Arkansas Department of Education
SPECIAL EDUCATION UNIT

IN RE:

[redacted] as Parents in behalf of [redacted], Student — **PETITIONERS**

VS. NO. H-10-08

[redacted] — **RESPONDENTS**

HEARING OFFICER'S FINAL DECISION AND ORDER

Issue and Statement of the Case

Issues:

Did the Respondents deny the Student a free and appropriate public education (FAPE) according to the Individuals with Disabilities Education Act (IDEA) by failing to follow due process procedures in not identifying all of the student's disabilities that adversely affect his education; by not developing and implementing an appropriate Individualized Education Plan (IEP); and failing to implement an appropriate IEP to address the Student's educational needs in the least restrictive environment for school years 2006-07, 2007-08, 2008-09 and 2009-10?

Procedural History:

On October 5, 2009, a request to initiate due process hearing procedures was received by the Arkansas Department of Education (hereinafter referred to as the "Department") from [redacted] (hereinafter referred to as "Parents"), the parents o[redacted] (Petitioner) (hereinafter referred to as "Student"). The Parents requested the hearing because they believe that the Hot Springs School District (hereinafter referred to as " HSS District") and

subsequently the Fountain Lake School District (hereinafter referred to as "FLS District") failed to comply with the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 - 1485, as amended) (IDEA) (also referred to as the "Act" and "Public Law 108-446") and the regulations set forth by the Department according to Arkansas Code Annotated 6-41-202 through 6-41-223 in providing the Student with appropriate special education services as noted above in the issues as stated.

The Department responded to the Parent's request by designating November 5, 2009, as the date on which the hearing would be held and by assigning the case to an impartial hearing officer. The Hearing Officer issued an order setting preliminary timelines on October 9, 2009, which afforded the Districts with the opportunity to challenge the sufficiency of the due process complaint notice. The order setting preliminary timelines included an order for the HSS District and the FLS District to convene resolution sessions with the Parents on or before October 20, 2009. Both Districts notified the hearing Officer that resolution conferences were held; however, no agreement was reached.

On October 19, 2009 the HSS District challenged the sufficiency of the complaint and the Hearing Officer concurred and issued an order on October 21, 2009 permitting the Petitioner to amend their due process complaint in accordance with §§ (c)(e)(E) of § 615 of Public Law 105-17. The order also dismissed the Petitioner's complaints against the HSS District and FLS District for allegations of violations of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and the Fourteenth Amendment of the U.S. Constitution, which were considered by the Hearing Officer as non-hearable issues under the IDEA. The order further informed the Parents that the alleged complaints against agencies listed in the complaint which were

not under the jurisdiction of the Department would not be adjudicated by the Hearing Officer.

The Parents responded to the order by submitting an amended complaint on October 28, 2009. On receipt of the amended complaint an amended order setting preliminary timelines was issued on October 31, 2009; which again afforded both districts the opportunity to challenge the sufficiency of the amended complaint. The amended order setting preliminary timelines again included an order for the both districts to convene resolution sessions with the Parents on or before November 14, 2009. The HSS District and the FLS District notified the hearing Officer that resolution conferences were held; but again, no agreement was reached.

The HSS District responded to the amended complaint with a challenge as to its sufficiency on November 9, 2009. Having not been named in the challenge or the response to the challenge the FLS District filed a motion to adopt the responses to the complaint by the HSS District on November 10, 2009. An order was issued by the Hearing Officer on November 10, 2009 denying the challenge of sufficiency by the HSS District and by establishing a pre-hearing conference to be conducted on November 19, 2009. The pre-hearing conference was held as planned with the issues as noted above being agreed to as those which would be adjudicated beginning on November 30, 2009.

On Sunday evening, November 29, 2009, the HSS District submitted to the Hearing Officer via facsimile a motion to dismiss. The basis of the motion was fourfold: (1) The Student obtained the age of a major on October 31, 2009; (2) the complaint exceeded the statute of limitations on matters in excess of two years; (3) neither the Student nor Parents are currently residents of the HSS District; and (4) the Student is being home-schooled. On the day of the hearing the FLS District requested that they be permitted to adopt the HSS District's motion to dismiss. The request to the

FLS District was accepted; however the motion to dismiss was denied.

At the time the original complaint was submitted to the Department the Student was seventeen years old. By the time the issues came on for hearing on November 30, 2009, the Student had reached his eighteenth birthday. The HSS District and the FLS District's contention that the Parents' rights with regards to special education services were terminated when the Student reached the age of majority is consistent with the statute governing the IDEA; however, the Hearing Officer decided to go forward with the hearing in that a dismissal on such grounds would only delay the process of determining the validity of the complaints which allegedly occurred prior to his eighteenth birthday on October 31, 2009.[1] Additionally, the Supreme Court has opined that parents of students with disabilities as well as the students themselves are are entitled to enforceable rights under the IDEA [2]. On the following day of the hearing the Student submitted a declaration announcing the appointment of his Parents as his educational representatives also pursuant to 20 U.S.C. §1415(m) and Department regulations at Section 9.07. It was further noted by questions from the Hearing Officer that neither district had produced evidence of being in compliance with the IDEA as well as the Department's regulation governing special education and regular education students which require districts to notify students and parents of the transfer of rights when a student reaches the age of majority. The document presented by the Parents for the Student assigning his rights to his Parents was accepted into the record as a Hearing Officer exhibit.

With regard to the complaints having exceeded the constraints of the statute of limitations as established by the 2004 re-authorization of the IDEA, the HSS District is correct, but only in part.

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[1] 20 U.S.C. §1415(m)

[2] *Winkelman v. Parma City School District*, 550 U.S. 516 (2007)

The two year statute of limitations as established by the IDEA states that a parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have know about the alleged action that forms the basis of the complaint. The IDEA provides two exceptions to the statute of limitations. It does not apply to a parent if the parent was prevented from requesting the hearing due to (1) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or (2) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent. Neither of the two exceptions were addressed as issues by the Parents with the filing of their complaint, nor was it defended by the HSS District except in their motion to dismiss and in post hearing briefs by all parties. At the hearing the Hearing Officer concluded from a cursive review of the evidence presented that information for the time exceeding the two year limitation may in fact be important to determine the substantive basis of facts for the subsequent school years which did not exceed the statute of limitations and for which the Petitioner is entitled to be heard. This Hearing Officer did not believe it possible to determine whether or not the Student was denied FAPE for the two years within the statute of limitations without the prior information which led to the various parties' subsequent decisions. To the extent that evidence that related to the time period prior to two years before Petitioners knew or had reason to know of the alleged violations giving rise to their claim, was considered relevant for background information. In their post hearing brief the Parents contended that the inclusion of the 2006-07 school year complaint was justified because they believed that the facts presented to them at the time were misrepresentations. The specific misrepresentations were not a part of the original or amended complaint as such; however, the elicited testimony from the witnesses were directed by the Parents

in the direction that would lead the reader of the transcript to believe that the Parents believed they were misled in making decisions by both the HSS District, the FLS District, and the private agency who were involved in the education of their child. Nothing in the evidence or testimony indicated that the HSS District intentionally misrepresented anything to the Parents. As noted below under the findings of fact, at most the temporary IEP for school year 2006-07 was inadequate to meet the Student's needs. But if that were sufficient to warrant application of the statutory exception, the exception would swallow the rule. In hindsight, the Parents might consider the HSS District's assessment of the Student to be wrong, but that does not rise to a specific misrepresentation. However, it is the opinion of this Hearing Officer that due weight should still be given as to the factual findings regarding the HSS District's purported misrepresentations. Regardless of either party's position on this issue, the Courts have agreed that IDEA hearing officers should make a highly factual inquiry when there is the potential presence of any such exception to the statute of limitations. Further, the HSS District alleged in their motion to dismiss that the record was evidence that the Parents had sufficient information of being informed by having made contacts with various disability rights organizations which served to assist them in understanding their rights. However, the only document presented as evidence to this assertion was dated March 2007 following the HSS District's decision to transfer the Student to an alternative learning environment.[3]

At the time the complaints were alleged to have begun the Student was in fact a resident of the HSS District and as such the responsibility of the HSS District for purposes of providing an appropriate education. The courts have consistently agreed that students who, as in this case, claim a district violated the IDEA, but moves from the district before filing an administrative action, are

[3] HSS District Binder, Page 1

allowed to proceed if they seek relief, such as compensatory education, which survives the move.

The HSS District is correct in citing regulations which bar parents and students from the benefits of due process concerning special education matters when they have unilaterally removed the student from the public education agency. There is no dispute that the Parents removed the Student from enrollment in the HSS District and the FLS District for purposes of home-schooling, but why and how those decisions were reached, are part and partial of their complaint, thus the evidence surrounding the complaint were deemed to be hearable.

The hearing began as scheduled on November 30, 2009 and on December 1, 2009; however, the Parents were not able to complete their desired testimony and requested a continuance which was granted without objection for the case to be heard for a third day on January 8, 2010. The hearing proceeded for an additional two days, with the final day of the hearing being held on February 4, 2010. Following the final day of the hearing both parties were offered the opportunity to provide the Hearing Officer with post-hearing briefs to be included with the record. They were instructed that their briefs must be received within ten business days from the final date of the hearing. All parties were in compliance with having produced post hearing briefs within the time established and all are included as Hearing Officer exhibits.

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, Robert B. Doyle, Ph.D., Hearing Officer of Sherwood, Arkansas, conducted a closed impartial hearing. The Parents were represented by Theresa Caldwell, Attorney of Little Rock, Arkansas; the HSS District was represented by Paul Blume, Attorney of Little Rock, Arkansas; and the FLS District was represented by Jay Bequette, Attorney of Little Rock, Arkansas.

At the time of the alleged complaints were purported to have begun (school year 2006-07)

the Student was a fourteen [redacted] who had transferred to the HSS District as an IDEA eligible student from the [redacted] On being notified by the Parents in the enrollment procedures, the HSS District requested and received copies of the Student's special education records from the school district in [redacted] The Student and the Parents remained residents of the HSS District until they moved their residence into the adjoining FLS District in December 2008 and subsequently requested services for school year (2009-10).

Findings of Fact:

School Year 2006-07

As pointed out by the HSS District in their motion to dismiss, and the FLS District's motion to adopt, complaints which were alleged to have occurred during school year 2006-07 fall outside the statute of limitations according to the re-authorization of IDEA in 2004 for which complaints can be filed, and thus it is assumed they are not hearable by a hearing officer. However, neither the provisions of the IDEA as re-authorized in 2004, nor the regulations interpreting the statute, outline precisely how a hearing officer must consider a claim where the exceptions to the statute of limitations may apply; nor how to address the importance of any prior actions on the part of a petitioner or respondent. Consequently, this Hearing Officer has taken the position that prior actions and decisions made by all parties involved in a due process hearing may or may not be relevant to those complaints or issues which do fall within the period of time in which complaints can be filed for adjudication. At the same time it is recognized that the IDEA is clear and subsequent case law has supported the position that no restitution for the prevailing party can be awarded for actions of a defendant which fall outside the statute of limitations.[4] In the case before

[4] *Evan H. v. Unionville-Chadds Ford School District,* 51 IDELR 157 (E.D. Pa 2008)

this Hearing Officer the position taken in allowing information in on issues beyond the statute of limitations was deemed appropriate and necessary in providing a fair judicial decision. Such information was considered necessary in that decisions and actions taken by all parties prior to school year 2007-08 were considered relevant in determining how the parties made all subsequent decisions relevant to the case.

Prior to entering the HSS District the Student's high school in [redacted] developed an IEP on May 1, 2006 for school year 2006-07 anticipating that he would continue to be the responsibility of their district. The IEP indicated that he would receive special education direct services for deficits in reading, spelling, written language, math and organization for 1,250 minutes weekly and 20 minutes of counseling as a related service. [5] In the summer of 2006 the family moved to Hot Springs, Arkansas and enrolled their children, including the Student in the HSS District. The HSS District was made aware of the Student's previous special education services and in August 2006 conducted a referral conference at which time the IEP team developed a temporary IEP for the Student to begin his 2006-07 school year in their high school.[6] The temporary IEP included 750 minutes of direct weekly educational services in math, English, and reading. The total time of direct special education services as planned by the previous school was reduced by 500 minutes, with no specific specialized instruction offered in organization as was anticipated and planned by the previous school district. In lieu of providing a comparable IEP as to the one from the previous district the HSS District developed a temporary IEP which also did not include the proposed related service of counseling as was planned by the previous school. The HSS District's high school Special Education Designee testified that when they receive a special education student from

[5] HSS District Binder, Tab 6

[6] Ibid, Tab 2

another district or state that they typically implement the existing IEP for that student.[7] In this case, however, the existing IEP was not implemented. As noted above the reduction in the amount of time of direct instructional special education services was reduced to an amount which altered the type of placement determined to be appropriate in the previous school setting. In that setting the IEP committee determined that the most appropriate placement for his freshman year in high school would not have been in the regular education classroom because as noted it was "insufficient to meet the needs" of the Student.[8] His previous IEP committee determined that the most appropriate placement would be in a special education classroom fifty percent or more of the time, with some instruction in the regular education classroom. The HSS District's temporary IEP reflected that the Student would be in a regular education classroom with twenty-one to sixty percent of his instructional day being in a special education resource room.[9] No rationale was provided in the testimony by any of the HSS District personnel who were present at the time of the development of the temporary as to why the HSS District policy as stated by their special education designee was not followed or why no related services such as counseling were considered.

The Student's records from his previous school in [redacted] reflected his receipt of counseling services from a school-based social worker. The anticipated IEP for his high school freshman year in [redacted] had planned for him to receive twenty minutes weekly of counseling to address his social and emotional needs. According to their record the need for counseling was "due to frustration with academic difficulties, [the Student] demonstrates difficulty completing academic assignments,

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[7] Transcript, Vol IV, Page 57

[8] HSS District Binder, Tab 6, Page 12

[9] Ibid, Tab 2, Page 19

homework, and resolving peer issues."[10] These specific emotional and behavioral issues could not have been known by experience to the HSS District personnel on the Student's arrival into the school; however, the evidence presented and testimony given do not reflect that they were ever addressed as a possible need prior to or even after the implementation of his temporary IEP.

Following the implementation of the temporary IEP the HSS District conducted an evaluation which included a social history, individual intelligence, communication assessment, adaptive behavior rating, academic achievement, vision/hearing screening, and a curriculum based assessment. Although psychological services, such as counseling, was initially marked on the existing data form as a component needed for a comprehensive evaluation, it was subsequently unmarked.[11] Why this information was deemed as not being needed was not fully explained in testimony by the HSS District special education coordinator. She testified that counseling services were not discussed until after he was deemed to be ineligible for special education services in October 2007 when they came back for the evaluation conference to determine eligibility.[12] At the time the previous school's IEP for the Student was being developed in May 2006 their records reflect that he was not only receiving weekly counseling in the school setting, but that he was receiving outside counseling through [redacted][13] The HSS District's designated evaluator testified that she did not know why a need for counseling services was not included in the need for additional data and further testified that she did not make or ask for such an

[10] Ibid, Tab 6, Page 11

[11] Ibid, Tab 2, page 4

[12] Transcript, Vol I, Page 88-91

[13] HSS District Binder, Tab 6, page 15

assessment.[14] At the same time her evaluation report includes the statement that the Student's "mother reported that at his previous school [he] was frequently bullied" and "he participated in counseling for assistance in this area" and that "he was beaten up twice by bullies last school year with one incident resulting in a hospitalization due to head and eye injuries."[15]

The HSS District's evaluation, less the emotional/behavioral component and classroom observations, was completed between August 2006 and October 2006 and presented at the evaluation conference held in October 2006. Their evaluation data did not substantiate the existence of a disability that justified the need for special education services and consequently decided that the Student would not receive special education services.[16] The data as presented as evidence, as well as in testimony, reflected a borderline level of processing speed which the examiner testified would be manifested in the classroom as taking the Student longer to process routine things and that 'when presented with novel tasks, it may just take a little bit longer to process that information, and even take a little longer to complete assignments and things of that nature." Her data also revealed low average reading, math reasoning, and written expression skills. She used a regression analysis between his academic performance and his intelligence prediction to determine that there did not exist a specific learning disability. Her data reflected that not only was he entering his first year of high school with a significant weakness in processing speed skills, but also that his skills in reading, math reasoning, and written expression were low average; that his math calculation skills were in the low range, as well as was his fluency of academic skills; and that his ability to apply academic skills was in the low average range as well. His mother testified that his difficulties with

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[14] Transcript, Vol II, Page 12-13

[15] Parent Binder, Page 202

[16] HSS District Binder, Tap 2, page 25

learning and completing homework assignments from school, coupled with her and her husband's lack of academic skills to assist him, were causative factors in his experienced anger and frustration in the home and to which she attributed to his dislike for attending school.[17]

Even though the HSS District's examiner did not evaluate for a possible emotional disorder, she did acknowledge his previous receipt of counseling services and suggested in her report that the committee might consider making a referral. The only adaptive behavior assessment measure used in her evaluation was taken from information provided by the Parents. No information was collected or used from his classroom teachers and no classroom observations were conducted according to the data presented as evidence. The HSS District special education coordinator testified that the behavioral assessment was sufficient to meet the criteria of a comprehensive evaluation even though the Parents had no knowledge of the Student's classroom behavior. It was quite ironic, however, when the HSS District objected to the Student's mother's testimony when asked if she thought the Student's behavior problems at school were related to problems he was having in the classroom, by asserting that the HSS District did not think she was capable of making that determination.[18]

The Student began his freshman year in the regular classroom according to the temporary IEP with the evidence indicating that during the period of the evaluation data collection (August 21, 2006 to September 11, 2006) he attended his assigned classes only on eleven of the sixteen days of school.[19] Therefore prior to the completion of the evaluation data his classroom teachers would have had only eleven days of observation information to provide the examiner. However, prior to

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[17] Transcript, Vol IV, Page 195

[18] Transcript, Vol V, Page 76

[19] HSS District Binder, Tab 5, Page 12

as assistance with a referral for counseling. The record also indicates that his classroom teachers would be provided with the recommended accommodations.[23]

An intake evaluation for counseling services was conducted on February 26, 2007 by Community Counseling Services (CCS) on the recommendation of the HSS District examiner who assisted in obtaining counseling services for the Student. CCS was authorized by the HSS District to provide in-school counseling services; however, CCS personnel were neither employed or supervised by HSS District personnel. Their evaluation indicated [redacted][24] The record reveals he was provided individual therapy from February 26, 2007 through the end of the 2006-07 school year with no change in diagnosis and with a physician certifying that he suffered from [redacted]

The record of attendance between August 29, 2006 and March 12, 2007 shows that the Student was absent for medical reasons on eleven (11) days; had thirty-eight (38) days of being absent without an excuse from one or more classes; had three (3) days of an in-school suspension; and had five (5) days with an out-of-school suspension; for a total of having missed some fifty-seven (57) days of classroom instruction.[26] Attendance was noted in his previous school as being a major concern.[27]

His previous school's counselor noted that he had difficulty in resolving conflict, showing

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[23] Parent Binder, Page 15

[24] Ibid, Page 645

[25] Parent Binder, Page 615

[26] HSS District Binder, Tab 5, Page 12-13

[27] Ibid, Tab 6, Page 17

the scheduled evaluation conference on October 2, 2006 some of his classroom teachers would have had an additional fourteen days of classroom time to provide additional data and a classroom observation could have been made by someone other than a classroom teacher; however, there were no classroom teachers present at the evaluation conference on October 2, 2006.[20] The records show that he was present in the school for all of those fourteen days between September 11, 2006 and October 2, 2006, but absent from the majority of his classes on five of the fourteen days.[21]

A question as to whether or not the Student might be eligible for special education services due to a serious emotional disturbance was never considered according to the exhibits and testimony. This is in spite of the facts presented in evidence that not only did the Student exhibit difficulties in adapting to social situations in his previous school environment, but that he had recently been moved to a different school, had experienced the deaths of two close relatives, and would be experiencing the difficulty of adapting to developing new friends and teachers. His Parents reported that his grandfather and an uncle with whom he had close relationships had recently died. Both parents are physically disabled and unemployed, his mother being [redacted] and both with [redacted][22] No evidence or testimony was presented to contradict that this information was or was not known to HSS District personnel, but nonetheless there was no evidence that it was taken into consideration in determining and developing this Student's educational needs on entering the HSS District in August 2006.

Although the IEP team decided the Student did not qualify for special education services the record reflects that they provided the Parents with information for him to receive tutoring as well

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[20] Parent Binder, Page 14

[21] Ibid

[22] Transcript, Vol IV, Page 192

empathy, and controlling his anger.[28] During his freshman year (2006-07) at the HSS District high school he was disciplined on October 3rd for disorderly conduct; on October 7th for disorderly conduct; on October 26th for assaulting a staff person; on January 23rd for insubordination; on February 8th for disorderly conduct; on February 8th for disorderly conduct; on February 12th he was disciplined three times for insubordination; on February 16th for insubordination; on February 20th for truancy; and on March 5th he was disciplined for assaulting a staff person.[29] The progress notes written by his in-school assigned therapist indicate that during this time frame he continued to have difficulties with anger management, academic/school issues, communication skills, decision-making, family conflict/instability, parenting and social/interpersonal skills.[30]

On March 12 , 2007 the HSS District initiated a Family in Need of Services (FINS) petition with the local circuit court. In the petition the HSS District representative stated that the Student was being transferred for education purposes to the HSS District's alternative learning environment (ALE).[31] The circuit court issued an order for the Student and his mother to appear on May 11, 2007.

In order for a district under the jurisdiction of the Department to transfer a student to an ALE two characteristics defining the need for the referral had to be indicated on the referral form. For the Student the HSS District's ALE referral form on March 12, 2007 indicated disruptive behavior (verbal assault of staff member) and personal/family problems/situations.[32] At the time of the ALE

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[28] Ibid, Page 16

[29] Ibid, Tab 5, Page 15-16

[30] Parent Binder, Page 608

[31] Parent Binder, Pages 689-690

[32] HSS District Binder, Vol 4, Page 6

referral the HSS District maintained two separate ALE's, with one (Summit) being an alternative learning environment for students from kindergarten through the twelfth grade and with the other (Vista) providing the same educational services as Summit, but the Vista learning environment also included a "mental health component to the students."[33] The Student was assigned to the Summit program; the program which did not include the mental health component, even though as noted above he had been diagnosed with a serious emotional disorder by a physician and was receiving in-school counseling services. According to the HSS District Superintendent the decision as to which ALE a student is assigned is the responsibility of the building Principal.[34] However, in her testimony the HSS District special education coordinator stated that "any of the administrators, teachers, special ed, anyone can make a referral."[35] When questioned as to why the Student was not referred to the HSS District's ALE Vista program when he had a history of needing and receiving mental health services, she responded that "in reviewing the information that was pulled together for this hearing, that ...Vista was full."[36] She also testified in response to the Hearing Officer's questioning as to what happens when their Vista program is full and they have students who need the mental health services provided at Vista. She stated that they "remain in the regular school, or their regular school campus, and we provide supports as needed."[37] The Student, however, was no longer on their regular school campus, but at their other ALE, and thus no alternative for services was testified to or entered as evidence as having been provided other than in-school

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[33] Transcript, Vol IV, Page 14

[34] Ibid, Page 15

[35] Transcript, Vol I, Page 128

[36] Ibid, Page 127-128

[37] Ibid, Page 216-217

counseling by an outside agency.

As noted above and by the time of the March 5th incident the Student had begun in-school counseling with a therapist from CCS. The counselor's note of March 5 noted a conversation with the Student's mother in which she wrote that she went to get the Student and discovered he had been suspended from school. After which she wrote that she talked to the HSS District's vice-principal who informed her that the Student had cut his finger and was sent to the school nurse. According to the counselor the Student advised the nurse that his mother would be coming that afternoon to take him to a previously scheduled doctor's appointment and he requested to call her to come for him earlier. The nurse apparently refused to allow him to use the telephone upon which he became angry and cursed the nurse. She was informed in her conversation with the vice-principal that the HSS District could not tolerate disrespect for the teachers and that following his suspension he would be sent to the Summit ALE. Whereupon she wrote that the Student had only begun his counseling and that she requested he be allowed to return to the regular classroom for one more chance. In her note of March 12, 2007, following his transfer to the ALE, the counselor noted that she had met with the school principal to discuss the possibility of the Student returning to the high school rather than going to the Summit ALE; however, it was reported to her by the Parents that they felt he might be able to get more help in the ALE setting for which they were pleased.[38] However the following week she recorded that the Parents came to her being unhappy with the Student having been punished in sending him to the ALE and that they did not think the punishment met the crime. Whereupon she again advised the Parents that she would talk with the high school principal about him being able to return to the high school.[39] Two days later she wrote that she had

[38] Parent Binder, Page 634-637

[39] Ibid, Page 632

discussed the issues with the principal who stated to her that he was leaning towards allowing him to return to the high school. The therapist then wrote that she advised the principal that the Parents were once again pleased with the ALE placement and that they believed he would learn more there working at his own pace.[40] On this same date the Student's physician at CCS once again determined that he suffered a [redacted][41] The following day the counselor noted in her report that the high school principal had contacted her about the Parents having asked him about the Student returning to the high school. He reported to her that he was considering the request and that it would most likely be so when the 2007-08 school year started in August.

In the March 5th progress note his therapist wrote that she had a meeting with the HSS District special education coordinator to gain information about the school testing the Student; however, she was informed by the coordinator that the HSS District was not planning on testing the Student since the testing had already been completed and that there were no indications for additional testing. According to her note the Parents apparently believed that he would be tested for dyslexia or learning disorders by the school.[42] On April 9, 2007 she wrote that she had informed the Student's father that CCS would test for dyslexia or other learning disabilities and that this would help with next year's placement in school, but not the current year; noting further that the Student's father agreed to have the testing done. Who would do the testing, however, was not indicated, but the implication was that it would be completed by the examiner staff at CCS.[43] Ten

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[40] Ibid, Page 630

[41] Ibid, Page 627-629

[42] Ibid, Page 622

[43] Ibid, Page 628

days later her note indicated that she told the Student's mother that the testing would help the school see if he needed to be placed in any resource classes.[44] The testing she was referring to was that which would not be completed until August by the psychological examiner at the CCS.

Having been deemed ineligible for special education services by the HSS District the Student's mother contacted the high school Section 504 coordinator and requested a meeting to determine if he would be eligible for 504 services. On the day before the conference on April 12, 2007 the 504 coordinator collected information from his teachers at the Summit ALE. His English teacher indicated that he spent most of his days not in her class, but in the transition classroom. The teacher in the transition room noted that he had not attempted to complete any work and either looked around or slept. The algebra teacher stated in her report that he attended only two days in her class since being assigned to the ALE. His science teacher indicated he had excessive absences and completed only one chapter in one month. [45] The Student's school-based counselor was not present at the meeting even though she had completed her intake for services when he was found to suffer from a serious emotional disturbance. The records of the 504 conference reveal that a determination made on April 12, 2007 was that the Student did not have a mental or physical impairment and that he had no impairment that substantially limited a major life activity and that he would continue to receive his education in a regular classroom. The determination form was signed and agreed to by all except for the Student's parents, who signed but did not indicate agreement or disagreement.[46] The final decision was recorded to have been based on the previous psychoeducational evaluation where no learning disability was determined to be present; the

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[44] Ibid, Page 616

[45] HSS District Binder, Tab 3, Pages 7-11

[46] Ibid, Page 1

teachers interviews (as noted above); other school information (unspecified); and parent interview.

Between March 12, 2007 when the Student began receiving educational services at the Summit ALE and the end of the school year on May 1, 2007 the record presented as evidence showed him being absent from some or all of eighteen (18) of the thirty-seven (37) days of instruction.[47] In totaling the records for school year 2006-07 the Student missed all or part of ninety-four (94) days of instruction. How many of those days were for medical reasons; how many were for skipping classes; or how many were for disciplinary reasons is difficult to tell from the records. The records do show that he received only 1.5 credits in his freshman year toward the required 23 credits necessary for him to receive his high school diploma.[48]

As noted in the opening paragraph to this section, the Student's school year 2006-07 falls outside the statute of limitations for filing a complaint against the HSS District for purposes of the IDEA re-authorization of 2004. However, the factual data as presented in the hearing and as outlined above provide the basis on which decisions were made by all parties involved in the education of the Student. The facts indicate that the Parents were experiencing grave problems in attempting to address the behavioral and emotional needs of the Student in the home while attempting to assert his and their rights for him to be provided an appropriate education in the public schools.

School Year 2007-08

The Student remained in counseling at CCS during the summer between school year 2006-07 and 2007-08 without a change in his diagnosis as being seriously emotionally disturbed and

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[47] Parent Binder, Page 696

[48] HSS District Binder, Tab 4, Page 14 and Parent Binder, Page 715

without a change in the assigned global assessment of functioning.[49] Psychoeducational testing noted above was completed in August and September 2007 by CCS personnel according to the documents presented as evidence as well as the testimony of his therapist and his mother. Those records show that an academic achievement evaluation was conducted on August 2, 2007 and an intellectual assessment on September 24, 2007.[50] The intellectual data indicated a full scale IQ of 75, some thirteen points lower than what was measured the previous year by the HSS District's examiner. The differences were never addressed in testimony; however, the results support the HSS District's contention that by regression analysis alone the probability of there existing a specific learning disability is even less likely than the results the previous year's data suggested. The complete results did however, support the unsigned and declarative invalid results of an IVA Plus test that was available at a September 504 conference. That data indicated the possibility of the Student having a hyperactivity attention deficit disorder. His academic achievement scores were relatively similar with both reflecting a significant weakness in numerical operations, reading comprehension, spelling, and reading.[51]

During the summer therapy sessions the Student told his therapist that he planned to return to high school in the HSS District for his 2007-08 school year. The therapist advised him that she had spoken with the high school special education coordinator to discuss an educational plan for him. According to her note the high school special education designee advised her that he was going to try to get the student into a special reading class to help him with his reading and that he

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[49] Parent Binder, Pages 593-610

[50] Ibid, Page 262

[51] Parent Binder, Pages 204 and 267

was going to get him classified as 504 so he could get extra help with his school work. [52] In his testimony, the high school special education designee denied any such conversation took place stating that he had no contact beyond the 2006-07 evaluation conference when the Student was deemed as not being eligible for special education or 504 services. [53] In testimony the Student's therapist testified that her notes may have been incorrect in stating with whom she discussed the Student's educational needs on his beginning school year 2007-08. However, her note of August 20, 2007 specifically names the high school special education coordinator.[54] Other notes make mention of the high school 504 coordinator and at one point in her testimony she stated it was most likely the high school 504 coordinator with whom she subsequently had her discussions about the educational needs of the Student.[55] Notes from the HSS District's Section 504 designee revealed conversations which took place between her, the Parents, the Student's counselor, the high school principal, as well as the HSS District's Summit ALE Section 504 coordinator between August 22, 2007 and September 6, 2007 concerning the Student's ALE placement. [56] She reported that the Student's CCS counselor and his mother visited with her on August 22, 2007 to discuss possible placement in 504. As noted above the only data was the IVA Plus test, which was subsequently deemed invalid by the HSS District psychologist, which was presented to her with the counselor informing her that additional testing was being completed by CCS. She was concerned about the validity of the IVA Plus results and asked the HSS District psychologist to review it for her on

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[52] Parent Binder, Page 393

[53] Transcript, Vol IV, Page 101-102

[54] Parent Binder, Page 593

[55] Transcript, Vol VI, Page 52-52

[56] HSS District Binder, Tab 3, Page 44-48

August 29, 2007. On September 5, 2007 she engaged in a conversation with the high school principal who informed her that the Student would be attending the Summit ALE as he had done in the later part of the previous school year. She discussed the possibility of the Student being assigned to the Vista ALE; however, she was informed that Vista could not give the Student space until October 2007 at which point she was informed by the Student's counselor that she would discuss the CCS Excel program with the Student's parents about Excel's preparation program for the GED. The attorney employed by the HSS District was present in the high school principal's office where she was asked to explain everything that she had done concerning the Student's placement.

As noted the Student began his 2007-08 school year as a regular education student in the regular classroom at the high school. His academic improvement plan completed by the HSS District for that year indicated that he would be repeating the ninth grade, with a reading grade equivalent of 1.9; an applied math grade equivalent of 4.5; a combined math grade equivalent of 2.4; a language grade equivalent of 1.1; and a spelling grade equivalent of 1.7.[57] Expecting the Student to be successful in a regular high school classroom setting with these grade equivalent scores is beyond comprehension without there existing some efforts to provide assistance. How his academic deficiencies were related to his emotional disturbance was never evaluated by the HSS District, even though they knew of his prior counseling services as well as his current counseling services being rendered by their own in-school counselor.

On August 31, 2007 the Student was arrested by the local police following an incident at the school the previous day where he was accused of throwing a chair while the classroom teacher was

[57] HSS District Binder, Tab 4, Page 26

in the hall and then cursing her on his way out of the classroom[58]. The Student was suspended from school. He and his mother were served with a petition to appear in the county circuit court on September 6, 2007.[59] The high school principal also made a decision on August 30, 2007 that the Student would return to the Summit ALE rather than receive his education in the regular high school classroom.

The Parents had already requested and were granted a conference to discuss the Student's eligibility for services under a Section 504 plan on September 20, 2007 based on new testing information from CCS as referred to above by his counselor. The counselor was invited, but there was no record of her being present at the meeting. In her testimony she stated she recalled being at one of the meetings, but did not recall which one. She also testified that it was her understanding that the Student was already receiving 504 accommodations in the classroom.[60] The only additional testing which the HSS District had available at the time of the conference was the unsigned IVA Plus test which was deemed unusable by the HSS District's psychologist. Even though she acknowledged that some of the results were considered valid such as the possibility of the Student having an attention deficit disorder, she still considered it unusable because there was no indication as to the qualifications of the examiner. The HSS District special education coordinator testified when questioned by the Hearing Officer that there was no consideration given to additional evaluations based upon the results – invalid results, or even the valid results of the IVA.[61] The

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[58] Parent Binder, Pages 698-700

[59] Ibid, Page 697 and 700

[60] Transcript, Vol VI, Pages 64-66

[61] Hearing Transcript, Vol I, Page 212

psychologist testified that she was approached by the school and shown the testing results and asked for an opinion. She was never asked to evaluate the Student for a possible [redacted] or the possible existence of an attention deficit disorder as suggested by the results of the IVA, which might have accounted for the Student's learning difficulties. Nor was she asked to review the previous evaluation that had been completed by the HSS District's examiner. Her opinion of the single test presented to her was that it was not useable because there was no signature or indication as to the qualifications of the examiner.[62] She further testified that she had never used the specific test for which she was being asked to assess and only had seen it being administered by another psychologist.[63]

The intellectual assessment completed four days later by CCS on September 24, 2007, as discussed above, was not available for review by either the psychologist or the 504 committee on September 20, 2007. The HSS District special education coordinator who was present at the 504 conference testified that she was aware that for a student to receive counseling at the CCS Excel program that the student had to have a psychiatric diagnosis; however, no information was solicited or considered on the day of the conference as to the possibility of the Student's emotional issues which might impact his learning, either as a special education student or as a Section 504 student. She stated that "no diagnosis from Community Counseling was discussed; no information was provided by Community Counseling at that meeting that there was a diagnosis." [64] The 504 committee once again deemed the Student ineligible for receiving 504 accommodations in the

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[62] HSS District Binder, Vol III, Page 142

[63] Ibid, Vol III, Page 145

[64] Transcript, Vol I, Page 61

regular classroom, to which the Parents once again disagreed.[65]

The Student's counselor was providing in-school counseling services as contracted with by the CCS through the HSS District. While the HSS District provided educational and mental health services to other students in their own ALE at their Vista program, the CCS, a private agency, advertised the same services at their Excel program. However, as testified to by almost every witness in the hearing, the CCS Excel program was not an approved educational program with the Department and thus could not award credits towards a student in receiving a high school diploma. To complicate the picture for those such as the Hearing Officer, and most likely the Parents, the District had prior to 2006 an approved ALE program within the district called Excel. In fact the HSS District continued to use letterhead stationary with their approved Excel program listed when the Student was withdrawn from the HSS District to be "home-schooled" at the CCS Excel, with no indication on the form that the two programs were separate entities.[66] Testimony was that it was old letterhead and that they no longer used it; however, the confusion still existed when the records were presented as evidence. As noted below the CCS Excel program has since changed their name to Turning Points. To complicate matters further when the Student moved into the FLS District in 2009 he was scheduled to enter their ALE program, which is also called Excel; and which is also operated by CCS; however, it is an approved program through the FLS District.

The Student's mother testified that she and her husband both had learning difficulties and could not provide the Student with the necessary educational instruction. Following their lack of success in obtaining services for their child either as a special education student such as he was

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[65] HSS District Binder, Tab 3, Page 18

[66] Parent Binder, Page 655

receiving in his previous school and now being denied eligibility for services as a Section 504 student the Parents were faced with another option, leave him in his current ALE with the HSS District or to transfer him to the CCS Excel program. The CCS Excel program was available to them; however, they would have to withdraw the Student from the public school and list him with the HSS District as someone being home schooled. With the assistance of the HSS District's special education coordinator they made that decision, without additional consultation, on the same day as the 504 conference (September 20, 2007). The only information about the program was provided by the Student's counselor, an employee at the time of CCS. Why she did not encourage the HSS District or the Parents to first seek mental health services in the HSS District's Vista program where he could also earn credits towards a high school diploma was unclear from her testimony, even though she stated she advised all parents about all options. She testified that she was aware that high school student's enrolled in the CCS Excel program could not receive credits towards receiving a high school diploma, only that they would be working towards the receipt of a GED.[67] She stated she informed the Parents of the HSS District's ALE's at Summit and Vista, as well as the CCS program at Excel. However, in her testimony they were never designated as one being within the district and the other being a private enterprise.[68] She was aware, or had been told; however, that the private enterprise Excel operated by CCS subsequently changed their name to Turning Point. The information provided to the Parents in September 2007 from CCS Excel was introduced as an exhibit by the Parents.[69] Their program policies and procedures as of July 2007

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[67] Transcript, Vol VI, Page 38

[68] Ibid, Page 39

[69] Parent Binder, Pages 331-350

are quoted as:

> "The EXCEL Therapeutic Program is for those children and adolescents who are at risk of psychiatric hospitalization, have been released frm the hospital but are not currently able to return to a traditional school setting or are experiencing such difficulty in the traditional school setting that a transfer to an alternative setting is necessary to prevent school failure, repeated suspension or expulsion. Students are eligible for special services under Act 504 or *Individuals With Disabilities Education Act* (IDEA).
>
> "EXCEL's educational program will follow the standards established by the Arkansas State Department of Education for Alternative Environments. Certified teachers will staff the educational program. At least one of the teachers will be certified in special education..
>
> "Students 15 years or older may elect to pursue *General Education Development* (GED) course work while at EXCEL. Once the course work is complete, the student is referred to National Park Community College for final testing.
>
> "Special education students will receive all services as required by federal law. An *Individualized Educational Plan* (IEP) will be continued and/or developed for each student, which will guide his or her academic instruction. If it is determined that a student does not meet special education criteria but qualifies for special services under ACT 504, he or she will receive modifications directed at enhancement and improvement of their academic functioning."[70]

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[70] Parent Binder, Page 333

The evidence and testimony would suggest that the HSS District allowed and possibly assisted the Parents in making decisions regarding the appropriateness of his being educated by an agency not approved by the Department. To allow a parent of a troubled or difficult student to accept the misleading representation of the CCS Excel program, as was found to be without authorization as an approved program of instruction by the Department, and especially to the Parents of this Student who exhibited limited intellectual skills themselves, is beyond belief and totally unconscionable. Whether this action was deliberate on the part of the HSS District personnel or whether it was manipulative on the part of the CCS Excel program counselor/employee is beyond the scope of this hearing. However, the HSS District was, at the time the Parents made the choice to withdraw the Student from public education to be "home-schooled" at the Excel program, responsible to both the Student and the Parents to inform them in a manner they could understand of the potential consequences of their choice. The Student's mother testified that she attempted on multiple occasions to talk with the HSS District personnel about the difficulties she perceived her son was having in school. She stated she discussed the issues with the Student's counselor, with the HSS District special education coordinator, with the high school special education designee; with the high school principal, and even with the HSS District's employed attorney. Her testimony was that she received messages from some of the personnel that her son was lazy and from others that he was just bad.[71] She also testified that she was not permitted to talk to any of the Student's teachers about her perception of his learning problems and her belief of their relationship to his behavior problems, both at school and in the home.[72] Even after the Parents took

[71] Transcript, Vol V, Pages 73-75

[72] Ibid, Page 76-78

actions to "home school" the Student at the CCS Excel program the HSS District remained responsible for providing an appropriate evaluation to determine the extent to which any serious emotional disorder may or may not have had on his educational performance.

The HSS District's special education coordinator testified that she knew at the time that the CCS Excel educational program was "a non-accredited program with the State Department of Education."[73] She stated she was aware of the HSS District's responsibility to, not only the students in their district who were educated in private schools, but also those being home-schooled: "We provide annual consultations with our private schools and we always invite someone that I know that has been home schooled or through the home school association to come to our annual meeting so that we can discuss what services we will provide." [74] She also agreed that it was the responsibility of the HSS District to provide evaluations for special education services to both students being educated in private schools as well as those being home schooled: "We go to a referral conference just as we do with students within the public school."[75]

The only other alternative learning environment in the community where the Student could access mental health services, such as those provided in the Vista program, would be at the privately ran, un-certified CCS Excel program. The CCS Excel program required the Student to be withdrawn from the public school to be "home-schooled" in their therapeutic program. For the Parents who were desperate to help their child at this point in time it appears that the HSS District did not offer any other choice for them to make.

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[73] Transcript, Vol I, Page 41

[74] Ibid, Page 47

[75] Ibid, Page 49

The HSS District special education coordinator testified that the district does not make referrals to the private CCS Excel program and that they did not recognize it as a school; however, the form used by the HSS District as entered as an exhibit stated that the name of the School/District to which the Student was being transferred to was "Excel."[76] This is the same outdated letterhead form that listed the previous EXCEL program as one in which the HSS District participated in as an approved alternative learning environment. Again, as might be expected by anyone looking at the form and the information, it would appear that it is the HSS District making the referral to a program which would provide an appropriate educational environment for the Student.

Questions were asked of the HSS District personnel about the "funneling" of students in the private agency, which was denied as a HSS District action, but could not attest to the actions of the CCS personnel. The HSS District Superintendent stated that in a meeting with her staff they "talked about the home schooling issue, and got some comments from some of the people from the schools saying that the Community Counseling-based representative in our schools was recommending students to go to Excel....so when I heard that, I called Don Martin, who is over the Community Counseling Center, and told him what I had heard, been told, hearsay, no evidence, no factual evidence to support it, I don't know, but if it is happening, that I expect it to cease..and he assured me that it wasn't happening, that his counselors knew not to refer – tell parents to go get a home school application so they could come to Excel."[77]

A letter was issued by CCS to the Student's probation officer on September 27, 2007 stating that the Student was enroled in their GED EXCEL program as of 9-24-07 and that their

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[76] Parent Binder, Page 655

[77] Transcript, Vol IV, Page 24-25

psychological examiner was presently testing him with a scheduled completion date of October 8, 2007.[78] At this point in time it would appear that it was the responsibility of CCS to appropriately assess and provide an appropriate education for the Student according to their published policies and procedures provided to the Parents. As noted above, their program advertised their compliance with both state and federal guidelines with respect to both the IDEA and the Section 504 statutes and governing regulations. In the eyes of any reasonably thinking parent this would appear to be a rational alternative for a student that they believed to have difficulty in adapting to the public school programs and a school in which their child could receive an appropriate and an approved high school education. The HSS District personnel dealing with the Student and his Parents knew that this program was not an accredited program and one that could not provide the Student an educational opportunity towards a high school diploma under the federal and state guidelines as advertised.

The HSS District was aware, as was the Student's school based counselor, that to be eligible for services at the CCS Excel ALE required a psychiatric diagnosis. When questioned about possibility of special education services for an emotionally disturbed student the HSS District special education coordinator expressed her knowledge of what was necessary to receive services under that category.[79] However, even in light of the Student's multiple acting out behaviors in the school setting during the previous school year and the reoccurrence in the beginning of his 2007-08 school year, no one from the HSS District suggested the possibility of a need to assess the Student for a possible [redacted] which may have been a causative factor in his difficulty in the

[78] Parent Binder, Page 318

[79] Transcript, Vol I, Pages 63-65

school environment.

The Student's mother's testimony also indicated that it was the Student's counselor as well as someone in the HSS District who attended the meeting where she was informed that if he didn't qualify for 504 placement that she could send him to the CCS Excel program and "they maybe could help him there."[80] She further stated that at the time of the September 504 meeting that she did not know what the CCS Excel was other than having been told it was a school. After the meeting it was the HSS District personnel who assisted her in completing the necessary paperwork for her to withdraw the Student to be "home-schooled" at the CCS Excel school. The only part of the form she completed was signing her name. [81] The notice of intent to home school form completed for her indicated that the Student would participate in the EXCEL curriculum and that the curriculum reflected the Arkansas frameworks guidelines to include English, writing skills, reading, social studies, math, science, physical education, and life skills that would be presented at the Student's academic functioning level. The form further indicated that the qualifications of the Parents was that they both not only completed high school, but had completed two years of college.[82] The Student's mother testified that she wrote in the educational qualifications of her spouse and herself, but qualified it by stating that "I should have wrote it different. It (the college she attended) was for my reading and my math and stuff, the state was paying for me to go to school to try to improve. But I failed, so they said that I couldn't take no classes," and that the college "had somebody there that dealt with learning disabilities, to try to improve your reading before you can

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[80] Ibid, Page 87

[81] Ibid Page 87-89

[82] Parent Binder, Page 651-652

go into a class. And I did not do too good, I failed."[83] She believed at the time of the September 2007 meeting that she had no other choice but to accept the recommendation to withdraw the Student and for him to be "home-schooled" in the CCS Excel program, "because my child kept exploding and he wasn't getting the help he needed so he could do his work. And I didn't want my son in jail, I didn't want my son taken from me because he wasn't getting the help he needed."[84]

The evidence presented as progress notes from his treatment by CCS personnel during the school year 2007-08 reflect a continued problem with acting out behaviors that the Student associated with others having plotted against him, while the therapy staff saw it the other way around, with the Student being the instigator in many of the conflict situations. He was subsequently admitted in February 2008 to an inpatient [redacted] facility in [redacted] He was discharged back to the CCS Excel program by the hospital on February 22, 2008 with prescriptions for [redacted][85] The progress reports submitted as evidence are replete with examples of acting out events and behavioral situations to which the therapy staff, attempting to provide services, addressed during the school year.[86] His diagnosis for treatment purposes at the beginning of the year was an adjustment disorder with mixed disturbance of emotions and conduct and at the end of the year with the same adjustment disorder diagnosis plus an attention deficit hyperactivity, predominately inattentive type diagnosis.[87] The county circuit court had placed him

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[83] Transcript, Vol V, Page 93

[84] Ibid, Page 95

[85] Parent Binder, Page 719

[86] Parent Binder, Pages 480-598

[87] Ibid, Page 486 and 595

on probation during the school year and released him from probation at the end of the school year on June 2, 2008. [88] However, the academic grades assigned to him by the CCS Excel program included a "B" in language arts; an "A" in reading; an "F" in math; an "F" in social studies; and a "C" in science. The comments on the report regarding the two failing grades were that he had not completed enough work to earn a grade.[89]

School Year 2008-09

At the beginning of school year 2008-09 the Student was entering what was supposed to be his junior year of high school with only 1.5 credits towards graduation according to the transcript from the CCS Excel program as noted above and the HSS District transcript. The Excel educational program as suggested in the evidence was designed for the Student to obtain a GED rather than a diploma. As to whether or not the Student or the Parents were aware of the implications or consequences of this decision are unclear from both the evidence and the testimony by the Student's mother. Nonetheless, the evidence shows that the Parents once again submitted a waiver to the HSS District to provide home schooling for school year 2008-09 indicating that the Student would continue to receive educational services at the CCS Excel program.[90]

As with the previous year, the notice of intent form to home school was not completed entirely by the Parents. The Student's mother testified that she wrote in the name of the Student and her name and educational qualifications. The Student's father was not listed on the waiver as one who would be providing home schooling for the 2008-09 school year. As with the previous year

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[88] Ibid, Page 662

[89] Ibid, Page 663

[90] Ibid, page 649

she listed herself as having two years of college.[91] The curriculum to be followed was completed by someone other than the Parents according to testimony. It stated that the Student would be participating in the Turning Points Curriculum and that the curriculum reflected the Arkansas frameworks guidelines and included English, writing skills, reading, social studies, math, science, physical education, and life skills with all of the information being presented at the Student's academic functioning level.[92] CCS had by this time changed the name of the program from Excel to Turning Points. The program continued to operate as an agency which was not recognized by the Department as one being qualified to award credits towards graduation of high school students. The program's policy and procedures continued to advertise that it was designed to meet the educational and psychosocial needs of children and adolescents who are experiencing emotional disturbance and who are currently unable to return to the traditional classroom setting. They also continued to advertise that their students were eligible for special services under Act 504 or IDEA and that as such would receive all services required by federal law.[93]

The Student continued to receive counseling services at the CCS Turning Points for both the adjustment disorder and for the ADHD diagnoses. [94] By December 2008 he also had been diagnosed with a [redacted][95] According to the same record his global assessment of functioning remained at a level forty-five. That level of

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[91] Ibid, Page 648

[92] Ibid

[93] Ibid, Page 322

[94] Ibid, Page 450

[95] Ibid, Page 381

functioning as noted in the evaluation from CCS meant that his emotional difficulties substantially interfered with or limited him from achieving or maintaining one or more developmentally-appropriate social, behavioral, cognitive, communicative, or adaptive skills.[96] In December 2008 the treatment plan summary from CCS indicated that he was making minimal progress towards his treatment goals of improving attention and concentration, obtaining a GED, and improving interpersonal and family relations.[97] The day following the signing of this form by the Parents, as recorded in the CCS progress note, was also noted as being the final day that he would be attending Turning Points. The note indicated that even though the Student had indicated his intention of returning to Excel, (now CCS Turning Points), that it was not an option for him because he had "indulged in both verbal and/or physical aggression daily."[98] The note continued by stating further that the family had moved into another school district; however, the Student's mother informed Turning Points that the new school district would not take him. At that point the note indicated that the Student's mother was provided with information as to how the Student could take pre-GED tests and then go to the GED school and study, with teachers, and that for the tests he didn't pass, he could continue with them (the teachers) until he was able to pass his GED.

At this point in time the options for obtaining an appropriate education for the Student had now dwindled to nothing according to the testimony of his mother. He was no longer a resident of the HSS District since the family had moved into the FLS District. The HSS District had deemed him ineligible not only for special education services, but also for Section 504 services. He was not

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[96] Ibid, Page 384

[97] Ibid, Page 379

[98] Ibid, Page 377

successful in the HSS District ALE and not the non-accredited CCS program had discontinued, not only his psychological services, but also his educational services towards achieving a GED. It was now the Student's mother's belief that the FLS District would not accept him either.

School Year 2009-10

The evidence shows that the Parents did not approach the FLS District until on or about July 1, 2009 to register their children in the FLS District even though they had moved into the district in December 2008. In July 2009 the Parents signed a release for the FLS District to obtain the Student's records from the CCS Excel program.[99] However, the FLS District special education coordinator testified that the district never received records from CCS, even though they had made several attempts to get them.[100] She did acknowledge that the Parents approached her sometime around July 2009 time to discuss transferring not only the Student, but his siblings to the FLS District. The evidence does show that on August 2, 2009 the Student's mother signed a FLS District document indicating receipt of a "Smart Core Informed Consent Form."[101] Although she does not normally get involved in the registration process of regular education students she recalled her discussions with the Parents about enrolling the Student in FLS District, informing her that "if special education services was needed, it was something we would certainly look at."[102] Her recall was that "he did not have credits that he needed, had not been in school – you know, he had been in the (CCS) Excel program, my understanding was he did not have credits, and he had an IEP

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[99] Parent Binder, Page 825

[100] Transcript, Vol IV, Page 117 and 122

[101] Parent Binder, Page 834

[102] Transcript, Vol IV, page 134

previously in his life[redacted][103] Given the previous information regarding special education services she testified that she contacted the HSS District's special education coordinator and obtained a copy of their records around August 4, 2009.

The FLS District special education coordinator stated that, as noted above, that she became involved at the Parent's request in July 2009 and after informing the Parents that they would have to enroll the Student in the district she talked with the high school principal about enrolling the Student and his siblings into the district but "that it was better for them to go to the alternative program for credit recovery."[104] She then referred the Parents to the director of the CCS Turning Points "that ran their ALE program."[105] Therefore the Parents learn on enrolling the Student in the FLS District that the immediate recommendation is for him to continue to receive his education in another ALE program operated by the same private company from which he had been expelled. CCS provides an onsite therapeutic program which ironically was also called Excel; however, one that is an approved educational program located and operated by the FLS District. The Student's mother testified that the FLS ALE coordinator informed her that "there was special ed there for the kids...she can teach the kids special ed....but I didn't know it was an ALE school...that means that the kids have behavior problems...and I just found out that...so, I didn't know...I thought it was school to help them, like I [thought] with Excel." She went on to explain that "she said something about credits..and that's another thing that was weird to me..she said something about credits...and

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[103] Ibid, Page 120

[104] Ibid, Page 126-127

[105] Ibid

I didn't understand the credit thing...I didn't know Excel wasn't giving credits."[106]

When asked why the Student's mother did not enroll the Student in the FLS District when they first moved there in December 2008 she replied that all of her children were attending the CCS Excel program and that the program was providing them with transportation and at that time the Student appeared to be making progress. However, later in the school year she and one of the counselors "got into it" when the counselor told her that her children were retarded and that he wanted the Student placed in a residential psychiatric hospital.[107] At that point in time she decided to provide home-schooling on her own rather than sending him back to the CCS Excel program.

In order to adequately assess the educational needs of the Student the FLS District did not have the most current information from the very same agency to which they were recommending the Student be placed in their district. However, the FLS District did have access to the HSS District information which, as noted above, included his dismissal from special education services and there determination that there was no need for Section 504 services. The FLS District special education coordinator testified that she discussed the Student and his siblings with their own psychological examiner. She did not however, ask the examiner to explore any behavior issues for which the Student was receiving counseling. Her "main concern was what grade they were in and what kind of credits they had and that kind of thing...and disabilities, yes, I did ask her about disabilities" but was told only that "they were in the Excel program and that she was trying to get the records."[108]

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[106] Transcript, Vol V, Page 128-129

[107] Ibid, Page 120

[108] Ibid, Page 134

A discussion was held between the FLS District high school principal and the special education coordinator prior to the start of school year 2009-2010 in which it was decided that the Student would not attend the regular high school, but would be enrolled in their ALE also called Excel for credit recovery. As noted above certain criteria must be met according to the Department prior to a student being transferred to an ALE. No record was produced by the FLS District to indicate such an observation or referral was made, yet the FLS District high school principal testified that he was aware of the requirement.[109] Without any formal or informal assessment to determine if such a placement was indicated the FLS District pre-determined the placement of the Student. Although undated a referral form was submitted as evidence by the Parents.[110] The high school principal testified that it was his belief that the Student "had not amassed [enough] credits [to graduate] and needed to recover credits" and that without "recovering the credit, it [was his] belief that kids are in danger of dropping out."[111] To his knowledge this was the sole reason for making the referral to their ALE, which meant that as such the Student did not technically qualify for the referral under Department guidelines.

The meeting to which the FLS District points to as an enrollment of the Student into the district was held on August 19, 2009, but there were no officials from the FLS District present. The only persons present other than the Parents, the Student, and his siblings were representatives from the CCS Excel program with whom the FLS District had contracted to operate their ALE.[112] The

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[109] Transcript, Vol IV, Page 220

[110] Parent Binder, Page 804

[111] Transcript, Vol IV, Page 223

[112] Parent Binder, Page 360

FLS District's director of their ALE testified that she was not aware that the intake meeting conducted by CCS had taken place when it did.[113] She did state, however, that an intake assessment is made by the CCS staff on all students entering the ALE and that it was a required element of their program for them to do so. [114] She was not aware that CCS had provided transportation for the Parents and Student on that day for that particular meeting, but was aware that the Parents were unable to drive.[115] She had no knowledge that there existed the possibility that the Student, his siblings, and the Parents were acquainted with the CCS staff at their ALE. She was not aware that her intake team from CCS were or could have been those who also provided services for the Student or his siblings at CCS's non-accredited ALE Turning Points. According to the FLS District high school principal the district provides the space, a certified teacher, and two paraprofessionals, with CCS providing the counselors and case managers to the district's Excel ALE.[116] At the meeting and according to the intake notes by the CCS counselor the Student was observed to have "sat on the couch away from the group; appeared tired and uninterested in the assessment and placement" and that he "made it clear he does not want to be a part of the program and being forced by his parents and the law to attend school."[117] The ALE director testified that she was not aware of what took place at the intake assessment held in her facility and that she never asked.[118] She stated that there

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[113] Transcript, Vol V, Page 22

[114] Ibid, Page 38-39

[115] Ibid

[116] Transcript, Vol IV, Page 213

[117] Parent Binder, Page 366

[118] Transcript, Vol V, Page 41

were no teachers present to discuss the "educational component" of their program.[119]

Had the ALE director read the CCS intake assessment she would have seen that in their assessment the Student had a history of attention deficit disorder and depressed mood with instances of suicidal ideation, as well as a history of appositional behaviors, arguing with adults and peers, and fighting at school and at home. She would have seen that the recorded educational information included special education and learning disability reading/English. Had she been given a copy of the intake assessment for the Student who was to be educated in her building she would have seen that the Student and his siblings had legal issues with histories of being on probation for theft, fighting, and truancy. With knowledge from the intake assessment she would have been aware that this incoming student presented with having made statements of wanting to join his family members in death and that he had previously received inpatient psychiatric services; and that he was currently diagnosed with an attention deficit disorder and a depressive disorder, per previous assessments and that the intake suggested that they should rule out an appositional defiant disorder. [120] With this knowledge and with her background in special education there may have been subsequent meetings involving the therapists and the Parents to determine the need for additional testing and a possible evaluation for an existing serious emotional disturbance which, depending on the results, may have been taken into consideration in developing an appropriate educational program for the Student. The FLS District ALE director testified that she never seeks the mental health records for any of her students, yet she described their involvement with her teachers as a team.[121]

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[119] Ibid, Page, 57

[120] Parent Binder, Page 360-367

[121] Transcript Vol V, Page 14 ("we work as a team"), Page 19 ("we meet as a team to look over new referrals") and Page 54 ("once a week we sit down as a team and discuss progress for our

The FLS District ALE director testified that on the morning the Student was scheduled to start their program that the Student's mother, while pointing over her shoulder in the direction of the Student, stated that the Student "doesn't want to come here to this school...he wants to be home schooled..and I have made a decision that I'm going to home school him, that's what he wants...here are his home school papers."[122] Although she did testify that she stated to the Student's mother as to the difficulty of home-schooling she did not suggest that they meet as a team to see if something could be worked out for the Student or to see if additional testing might be helpful for them to make a more informed decision.

During the process of the hearing the FLS District developed a temporary IEP for the Student.[123] When asked why this could not have been done when the Student enrolled in the district on August 5, 2009 the response was that "he did not attend school."[124] However, the form signed by the Parents withdrawing the Student was not dated until August 24, 2009.[125] Between the time the Parents contacted the FLS District in July 2009 and when the Parents decided to withdraw him from the public agency to be home-schooled the FLS District did have the opportunity to obtain records, to conduct a conference at the Parent's request, and develop a temporary IEP in order to allow them time to further investigate the Parent's concerns about the Student. At the conclusion of the hearing the Parents reported that the Student was "doing good in school, and he is actually

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kids")

[122] Hearing Transcript, Vol V, Page 40

[123] Ibid, Vol IV, Page 152

[124] Ibid

[125] FLS Binder, Tab 2, Page 10-11

wanting to go to school."[126] She elaborated later stating that "his attitude is different..it's not like it used to be...he is getting the help he needs, and I don't see no explosions at home...he is actually helping us...and he is getting his license soon, too..so he is trying to be independent."[127]

Conclusions of Law and Discussion

Part B of the Individuals with Disabilities Education Act (IDEA) requires states to provide a free, appropriate public education (FAPE) for all children with disabilities between the ages of 3 and 21.[128] The IDEA establishes that the term "child with a disability" means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who by reason of their disability, need special education and related services.[129]

The Department has addressed the responsibilities of each local education agency with regard to addressing the needs of all children with disabilities in it's regulations at Section 5.00 of Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education, 2008.

In 1982, the Supreme Court was asked and in so doing provided courts and hearing officers with their interpretation of Congress' intent and meaning in using the term "free appropriate public education." The Supreme Court noted that the following twofold analysis must be made by a court

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[126] Transcript, Vol V, Page 109

[127] Ibid, Page 110

[128] 20 U.S.C. § 1412(a) and 34 C.F.R. § 300.300(a)

[129] 20 U.S.C. § 1401(3)(A)

or hearing officer:

(1). Whether the State (or local educational agency) has complied with the procedures set forth in the Act (IDEA)? and

(2). Whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the student to receive educational benefits?[130]

The courts consistently agree that FAPE must be based on the child's unique needs and not on the child's disability.[131] Thus the charge to education professionals is to concentrate on the unique needs of the child rather than a specific disability. It is necessary, therefore to look at the facts in this case as to whether or not the HSS District and the FLS District concentrated on the unique needs of the Student and not specifically at his disabilities as identified by his Parents, his counselors, his case managers, his physicians, or other healthcare professional.

In more specifically defining what is meant by FAPE the Supreme Court, in *Board of Education of the Hendrick Hudson Central School District v. Rowley,* held that an educational agency has provided FAPE when it has provided personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. The Court noted that instruction and services are considered "adequate" if:

(1). They are provided at public expense and under public supervision and without charge;

(2). They meet the State's educational standards;

(3). They approximate the grade levels used in the State's regular education; and

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[130] *Board of Education of the Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 206-207 (1982)

[131] 34 C.F.R. § 300.300(a)(3)

(4). They comport with the student's IEP.[132]

The definition of children covered under IDEA is doubly circular. A child with disabilities must be so disabled as to require special education and related services. Special education and related services as noted above are those that meet **the unique needs of a child** with disabilities. Moreover, related services are those that **assist a child to benefit from special education**, which can only be received by a child with disabilities.[133] Such related services might include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services may also include school health services and school nurse services, social work services in schools, and parent counseling and training.[134]

As noted above FAPE is defined as special education and related services that are provided at public expense, under public supervision and direction, and without charge, **which meet the standards set forth by the Department**. Consequently, a hearing officer must look at the issue to determine whether or not a district has been compliant with that definition and whether or not any single violation or the accumulation of violations are severe enough to constitute a denial of FAPE. The educational document that must contain how a district will be in compliance with those standards and the document that defines what specifically designed instructions are to be implemented to meet the unique needs of a student is the Individual Education Plan (IEP). The

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[132] *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

[133] 20 U.S.C. § 1400©

[134] 34 C.F.R. § 300.34(a)

Supreme Court as noted in the Rowley case opined that an IEP must be considered appropriate if it is "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."[135] In an administrative due process hearing, the petitioner has the burden of proving the essential elements of its claim.[136] The Parents in the instant case bore such burden.

The first issue of compliance for the HSS District is whether or not they met the Department's standards with regard to providing FAPE for the Student when he entered their district for school year 2006-07.[137] The Department in adopting the IDEA standards has outlined the responsibilities for a district to follow when a special education student enters their district with an IEP from another district or state. That standard reads that "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) - A. Conducts an evaluation pursuant to 34 CFR 300-304 through 300-306 (if determined to be necessary by the new public agency); and - B. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR 300-320 through 300-324."[138]

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[135] *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

[136] *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed 2d 387]

[137] The reader is referred to the argument by the HSS District and the Hearing Officer's response to the challenge and motion to dismiss that the 2006-07 school year went beyond the statute of limitations for redress.

[138] *Special Education and Related Services: Procedural Requirements and Program Standards,* Arkansas Department of Education, 2008, Section 8.03.4.1

The evidence and testimony presented in the course of the hearing reflects that the HSS District failed to follow the standards of the Department by not implementing and providing the Student with a comparable IEP to the one developed for him by the previous school district. The evidence and testimony shows that the HSS District developed a temporary IEP for the Student which decreased the amount of direct instruction in special education and that they failed to provide the designated counseling services as a related service.

From the testimony elicited in the course of the hearing in general indicated it became clear that neither the HSS District personnel, nor subsequently the FLS District personnel, had a good handle on the specific and unique educational needs of the Student. The HSS District did evaluate and consider his previous school's assessment of the possibility of there existing a specific learning disability; however, they did not consider the possibility of a serious emotional disorder.

The HSS District, and subsequently the FLS District, relied only on the behavioral assessments and opinions provided by the Parents, which oddly enough was objected to as being valid by the HSS District when the Student's mother was testifying. They elected to base their decisions on this limited information rather than formerly and judicially making their own assessment by their own professionals to determine the possible existence of any other disability category which might help explain the Student's difficulties that he had been experiencing in the education environment. Although the school year 2006-07 may have been outside the statute of limitations for which the Parents could seek redress, the decisions reached by the HSS District, and subsequently by the FLS District, made at that time led to the decisions by both the districts and the Parents with regard to options for educating the Student.

The subsequent evaluation conducted by the HSS District did not show that the Student was

eligible under the Department's standards for students to receive special education in that the data did not support the existence of a specific learning disability for which he had qualified in the previous school district. Since the Student was not adapting to the regular classroom setting with multiple discipline and attendance issues he was referred to the HSS District ALE program called Summit. The HSS District had available to them an ALE which not only provided the educational programming as did the program to which he was transferred, but theyalso had an ALE where he would receive educational programming and psychological services. This program would have allowed him access to more one-on-one instruction as well as counseling for him and his Parents. The HSS District did not elect to make this transfer because that particular program was full and there was no room for the Student. He was receiving in-school counseling services by a private agency who had on-campus access to students in the HSS District.

The Student was not successful in the HSS District's ALE program, apparently due to the same emotional and behavioral issues as he displayed in the regular classroom setting. He was now in trouble with the local court system for truancy. The Parents were encouraged and/or assisted by both the HSS District and the private agency to enroll him in the private agency's ALE which provided psychological services and educational services. Their educational services, however, were not accredited by the Department and thus their high school students do not receive credits towards receiving a high school diploma. In order to enter their program parents are required to withdraw the students from he public education agency where they attend and to indicate with the public agency that they intend to home-school their child. By assisting andpossibly encouraging such a transfer was not in an of itself a violation of FAPE according to the federal and state guidelines; however, the failure to make sure the Parents and the Student were fully informed about the potential consequences of their choice appears in the record and testimony as a failure in ethics

for which there is no redress under the IDEA.

Subsequent testing by the private organization to which the Student was transferred for educational and psychological services indicated the possibility of the existence of not only a serious emotional disorder, but also with a diagnosis of an attention deficit disorder as DSM-IV diagnoses. The Office of Special Education has responded to numerous inquiries regarding the use of the DSM-IV as a means of addressing eligibility for services under IDEA. Their response has been consistent in that a diagnosis under DSM-IV, as provided in this case by the physician of the private agency to which the Student was assigned for home-schooling, does not guarantee eligibility under the IDEA.[139] These diagnoses were not available at the time the Student entered the HSS District. However, by the time they were available only part of the private agency's assessment was considered for the HSS District to use when the Student's Parents asked for educational services within the HSS District under Section 504. They did not consider the test results valid and thus denied him access to accommodations under Section 504. At the same time, even though special education personnel were present for the Section 504 meeting, the results did not trigger even a suggestion that the Student might be eligible for special education services under a category other than a specific learning disability.

The HSS District's decision to not fully inform the Student and Parents of the consequences of removing the Student from their district, and for him to be "home-schooled" by a private agency, was not in and of itself a violation of IDEA. However, the failure to implement the existing IEP and to provide a comprehensive evaluation to include formal classroom assessments of the Student''s behavior and to assess for the possibility of either an attention deficit disorder or a

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[139] *Letter to Coe*, Office of Special Education Programs, 32 IDELR 204, September 13, 1999

serious emotional disorder, was a failure to provide FAPE, not only for the school year in which he entered the HSS District, but subsequent years.

The Rowley case, as noted above, addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. In that case the Court determined that a student's IEP be reasonably calculated to provide him or her with **some** educational benefit; however, the Court also stated that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services to maximize a student's abilities.[140] The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to **specialized instructional** and **related services** which are individually designed to provide educational benefit to the student.[141] The evidence presented in this case adequately demonstrated that the Student was denied both specialized instruction for the disabilities for which he entered the HSS District and was not provided with counseling services as a related service component of his IEP.

The Supreme Court in the Rowley case recognized the importance of adherence to the procedural requirements of the IDEA.[142] The analysis of whether a student has been provided a FAPE, as noted above, is twofold. In this case it must be decided as to whether the procedural safeguards of the IDEA have been satisfied and whether the FAPE offered was substantively appropriate. According to the evidence presented and the testimony given the Student had need for not only specialized instruction, but for psychological services in order for him to receive a basic

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[140] *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200, 102 S.C. 3034 (1982), at 198 - 200.

[141] Ibid at 201.

[142] Ibid at 205

floor of opportunity to succeed.

Contrary to the assessment results and opinions of the HSS District, the evidence presented regarding his educational needs for his freshman and subsequent high school years were not adequately evaluated and thus inconsistent with the development of an appropriate IEP. Therefore, the evidence shows that not only was a there a denial of FAPE by the HSS District for the year he became their educational responsibility, but the two subsequent years he lived within the district. For the FLS District to have accepted only the evaluations and history provided them by the HSS District in deciding without interview or assessment that the Student would be assigned to their ALE is also a reflection of dereliction of responsibility to consider the unique needs of the Student in determining the best course of action to take with regard to providing him an appropriate educational opportunity, thus a denial of FAPE according to the IDEA.

Order

The Parents have introduced sufficient evidence in the record to reflect that the decisions made by both the HSS District and the FLS District on being approached with the challenge to meet the educational needs of the Student contributed to the production of there being an adverse affect on his educational progress. Those decisions do not appear to have been intentional or malicious, but rather the accumulatively basis of first impression – that being that the Student did not qualify for special education services because there was not found to exist a specific learning disability. The immediate and subsequent failures to address and assess all of the Student's needs on entering the HSS District, and then the FLS District, proved to be decisions which contributed to the Student's failure to receive FAPE. Unfortunately these decision were made not only by the two

districts, but also by the private agency involved in this saga, as well the decisions that were made under their guidance by the Parents.

From the testimony entered on the final days of the hearing it would appear that the FLS District has begun an appropriate process of providing an educational opportunity that will be beneficial to the Student. In order to insure compliance with their efforts it is hereby ordered that:

1. The financial and administrative resources of both the HSS District and the FLS District will be equally utilized to provide the Student with a comprehensive evaluation which will include an assessment of any emotional disorders as well as learning deficits as defined by the Department which may allow him to benefit from special education services.

2. The comprehensive evaluation as ordered in (1) above will be conducted by examiners that the Parents, in coordination with their council, agree are appropriate to conduct the examinations, which can be those typically contracted with by the districts or independent evaluators.

3. The comprehensive evaluation as ordered in (1) above will be completed no later than April 15, 2010.

4. Upon completion of the evaluation as order in (1) above and no later than April 22, 2010 both the HSS District and the FLS District special education coordinators will assemble an appropriate IEP team, to include the examiners contributing to the evaluation, to consider the results of the evaluation and to develop an IEP as indicated by the results of the evaluation.

5. Between the date of this order and the completion of item (4) above, the HSS District and the FLS District will jointly provide the Student with opportunities and number of hours as deemed agreeable to by the Parents for compensatory educational opportunities consistent with the known levels of educational functioning. The specific educational opportunities are not being ordered;

however, the amount of time will be no less than eight (8) hours per week until item (4) above is completed.

Finality of Order and Right to Appeal

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall 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.

Robert B. Doyle, Ph.D.
Hearing Officer

February 26, 2010
Date