allow for helping the teacher or delivering supplies; wait time to allow Student to respond, Student understands but needs time to process her answers; access to noise cancelling headphones; flexible seating; use of visual schedule and visual timers.³¹ Student's IEP also included three goals: one speech therapy goal and eight objectives and two adaptive behavior goals.³²
20. Between October 16, 2023, and December 12, 2023, the District conducted a FBA on Student. On January 8, 2024³³ The FBA identified two target behaviors; refusal and physical aggression. The hypothesized functions of both behaviors were to gain a tangible.³⁴
21. On January 11, 2024, the IEP team met, with both parents present and reviewed the FBA and adopted a Behavior Intervention Plan (BIP).³⁵ The replacement behavior was for Student to request tangible items/preferred items and negotiate their access. Prevention strategies included: use of daily transition item from home, prompting and front loading each morning to encourage and remind Student to use skills she is learning and to access her incentive chart, daily check in for two minutes to let

³⁰ H-26-03, Parents' Exhibits, pg. 122.

³¹ H-26-03, Id., pg. 116.

³² H-26-03, Id., pgs. 117-119.

³³ H-26-03, Id., pg., 179. The Report wrongly states the report date as January 8, 2023, but the correct was January 8, 2024.

³⁴ H-26-03, Id., pg. 184.

³⁵ H-26-03, Id., pgs., 160-164/

Student talk about what she wants to talk through without giving directions...use of 4:1 positive to corrective ratio, and access to school issued noise cancelling headphones, phrase redirections in the positive, offer equal choice of activities and provide 2-4 non-contingent breaks daily-these should include “helper” tasks outside the classroom.

Student was to receive at least one time weekly for 20-30 minutes explicit instruction in:

- Following directions
- Negotiating with adults
- Accepting feedback
- Asking permission
- Accepting no
- Problem solving model -SODAS (Situation, Options, Disadvantages, Advantages, Solution)

For reinforcement Student will utilize a visual chart to help track her positive behaviors. Once she has earned 10 checks she will get 5-7 minutes with a preferred item.

When responding to problem behavior:

- If Student refuses, provide a non-reactive response and reminder of task or direction.
- Provide space and wait time for her to follow direction and reduce repeated directions outside of the reality statements

- If Student becomes physically aggressive, calmly block physical aggression, prompt and utilize reality statements. Adults should again allow space and wait time for her to follow direction.

Progress monitoring was performed by data collected based on the incentives chart.

The team was responsible for tracking and graphing the frequency of earned checks/stickers. The team determined a crises plan was not needed to address Students physically aggressive behavior.³⁶

22. The behavior intervention plan is difficult to follow and understand when changes were made because the District behavior plan document is marked up with strike throughs and handwritten additions, some dated some not. It makes it impossible for this hearing officer to be definitive on what occurred and on what dates.³⁷
23. The behavior plan was amended in some form on August 30, 2024, February 10, 2025, and March 17, 2025. On August 29, 2024, it appears the 2-4 non-contingent breaks daily were removed and instead of a chart with stickers, Student was to utilize the school wide PBIS system (DOJO) to reward appropriate behavior and access the Dojo store each Friday. Further progress monitoring changed to Student's behavior data would be tracked via SWISS, which is the school's behavior tracking system for all students. The document shows that the use of a daily transition item from home was removed on February 10, 2025. On March 17, 2025, the behavior plan was updated again and Extinction: Based on the function of the behavior, what should be reduced or stopped following the problem behavior? Reduced access to tangible items

³⁶ H-26-03, Parents' Exhibits, pgs. 161-164.

³⁷ H-26-03, Id.

- and make those items accessible outside the structure of the incentive chart and non-contingent breaks/sensory breaks were removed and nothing replaced them.³⁸
24. On November 22, 2024, the IEP team met for Student's annual review. Under Students current level of functional performance it was noted that Student was being serviced under the category of Autism. Student has a medical diagnosis from Dennis Developmental of autism level 2 supports, ADHD combined type, unspecified disruptive, impulse control or conduct disorder, unspecified anxiety, unspecified sleep disorder, and rule out disruptive mood dysregulation disorder (not diagnosable until 6 years of age). This IEP inaccurately reports that Student had zero behavior infractions. Student's IEP contained two speech goals with thirteen objectives and one behavior goal. Student was to receive ninety (90) minutes of direct instruction in adaptive behavior in the general education classroom and 180 minutes of direct instruction in speech therapy in the therapy room.³⁹
25. 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.⁴⁰
26. On February 10, 2025, a review and revise IEP team meeting was held at the request of the Parents to discuss any changes within school due to Student's changes in behavior over the prior two weeks. Student received a half day suspension on

³⁸ H-26-03, Parents' Exhibits, pgs. 161-164.

³⁹ H-26-03, Id., pgs. 1-13.

⁴⁰ H-26-03, Id., pg. 177.

February 7, 2025, because she pinched and attempted to bite a teacher.⁴¹ Further Student had eight behavioral referrals that week.⁴² Special Education services were changed at the February 10, 2025, IEP meeting. Adaptive behavior services were removed, and speech therapy services were reduced from 180 minutes per month to 30 minutes per month.⁴³

27. On March 14, 2025, Student was again suspended because she was putting hands on another student while in line. She screamed and yelled and then slapped a different student in the face. Student then ran from the line to the door outside of the fence. Student was given an alternative place to eat lunch. When the teacher directed attention away from Student she began to knock over objects in the room and attempted to flee. The teacher called for backup. Ms. Light came in the room Student was screaming she wanted to go back to her class because she didn't want to miss "between the lions." Ms. Light explained she couldn't go back to the classroom until she calmed down. Student then tried to open the door and flee multiple times. Student reached up and hit Ms. Light across the jaw and then turned and hit Mrs. Fairchild in the forehead. When asked why she hit the other student that day Student replied that he had whispered to her that he was better than her and she was a loser. However when asked if that had happened that day Student replied no. While talking with Mrs. Fairchild, Student scooted to the edge of her seat and kicked Mrs. Fairchild's face, hitting her in the neck. As noted on the out of school suspension form, a similar incident occurred on March 13, 2025, also when students were lining up. This

⁴¹ H-26-03, Parents' Exhibits, pg. 431

⁴² H-26-03, District's Exhibits, pgs. 474-475.

⁴³ H-26-03, Parents' Exhibits, pgs. 48-57.

- incident was directed at a different child and the only explanation given was that “I have a better tiara than her and she thinks hers is better.” Student was kept in an alternate location the remainder of the afternoon after the incident on March 13, 2025.⁴⁴
28. On March 19, 2025, Student asked to go to the bathroom, and was told to wait and Student got up and left the classroom.⁴⁵ Also on this same day Student exhibited physical aggression by pulling another student’s hair.⁴⁶
29. On March 31, 2025, Student exhibited physical aggression because another student opened the door before she could. Student eloped to the office and was given time and space before returning. Also on March 31, 2025, while in the office, Student fell off a chair and hit her head causing a bruise/knot.⁴⁷
30. On April 3, 2025, during a crisis incident Student threw a chair at staff, then tripped over it and fell. Student reported she was fine. However, staff was bitten, scratched, kicked, and punched during the incident.⁴⁸
31. On April 7, 2025, Student slapped staff with an open hand and hit same staff on the cheek with a fidget tube.⁴⁹
32. On April 7, 2025, an IEP team meeting was held. They discussed the calm down corner that was introduced to Student that day and her acceptance of it was not favorable. Use of social stories and practice will be used. The team mentioned concerns about the amount of time Student had been out of the classroom since spring

⁴⁴ H-26-03, District’s Exhibits pg. 432.

⁴⁵ H-26-03, Id., pg. 433.

⁴⁶ H-26-03, Id., pg. 434.

⁴⁷ H-26-03, Id., pgs. 435-436, 438.

⁴⁸ H-26-03, Id., pg. 439.

⁴⁹ H-26-03, Id., pg. 440.

- break and when asked said Student's last day of full participation in class were March 20 and 21. The speech pathologist explained that she was working on setting up a behavior chart with unicorns on it and Student was working for a trinket from the treasure box. It was decided some skills would be taught through social skills in direct speech language therapy. Student would start receiving thirty minutes of speech therapy weekly (had been 30 minutes monthly). A new FBA was discussed by parents but due to lack of days of school the committee agreed to meet again in the next two weeks to develop a new BIP based on current behaviors and data they currently had.⁵⁰
33. On April 25, 2025, a facilitated IEP meeting was held. The Parents requested a facilitator for the IEP meeting. The meeting was held to develop a new BIP based upon the data from the past year. The Parents stated they believed Student's behaviors are not just to escape from a non-preferred activity but more related to PE, hallway, and aggression to peers. They also expressed concerns that Student's anxiety and refusal to go to class is not addressed within the new FBA. Committee agreed to meet in August to discuss and obtain consent for a new FBA. Parents further stated they did not want rewards to replace the teaching of the skill needed. The home-to-school comfort item was discussed again but no agreement was reached. The meeting was set to reconvene May 7, at 9am.⁵¹
34. On April 28, 2025, Student was suspended for two days because she scratched and hit one adult in the face. She also hit another adult multiple times in the arms and stomach area while the adult tried to back away. Student scratched another adult multiple times on the arm. Student also bit an adult on the back of the leg, and she

⁵⁰ H-26-03, District's Exhibits, pg. 86.

⁵¹ H-26-03, Id., pg.90.

threw a door stop from a close distance hitting an administrator in the head, causing injury.⁵²

35. On May 7, 2025, an IEP meeting was held. This was a facilitated IEP meeting continued from April 25, 2025, to continue to develop a BIP. They discussed that a lot of Student's heightened state is due to sensory issues and Student will lash out, escape. The team discussed response to problem behavior that will help guide the team on how to respond to Student's emotional dysregulation. Use of a comfort item is a part of the BIP. District shared that when Student is dysregulated, she may hold her comfort item close, touch her belly button, squint and look to the side, chews on her hair and chews her fingers. Parents expressed concerns about who was going to help Student's reentry after suspension. Further it was discussed who would respond to Student when she was escalated and if they would be trained on her BIP. After two hours the team had not completed its review and agreed another meeting would be scheduled.⁵³
36. On May 21, 2025, Student was suspended for two days because she eloped from the classroom, and when asked to accompany an adult helper, Student ran to the office on her own. When they attempted to check on her, Student became physically aggressive toward multiple staff members including biting, scratching, and kicking, along with multiple other attempted aggressive behaviors (hair pulling, slapping). In addition, there was significant property destruction throughout the office as Student threw

⁵² H-26-03, District's Exhibits, pg. 443.

⁵³ H-26-03, Id., pg. 97.

- anything within her reach, dumped many items, tore and removed multiple wall hangings.⁵⁴
37. As Student's maladaptive behaviors increased in intensity and in frequency during the spring of 2025, Student's behavior plan remained with little change to address Student's increasing maladaptive behaviors.
38. On July 29, 2025, Parents prepared a memorandum outlining their concerns and asking the IEP team to be prepared to discuss those concerns.⁵⁵
39. On August 1, 2025, a facilitated IEP meeting was held, with Parents participating, and a new BIP was developed.⁵⁶
40. On August 13, 2025, Student's second day of second grade, Student was involved in an incident in which she became dysregulated because she believed another student had her noise cancelling headphones. Student became aggressive toward multiple students and staff. The staff was unable to calm Student and get Student to leave the classroom. Staff was able after several minutes to remove the other Students from the classroom. Student was still dysregulated and during this incident injured multiple staff members, threw school supplies and other objects as the rest of the class was leaving the room. At one point, Student got near another student while they were lining up to leave and climbed on her back and grabbed her by the shoulders and pulled her shirt partially off of her shoulders. Ms. Baxter was able to get Student to go to the bathroom. While in the bathroom, Student screamed she didn't want the chosen stall, locked herself in and climbed under two other stalls. It was unclear if Student

⁵⁴ H-26-03, District Exhibits, pg. 444.

⁵⁵ H-26-03, Parents' Exhibits, pgs. 23-32.

⁵⁶ H-26-03, Id., pgs. 14-18.

ever utilized the bathroom but eventually exited with staff to the safe space room.

Student was able to de-escalate and later joined her dad to eat lunch. Student finished out her day with Ms. Baxter and Ms. Nicholas by exhibiting periods of both regulated and dysregulated behavior.⁵⁷

41. During the 2025 legislative session, Arkansas general assembly passed Act 565 known as “the teacher and student protection act of 2025”. The purpose is to prohibit a student who is removed from a classroom due to violent or abusive behavior against a teacher or another student from being placed in a class with the teacher or student against whom violent or abusive behavior was directed; and for other purposes.⁵⁸
42. Two teachers in the Fayetteville School District who were involved in the incident involving Student on August 13, 2025, invoked Act 565.
43. There is no documentation that Student was suspended for the incident that occurred on August 13, 2025.
44. After the August 13, 2025, incident Parents were notified that Student was to go to the SOAR academy, the District’s Alternative Learning Environment until a manifestation determination review was held within ten days.
45. The Parents filed their first Due Process hearing on August 18, 2025.
46. The District held a manifestation review determination on August 22, 2025. All members present, including the teachers who invoked Act 565, determined that there was a direct and substantial relationship between Student’s disability and the act of misconduct Student exhibited on August 13, 2025.⁵⁹

⁵⁷ H-26-03, Parents’ Exhibits, pg. 80.

⁵⁸ <https://arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2025R%2FPublic%2FACT565.pdf>

⁵⁹ H-26-37, Parent’s exhibits pgs. 216-219.

47. The District stated that because of Act 565 Student could not be returned to her previous classroom, could not be around the two teachers that invoked the Act or the Student's involved in the incident. Therefore, The District offered three placement options for Student:

- Butterfield Trail Elementary with access to her full IEP and BIP services with restrictions to school staff and students.
- Another Elementary building (Asbell, Leverett or Washington) with access to her full IEP and BIP services
- Alternate Learning Environment, SOAR academy located on Owl Creek Elementary campus-with access to her full IEP and BIP services.⁶⁰

48. None of the three options provided by the District were acceptable to the parents. The Parents requested and the District citing Act 565, refused to return Student to her previous placement per IDEA which would have been a regular classroom at Butterfield elementary without the restrictions to school staff, students, lunch, recess, morning drop off, afternoon pickup and delivery of services.⁶¹

49. Parents then filed this second due process hearing request asking this hearing officer to order Student be returned to her previous placement.⁶²

⁶⁰ H-26-37, Parent's Exhibits pg. 214-216.

⁶¹ See MDR meeting recording.

⁶² See Due process complaint H-26-37.

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. ex rel. Peterson v. Cnty. Sch. Bd. of Hanover Cnty., Va.*, 516 F.3d 254, 261 (4th Cir. 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(a)(1)(A). FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. 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 confer educational benefit, 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. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 998–99, 197 L. Ed. 2d 335 (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 that the IEP must be responsive to the child's identified educational needs. See 20 U.S.C. § 1414(d)(1)(A); 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 Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 395, 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(29), (26). 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 206-07A 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 Sch. Dist.*, 439 F.3d 773 (8th Cir. 2006); *Schoenfeld v. Parkway Sch. Dist.*, 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)(1)(A); 34 C.F.R. § 300.101. In 1982, in *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. 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 VIOLATIONS 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's Stay Put provision. (2) whether the District denied Student a FAPE between August 19, 2025, and February 27, 2026, specifically by failing to return Student to the placement from which she was removed after the Manifestation Determination Review ("MDR") determined that Student's behavior on August 13, 2025, was a manifestation of her disability.

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 violated the IDEA's stay-put provision, 20 U.S.C. § 1415(j), after the filing of the Due Process Complaint.

The IDEA provides that, during the pendency of any due process proceedings, "the child shall remain in the then-current educational placement" unless the parties otherwise agree. 20 U.S.C. § 1415(j). The Supreme Court has described this stay-put protection as an "unequivocal"

command designed to preserve the child's educational status quo while disputes are resolved. *Honig v. Doe*, 484 U.S. 305, 323 (1988).

The Eighth Circuit has likewise held that the stay-put provision is to be "literally and rigorously enforced." *Hale ex rel. Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 835 (8th Cir. 2002). In *Hale ex rel. Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831 (8th Cir. 2002), the court explained that the question is not merely whether the district labels the move a "placement" change, but whether the change has a material effect on the student's educational setting. The court affirmed stay-put relief where the school district's unilateral change in location altered the student's educational placement. *Id.* The Eighth Circuit in *Poplar Bluff* Stated:

"A transfer to a different school building for fiscal or other reasons unrelated to the disabled child has generally not been deemed a change in placement, whereas an expulsion from school or some other change in location made on account of the disabled child or his behavior has usually been deemed a change in educational placement that violates the stay-put provision if made unilaterally. *See Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 548-49 (7th Cir. 1996), and cases cited."

Hale v. Poplar Bluff R-I Sch. Dist., 280 F.3d 831, 834 (8th Cir. 2002).

The Eighth Circuit has also recognized that IDEA claims are highly fact-intensive and that hearing officers may rely on the practical effect of the district's actions on the student's program. *See Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831 (8th Cir. 2002). Relatedly, the Eighth Circuit has held in the FAPE context that procedural violations are actionable only if they result in loss of educational opportunity, seriously infringe parental participation, or cause deprivation of educational benefit. *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795,

804–05 (8th Cir. 2011). Although *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011) addressed procedural violations generally, its analysis confirms that IDEA safeguards are not technicalities; they protect the child’s educational rights and the parents’ ability to participate meaningfully in placement decisions. *Id.*

The Eighth Circuit has further stated that parent consent matters under the IDEA. Where parents refuse or withdraw consent, the district may not be held liable for failing to provide the refused services. 20 U.S.C. § 1414(a)(1)(D)(ii)(III)(aa). And where parents waive services or otherwise agree to a program, school districts may rely on that consent. *Fitzgerald ex rel. S.F. v. Camdenton R-II Sch. Dist.*, 439 F.3d 773 (8th Cir. 2006); *Schoenfeld v. Parkway Sch. Dist.*, 138 F.3d 379 (8th Cir. 1998). Here, however, the record reflects no parental agreement to alter Student’s placement.

The record establishes that Student was removed from her placement on August 13, 2025, for reasons tied to the District’s effort to comply with Arkansas Act 565, not because of a disciplinary suspension documented under the IDEA. No disciplinary paperwork was admitted into evidence. Parents filed the Due Process Complaint on February 27, 2026. At that point, the stay-put obligation attached unless an exception applied or the parties agreed otherwise. They did not.

The evidence further shows that the District’s proposed “return” to Butterfield was not a return to the status quo. Rather, it contemplated materially different conditions, including:

- a different second-grade classroom
- a different resource teacher and potentially a different resource space
- resource services in another location if needed
- recess in a different area with one-on-one support and separation from prior classmates

- lunch in an alternate area rather than the main cafeteria
- a different arrival routine with escort and one-on-one support
- a different dismissal plan depending on transportation

These were not mere implementation details. They represented substantive changes to Student's school day, peer access, supervision, and service delivery.

The District argues that it was attempting to follow Arkansas Act 565 and that any changes were ministerial. That argument is unpersuasive under the IDEA. This Hearing Officer's task is to apply IDEA and determine whether the District complied with the federal requirements governing Student's placement during the pendency of these proceedings and after the manifestation determination. To the extent the District relied on Arkansas Act 565, state law cannot override the IDEA's federal stay-put mandate. See 20 U.S.C. § 1415(j). See 20 U.S.C. § 1415(j). Federal law controls where the two conflict. See 20 U.S.C. § 1415(j).

Under *Honig v. Doe*, 484 U.S. 305 (1988), and *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831 (8th Cir. 2002), the relevant inquiry is whether the District maintained Student's then-current educational placement. The answer here is no. The proposed return to Butterfield would have materially altered the educational environment Student had been receiving. The changes to classroom assignment, staff, service location, lunch, recess, arrival, dismissal, and one-on-one supervision altered the substance of the placement and not merely its label.

The District's position is also inconsistent with the IDEA's core policy of preserving stability during litigation. See *Honig v. Doe*, 484 U.S. 305, 323 (1988). Stay-put is intended to prevent unilateral changes while the parties litigate. *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 835 (8th Cir. 2002). Here, Parents did not consent to the changes, and the District did not obtain agreement to modify Student's placement. See *Fitzgerald ex rel. S.F. v. Camdenton R-II Sch.*

Dist., 439 F.3d 773 (8th Cir. 2006); Schoenfeld v. Parkway Sch. Dist., 138 F.3d 379 (8th Cir. 1998).

Nor does the IDEA's disciplinary framework excuse the District's failure to maintain placement. The record does not show a lawful, documented disciplinary removal that independently justified the changes at issue. Instead, the evidence shows an attempt to redesign Student's school day in response to Act 565. That is a substantive placement change, not a stay-put-compliant continuation of the existing placement.

Parents allege that the District was required to return Student to her last agreed upon placement per IDEA stay put provision once they filed their due process hearing request. This hearing officer agrees. Student was removed to an alternative educational setting on August 13, 2025, for not more than 10 school days, so that a manifestation determination could be conducted under IDEA. Parents filed their first due process hearing request H-26-03 on August 18, 2025, five days later. This hearing officer found in her decision in H-26-03 issued on February 18, 2026, that the district was still within its allotted 10 days, and a change in placement had not occurred and therefore no violation of stay put was found. In this case, however, more than 10 days have passed and stay put should have been implemented once Parents filed this due process hearing request.

This hearing officer finds the District procedurally violated IDEA's stay-put provision, 20 U.S.C. § 1415(j), by failing to return Student to her then current education placement during the pendency of this proceeding, after Parents filed this Due Process Complaint.

II. Whether the District denied Student a FAPE between August 19, 2025, and February 27, 2026, specifically by failing to return Student to the placement from

which she was removed after the Manifestation Determination Review (“MDR”) determined that Student’s behavior on August 13, 2025, was a manifestation of her disability.

The District held a manifestation determination review (“MDR”) on August 22, 2025. All members present, including the teachers who had invoked Act 565, determined that Student’s conduct on August 13, 2025, had a direct and substantial relationship to Student’s disability. Once that determination was made, the IDEA required the District to return Student to the placement from which she was removed, unless Parents and the District agreed to a different placement. 20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2). No such agreement occurred here.

The IDEA’s discipline provisions are not aspirational. They are mandatory safeguards designed to ensure that a child is not effectively punished for behavior that is a manifestation of the child’s disability. See *Honig v. Doe*, 484 U.S. 305, 323 (1988) (explaining that the stay-put protections are meant to prevent unilateral exclusion of disabled students); 20 U.S.C. § 1415(k); 34 C.F.R. § 300.530. Once a district determines that conduct is a manifestation of the student’s disability, the district must, absent parental agreement to the contrary, return the student to the prior placement and either conduct or review an FBA and implement or revise a BIP. 34 C.F.R. § 300.530(f)(1)-(2). The district does not have discretion to substitute a different setting simply because it believes a different arrangement would better satisfy state-law concerns or internal preferences.

The Eighth Circuit’s decision in *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831 (8th Cir. 2002) supports that conclusion. In *Hale*, the court held that the IDEA’s stay-put protections

are to be “literally and rigorously enforced,” and that a school district may not unilaterally alter a disabled student’s educational placement during the pendency of proceedings. *Id.* at 835. *Hale* confirms that the operative question is whether the district preserved the student’s then-current educational placement, not whether the district characterized the change as temporary, administrative, or necessary for operational reasons. *Id.* The District’s conduct here likewise amounted to an impermissible unilateral departure from the status quo after the MDR.

The record also establishes that the District’s proposed options were not the same placement in a different label. At the MDR, the District offered three alternatives: (1) return Student to Butterfield in a different regular second-grade classroom with numerous restrictions; (2) place Student at SOAR Academy, the District’s alternative learning environment; or (3) place Student at another district school in a regular second-grade classroom. Those options were materially different from the placement from which Student had been removed. They altered the classroom, peers, staff, supervision, and environment. Under *Hale*, that sort of substantive change is precisely the kind of unilateral placement shift the IDEA prohibits. See 280 F.3d at 835-36.

The District’s failure to return Student was not cured by its stated desire to comply with Arkansas Act 565. Federal law controls the manifestation determination remedy. Once the MDR concluded that Student’s conduct was a manifestation of her disability, the District was required to implement the IDEA’s return-to-placement mandate. 20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2). State-law restrictions cannot excuse noncompliance with a federal stay-put or manifestation-remedy requirement.

Nor does the record support any claim that Parents agreed to the changed placement. To the contrary, the evidence shows that Parents objected to the District’s proposed alternatives and did not consent to a different placement. Without parental agreement, the District had no

authority to keep Student out of the placement from which she was removed once the MDR found a manifestation. See 20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2).

This hearing officer finds The District's decision not to return Student to the placement from which she was removed after the manifestation determination review determined Student's behavior on August 13, 2025, was a manifestation of her disability, amounted to a procedural violation of the 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) violating IDEA's Stay Put provision. (2) failing to return Student to the placement from which she was removed after the Manifestation Determination Review ("MDR") determined that Student's behavior on August 13, 2025, was a manifestation of her disability.

SUBSTANTIVE VIOLATIONS OF IDEA

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District committed procedural violations under IDEA by: (1) violating IDEA's Stay Put provision, and (2) failing to return Student to the placement from which she was removed after the Manifestation Determination Review ("MDR") determined that Student's behavior on August 13, 2025, was a manifestation of her disability 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.

The Eighth Circuit has recognized that a district's failure to fully implement required IDEA provisions can amount to a substantive denial of FAPE when the failure deprives the child of educational benefit. See *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003).

That matters for MDR/return-to-placement violations because a district's refusal to return the child after a manifestation finding is not just a paperwork error; it is a failure to follow a mandatory disciplinary safeguard that preserves the child's status quo educational setting.

This Hearing Officer concludes that the District's violations of the IDEA's stay-put and manifestation-determination provisions were not merely technical or procedural; they substantively denied Student a FAPE because they deprived Student of the educational placement the IDEA required the District to maintain and restore, and they effectively excluded Student from school for the duration of these proceedings. Under Eighth Circuit law, a procedural violation results in a denial of FAPE when it compromises the child's right to an appropriate education, seriously hampers parental participation, or causes a deprivation of educational benefit. *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804-05 (8th Cir. 2011). Here, all three consequences occurred.

A. The District’s failure to return Student to the placement from which she was removed after the MDR determined her behavior was a manifestation of her disability deprived Student of educational benefit

Once the MDR team determined that Student’s conduct on August 13, 2025, was a manifestation of her disability, the IDEA required the District to return Student to the placement from which she was removed unless the Parents and the District agreed otherwise. 20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2). The District did not do so. Instead, it proposed three alternatives, none of which restored Student to her prior placement in the manner the statute requires. The proposed “return” to Butterfield was not a true return to the status quo; it was a materially altered placement with new restrictions, new supervision arrangements, and new limitations on Student’s movement, interactions, and daily routine.

Those modifications were substantial. They included a different second-grade classroom, different resource personnel and potentially a different service location, segregated recess, segregated lunch, altered arrival procedures, and a different dismissal plan. These were not minor logistical adjustments. They changed the educational environment in which Student would receive instruction and related services. Under Eighth Circuit authority, the question is whether the district preserved the student’s actual educational placement, not whether it characterized the change as a continuation of services. See *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 835 (8th Cir. 2002). The IDEA’s stay-put protection is “literally and rigorously enforced.” *Id.*

By refusing to restore Student to the placement from which she was removed, the District denied Student access to the educational benefit associated with that placement and instead imposed a district-designed substitute arrangement. That is a substantive violation because the

District did not merely fail to follow a technical procedure; it failed to provide the legally required educational setting itself.

B. The District’s actions seriously impeded Parents participation in placement decisions

The IDEA also protects parental participation in educational decision-making. A procedural violation is actionable where it “seriously hampered the parents’ opportunity to participate in the formulation process.” *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d at 804–05. That is what occurred here.

At the MDR, the District did not present a genuine return-to-placement proposal for discussion. Instead, it presented a set of predetermined options shaped by the requirements of Arkansas Act 565 and by the District’s staffing and facility limitations. The proposed changes were dictated to Parents rather than negotiated with them. The District’s proposal that Student could return to Butterfield only if placed in a different classroom, with different resource staff, different lunch and recess arrangements, altered arrival and dismissal procedures, and individualized supervision away from her prior peer group, did not preserve meaningful parental participation in the placement decision.⁶³ Parents were asked to react to a completed plan, not to participate in forming one.⁶⁴

Eighth Circuit law recognizes that parents must have a real opportunity to contribute to the IEP and placement process. See *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d at 804–05; *W.G. v. Bd. of Trs. of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1483–84 (9th Cir. 1992). Where the district has already decided the outcome and merely presents the parents with

⁶³ MDR recording at 1:11.25 District describes what the plan would include if Student returned to Butterfield Elementary.

⁶⁴ *Id.*

implementation details, parental participation is not meaningful. Here, Parents did not agree to the placement changes, and the District nevertheless proceeded as though it had authority to unilaterally redefine Student's placement.

C. The District's stay-put violation was itself a denial of FAPE

The District's failure to maintain Student's placement during the pendency of these proceedings independently supports a finding of substantive denial of FAPE. The Eighth Circuit has recognized that the stay-put provision is a core protection under the IDEA and is not discretionary. See *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d at 835. A district's unilateral change in placement during dispute resolution is precisely the type of harm the statute forbids. See *Honig v. Doe*, 484 U.S. 305, 323 (1988). The District's stay-put violation deprived Student of educational benefit because it prevented Student from receiving services in the placement to which she was entitled while the parties litigated their dispute. The record shows that the District did not maintain the status quo. Instead, it offered alternative arrangements that materially changed Student's classroom, staff, peer access, lunch routine, recess routine, arrival, dismissal, and supervision. Those changes were not ministerial. They changed the substance of Student's educational experience.

This was not cured by the District's asserted reliance on Arkansas Act 565 or by the fact that the District offered alternative programs. Federal law controlled the District's obligation. Here, the District's violation of the IDEA's stay-put provision was not a mere technical defect. Stay-put is a substantive safeguard designed to preserve the student's then-current educational placement during the pendency of proceedings. 20 U.S.C. § 1415(j); *Honig v. Doe*, 484 U.S. 305, 323 (1988). The Supreme Court has described that protection as an "unequivocal" command, and the Eighth Circuit has held that it must be "literally and rigorously enforced." *Honig v. Doe*, 484

U.S. 305, 323 (1988); *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 835 (8th Cir. 2002). By failing to restore Student to her then-current educational placement after Parents filed the due process complaint, the District did not simply commit a procedural misstep; it altered the educational setting the IDEA required it to maintain.

The District's stay-put violation deprived Student of educational benefit because it prevented Student from receiving services in the placement to which she was entitled while the parties litigated their dispute. The record shows that the District did not maintain the status quo. Instead, it offered alternative arrangements that materially changed Student's classroom, staff, peer access, lunch routine, recess routine, arrival, dismissal, and supervision. Those changes were not ministerial. They changed the substance of Student's educational experience. Under *Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831 (8th Cir. 2002), the question is whether the district preserved the child's actual educational placement, not whether it used a different label for the same arrangement. It did not.

The stay-put violation also seriously interfered with Parents' participation in placement decisions. The IDEA guarantees Parents a meaningful role in decisions affecting their child's education. *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804-05 (8th Cir. 2011). Here, Parents did not agree to the District's proposed changes, and the District did not present a true status quo placement for Parents to accept or reject. Rather, Parents were presented with predetermined alternatives that had already been shaped by the District's reliance on Arkansas Act 565. That unilateral change undermined the collaborative decision-making process the IDEA requires. The District's violation of the stay put provision under IDEA is a substantive violation of IDEA.

D. Conclusion

This Hearing Officer therefore finds that the District's stay-put violation and failure to return Student to the placement from which she was removed after the MDR collectively and substantively denied Student a FAPE. The District's actions deprived Student of educational benefit, deprived Parents of meaningful participation in placement decisions, and imposed a unilateral change in placement contrary to the IDEA. Accordingly, this Hearing Officer concludes that the District substantively violated the IDEA.

ORDER

Based on the testimony and evidence presented, this Hearing Officer finds in favor of Parents. Parents established by a preponderance of the evidence that the District denied Student a FAPE between August 19, 2025, and February 27, 2026. Accordingly, the District is hereby ordered to take the following actions regarding Student:

1. **Return to Placement.** The District shall immediately return Student to the last agreed-upon placement in effect immediately before the August 13, 2025, removal. That placement included attendance at Butterfield Trail Elementary in Student's regular education classroom, together with the special education and related services, supports, accommodations, and behavior intervention plan, without the numerous restrictions previously suggested by the district, unless Parents and district agree otherwise in writing.
2. **Compensatory ABA Services.** Because Student has been out of school for nearly an entire school year as a result of the District's failure to maintain Student's placement during the pendency of two due process proceedings, the District shall provide Student with compensatory Applied Behavior Analysis ("ABA") in the

amount of five hours per week from August 2026 through December 2026. The ABA services shall be provided by a qualified ABA provider. These services shall be provided at no cost to the Parents and shall be in addition to, and not in lieu of, all services Student is otherwise entitled to receive under her IEP. The services shall be delivered at school or in another setting agreed upon by the District and Parents. At a minimum the ABA services are ordered to address Student's education regression, loss of school routine, maladaptive behaviors, transition needs and any behavioral and functional deficits that intensified while Student was excluded from school. If the District cannot provide these services through its own staff, it shall fund a qualified outside ABA provider, with Parents afforded reasonable input regarding provider selection.

3. **IEP Meeting.** The District shall convene an IEP team meeting within ten (10) school days of this Order to identify the provider, schedule, and implementation details for the compensatory ABA services and to revise Student's IEP and BIP as necessary to address at a minimum, Student's current present levels, transition/reentry needs, and behavioral support needs.

To the extent Parents 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 those 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 this 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, this Hearing Officer has no further jurisdiction over the parties to the hearing.

IT IS SO ORDERED.

Dana McClain

HEARING OFFICER

6/29/2026

DATE