Arkansas Department of Education
Special Education Unit

IN RE:

XXXXXXXXXXX
as Parents in behalf of
XXXXXXXXX, Student **PETITIONER**

VS. NO. H-11-14

Pulaski County Special School District **RESPONDENT**

HEARING OFFICER'S FINAL DECISION AND ORDER

Issues and Statement of the Case

Issues:

The Petitioner alleges that the Respondent denied the Student with a free and appropriate public education (FAPE) for the first semester of school year 2010-11 according to the Individuals with Disabilities Education Act (IDEA) by:

1. Not providing an appropriate individualized education program (IEP) by failing:
    a. To determine the Student's present levels of performance;
    b. To consider the need for further testing and evaluation;
    c. To provide goals and objectives for special education services;
    d. To provide a behavior intervention plan (BIP); and in failing
    e. To provide a grade appropriate curriculum.
2. Not educating the Student in the least restrictive environment (LRE) by failing to consider supports necessary to address the Student's disabilities in a lesser restrictive environment.

3. Changing the Student's educational placement without due process by failing:

a.. To obtain parental consent for an occupational therapy evaluation;

b. To perform an occupational therapy evaluation; and by

c. Discontinuing direct occupational therapy services without a proper evaluation and/or without parental consent.

4. Not providing the Student with a continuum of educational placements by failing to:

a. Educate the Student with his non-disabled and same-aged peers;

b. Provide an age appropriate curriculum; and by failing to

c. Provide an education within the Student's home-based school.

5. Not following IDEA due process procedures by:

a. Discontinuing direct occupational therapy (OT) services;

b. Not determining the Student's present level of performance;

c. Not developing a behavior intervention plan (BIP);

d. Failing to obtain parental consent for an OT evaluation;

e. Failing to provide the Parents with notice of an IEP meeting;

f. Holding an IEP meeting without proper personnel present;

g. Failing to consider the need for a BIP after a disciplinary episode;

h. Not providing the Parents with reports of progress on the Student's goals and objectives;

i. Failing to provide goals and objectives to address the Student's deficits; and by

j. Not providing the Parents meaningful participation in IEP meetings.

Issues raised by the Parents in their initial request for a hearing that were ordered by the hearing officer as non-judicable under IDEA included allegations that the Respondent engaged in actions in violation 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.

Procedural History:

On November 18, 2010, a request to initiate due process hearing procedures was received by the Arkansas Department of Education (hereinafter referred to as the "Department")

from XXXXXXXXXXXXXXXXXXX (hereinafter referred to as "Parents"), the parents and legal guardians of XXXXXXXX (Petitioner) (hereinafter referred to as "Student"). The Parents requested the hearing because they believe that the Pulaski County Special School District (hereinafter referred to as "District") failed to comply with the Individuals with Disabilities Education Act of 2004 (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 by not 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 assigning the case to an impartial hearing officer and establishing the date of December 23, 2010, on which the hearing would commence should the parties fail to reach a resolution prior to that time. An order setting preliminary timelines with instructions for compliance with the order, as well as the dismissal of the non-IDEA claims as noted above, was issued on November 18, 2010. The District notified the hearing officer on December 18, 2010, that a resolution conference was conducted as ordered, but without resolution of the issues contained in the Petitioner's complaints. The District challenged the sufficiency of the complaint on December 3, 2010. An order was issued in response to the challenge on December 6, 2010. (See Hearing Officer Binder of Orders and Pleadings)

Due to the previously scheduled holidays and the non-availability of witnesses the District requested and was granted, without objection, a continuance with the hearing to begin on February 16, 2011, with a second day, if needed on February 17, 2011. The hearing began as scheduled on February 16, 2011, and concluded on February 17, 2011.

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 for the Arkansas Department of Education, conducted a closed impartial hearing. The Parent was represented by Theresa L. Caldwell, attorney of Little Rock, Arkansas and the District was represented by George J. Bequette, Jr. and Keith I. Billingsley, Attorneys of Little Rock, Arkansas.

At the time the hearing was requested the Student was a nine year-old male enrolled in

the District, having completed the previous school year as a student with a disability as defined by 20 U.S.C. § 1401(3), specifically other health impaired (OHI), in the Little Rock School District (hereinafter referred to as "LRSD"). His eligibility criteria of OHI presents through behavior difficulties in the education environment secondary to his diagnosis of having an attention deficit disorder.[1] The evidence presented by the Parents reflects that the Student was never provided special education services by the LRSD, only that he was identified as being eligible for such at the end of school year 2009-10.[2] According to the LRSD records a referral conference was held on March 2, 2010, with the recommendation that a comprehensive evaluation be completed.[3] The comprehensive evaluation was completed on April 29, 2010, but the evaluation/programming conference was not held until June 4, 2010, near the last day of the school year. According to the Parents the LRSD knew early in the same school year that they would be moving and that the Student would become the educational responsibility of the District for the current school year under contention.[4] For the first and second grades the Student had been provided accommodations for his disability under a Section 504 educational plan by the LRSD.[5] The Parents testified that between March 2010 and the end of the school year in June the Student attended the LRSD only on Friday's and some special events, completing his academic school work in his father's office and taking tests at school on Fridays.[6] The final Section 504 committee's plan on March 2, 2010, was to seek out of school placement (Day Treatment Rivendale) and to prepare paper work for placing him under IDEA special services.[7]

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[1] Parent Binder, Tab 2, Page 30-31

[2] Parent Binder, Tab 2, Page 30

[3] Ibid, Page 43

[4] Transcript, Vol II, Page 102-109

[5] Parent Binder, Tab 3, Page 47-89

[6] Transcript, Vol II, Page 203

[7] Parent Binder, Tab 3, Page 47

The LRSD ended their educational responsibilities of providing services to the Student in June 2010; however, they developed an IEP for the Student, with full knowledge that they would not be responsible for implementation of the IEP, since the Parents had already moved into the District's school zone.[8] They determined that the Student was eligible for special education services because his other health impaired (OHI) disability had been shown to have a significant adverse impact on his education. Their evaluation process determined that he obtained a superior level of intelligence on the measures of intelligence; that he expressed no difficulties with communication reception or processing; that he tested as average in visual-motor skills; that he showed no deficits or weaknesses in any academic subject area and that he was performing on grade level; however, they determined that he expressed significant deficits in attention and conduct/behavior; and that he demonstrated severe sensory processing deficits.[9] The IEP developed by the LRSD proposed that with the exception of art and physical education, he would receive all of his education services in a self-contained special education classroom. On the continuum of services as outlined by the Department this meant that the Student would receive 40% or less of his instructional day in a regular education classroom.[10] The IEP developed by the LRSD for the Student also proposed his receiving occupational therapy twice weekly for a total of sixty minutes per week to address his sensory processing deficits. The record shows that they developed goals and objectives for his affective/behavioral deficits and one goal and objective for language/arts; however, they did not develop any goals and objectives for his academic subjects which were be provided in the special education classroom.

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[8] Ibid, Tab 1, Page 13-22

[9] Ibid, Tab 2, Page 30 and Tab 4, Page 107

[10] Ibid, Tab 1, Page 21

What is significant for the current case is how the LRSD's IEP team described the Student's disability and its affect on his involvement and progress in the general education curriculum. Such is that in spite of the fact that they noted he excelled in the area of math, especially in computation skills, money, and time; that he liked to contribute to large group discussions; and that he enjoyed reading independently, they did not develop a specialized curriculum for these areas. Their assessment was that his severe behavioral difficulties prevented him from successfully participating and progressing in the general curriculum because he had poor social skills, often acting dominate and bullying other children; that he made physical threats and violence to other students and adults when he did not get his way or was unhappy about something; that he had thrown sticks, hit, spit, and cursed at other children and adults; that he had difficulty with self-regulating his emotions and would have an explosive temper disrupting all classrooms around him where classrooms had to be moved for the safety of all children; that he had been a flight risk, often running away from adults; that he demonstrated violent and aggressive behavior to peers and authority; that he was very rigid and often had difficulty stopping an activity he was interesting in or beginning an activity he did not want to participate in; and that he refused to complete work in the general curriculum.[11] Thus the stage was set for knowingly passing the Student into the hands of the District to implement an IEP that the District had no part in developing.

Both parties provided the Hearing Officer with pre-hearing briefs which contained the necessary information on which to proceed and determine the burden of proof. It was decided that the burden of proof was to be born by the Petitioner. It was explained to both parties at the beginning and again at the conclusion of the hearing that the decision reached by the Hearing Officer would be based only on the testimony and evidence presented at the hearing. Both parties provided the Hearing Officer with post-hearing briefs as requested and both are included as exhibits in the Hearing Officer Binder of Orders and Pleadings.

[11] Ibid, Page 14

Findings of Fact:

1. Did the District fail to provide an appropriate IEP by failing:

a. To determine the Student's present levels of performance;

b. To consider the need for further testing and evaluation;

c. To provide goals and objectives for special education services;

d. To provide a behavior intervention plan (BIP); or by failing

e. To provide a grade appropriate curriculum?

As noted above the LRSD IEP team, which included the Parents, met on June 4, 2010, to review the evaluation information they had obtained and develop the Student's IEP for school year 2010-11. The proposed placement where services would be provided according to the LRSD IEP was to be in a self-contained classroom with less than 40% of his instructional day to be in the general education setting.[12] The consideration factors in their placement decision included the determination that the Student had such "severe behaviors that [they] impede the safety of other students and adults requiring [a] small group behavior cls (sic)."[13] The LRSD IEP proposed that even though he performed at or above grade level, that he would receive all of his academic courses in a self-contained classroom with the exception of art and music, which would be provided in the general education setting. The LRSD IEP determined the Student's present level of performance was that he was "able to read at a DRA of 28 and [that he] enjoys reading independently. [That] he is able to write complete sentences [and that] he excels in the area of math, especially in computation skills, money, and time [and that] the likes to contribute to large group discussions."[14] Despite the Parents contention that the District failed to assess his present levels of performance, they continued to allow the same statement of such performance to be included in subsequent IEPs including the current IEP for which they both testified that they were happy with in his home-based school.

The summary of the evaluation conducted by the LRSD in April 2010 concluded that the

[12] Ibid, Page 21

[13] Ibid, Page 15

[14] Ibid, Page 14

Student's intelligence level was well above average when compared to same-aged peers. His scores on achievement tests were at the expected level when compared with his abilities, when compared to grade-based standard scores. His age-based standard scores were in the average range, but not at expected levels when compared to his intelligence. The evaluation summary also concluded that he had clinically significant levels of attention problems, atypicality, conduct problems and withdrawal. The evaluator determined that these behaviors might have an adverse affect on one or more areas of his academic progress and classroom performance. The evaluator continued by stating that it was recommended that the Student be placed in a day treatment program upon entering his new school.[15] Since this evaluation was completed in April 2010, it was well known to everyone involved in his education at that time, including the Parents, that he would not be the educational responsibility of the LRSD for school year 2010-11.

The Student's zone-based school's special education resource room teacher testified that when a student comes in from another District within the State that they are required to adopt and implement the IEP developed by the previous district.[16] She further testified that the only documents or records she was provided with by the LRSD at the time of the programming conference to discuss placement for the coming school year was the IEP that they had prepared on June 4, 2010.[17] The Student's father testified, however, that the LRSD made copies of the Student's entire record for him at the IEP conference held on June 4, 2010, and that he delivered them to the District[18]. The record is not clear as to when he delivered a copy of the record to the District, but he testified that he hand-delivered "some documents" and gave them to the secretary at the Student's zone-based school.[19] Assuming that the District had only a copy of the IEP developed by the LRSD, the LEA supervisor who organized the meeting knew that the

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[15] Ibid, Tab 4, Page 94

[16] Transcript, Vol I, Page 31

[17] Ibid, Page 30-32

[18] Transcript, Vol II, Page 193-194

[19] Ibid

District would have to be prepared to provide the Student with services as determined appropriate by the LRSD IEP team.

On June 8, 2010, the Student's zone-based elementary school special education resource teachers and the school's Assistant Principal met with the Parents in a programming conference to determine how and where they would implement the IEP provided to them by the LRSD. The Parents testified that they waived the notification time required for conducting the conference, which was originally scheduled for June 14, 2010, because they were told that June 8, 2010, would be the next to last day under contract for those involved in the process within the District[20]. The notice stated that the District proposed the meeting in order to decide educational placement as well as related services.[21] As noted above, the only persons attending the conference other than the Parents was the assistant principal and the special education resource teacher.[22] Absent from the conference was a third grade regular education classroom teacher from either his zone-based school or the District's proposed school placement. Also absent were other personnel from the District who had expertise in evaluating any documents which may or may not have been made available to the District in order to determine eligibility or need for services, including the related services of occupational therapy. Nor was the self-contained special education teacher from the school and class where his placement was being proposed present to participate in the decision. The Student had not been provided any special education services by the LRSD, only accommodations under Section 504. Apparently even these documents were not available to the IEP team at the time of the programming conference. As noted above, both the Assistant Principal and the Student's zone-based school's resource teacher testified that the only information they had available to them at the time of the meeting was a copy of the IEP developed four days earlier.

The Student's Section 504 documents are contained in the Parent's exhibit binder at Tab 3, Pages 47-89, dated from January 10, 2009 through March 2, 2010; Parent Binder at Tab 4,

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[20] Ibid

[21] District Binder, Tab 2, Page 17

[22] Ibid, Page 26

Pages 90-103 and Pages 106-114, dated from April 1, 2009 through April 4, 2010; and Parent Binder at Tab 5, Pages 136-213, dated from May 7, 2008 through March 9, 2010. One of the documents the Parents testified that they provided prior to the meeting was a copy of the Student's Occupational Therapy evaluation conducted by the LRSD.[23] However, at Parent Binder Tab 5, Page 135, an email from the District to the LRSD on August 25, 2010, is a request for a folder on the Student which would contain the Student's OT evaluation and goals. The question to address here is whether or not it would have made a difference in deciding the appropriate educational needs or placement if the additional information were to have been available to the District personnel attending the separate programming conference on June 8, 2010.

The Student's mother testified that she specifically requested the Student be evaluated for occupational therapy and to rule out autism.[24] At the same time, with the examination by the Occupational Therapist who provided services after the Student was enrolled in the District there are no indications in the record that the LRSD evaluation was available until after it was requested in August 2010. The notes of the IEP team meeting on June 8, 2010, do not reflect such a request, most likely because a re-evaluation had already been completed by the occupational therapist at the LRSD. The first occupational therapy evaluation was conducted by the LRSD when the Student was in the first grade. A re-evaluation was conducted by the LRSD while he was in his second grade. Neither of these evaluations mentioned anything about behaviors or indications of autism being observed or found in the tests results.[25] The original evaluation included sensory integration observations provided by his mother. They too did not include any indicators of autism according to the occupational therapist.[26] As is noted in the findings of facts below, the Parents allege that an occupational therapy evaluation was conducted without their consent. However, as the record and testimony shows that which was

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[23] Ibid, Tab 4, Page 106-113

[24] Transcript, Vol II, Page 152

[25] Parent Binder, Tab 4, Page 106-113

[26] Transcript, Vol II, Page 42-43

completed by the occupational therapist was not in reality an evaluation. The occupational therapist did indicate in testimony that after reviewing classroom notes between the beginning of the school year and before she recommended a change in the occupational therapy services on September 13, 2010, that he did exhibit "a few [autistic] characteristics," but not enough to have warranted conducting a separate evaluation to rule out autism.[27]

The evidence and testimony shows that the District did not have individuals present at the programming conference as required by Department regulations implementing the IDEA. The Department does require a receiving district of a special education student transferring from another district within the State to adopt and implement the previous district's IEP; however, the Department also requires the receiving district to develop, adopt, and implement a new IEP that meets the applicable requirements of the IDEA. It is understandable that the District was limited in the amount of available time given that the transfer of the Student took place in the later days of the 2009-10 school year; however, even a cursive review of the IEP developed by the LRSD would suggest that a more intensive gathering of an IEP team would be needed to address the Student's special education needs. Had such an IEP meeting been held, even if it needed to have been held closer to the beginning of the new school year, it is possible that more consideration would have been given the Student's unique needs (e.g., academic and behavior issues and sensory integration deficits) thus avoiding the current questioning as to whether or not the IEP implemented was appropriate. At the same time, a retrospective review of the evaluation documents available to the LRSD does not indicate that the IEP they developed was a failure to (1) determine the Student's present levels of performance; (2) consider the need for further testing and evaluation; (3) provide goals and objectives for special education services; (4) provide a behavior intervention plan (BIP); or failure to (5) provide a grade appropriate curriculum. However, the LRSD IEP did not contain either a behavior intervention plan or goals and objectives for his academic subjects. Based on the District's reliance on the professional decisions of their colleagues in the LRSD, it cannot be said from the evidence and testimony presented that they failed the Student in the same manner. They did however, fail to provide the appropriate personnel at the programming conference and as such deprived the

[27] Transcript, Vol II, Page 35

Parents with their entitlement of being able to be fully informed and participate in the decision making process. The statement, as the District asserts in their post-hearing brief, that the Parents "agreed" is not altogether accurate, in that the Parents acknowledged with their signatures on the various forms that they participated, at least to some degree, as members of the Student's IEP team. Without any previous knowledge of special education services they entered the entire process prior to the Student being transferred to the District, with extremely limited knowledge of the due process procedures. They did however, participate in the educational decisions regarding the Student from his kindergarten year through his second grade in the LRSD by participating in their Section 504 Plan for the Student. They could have asked more questions in the process and obtained additional information as to where and how their child would be educated in the District prior to acknowledging the IEP with their signatures; however, from their testimony, they too relied on the expertise of the educators.

2. Did the District fail to provide an appropriate IEP in the least restrictive environment (LRE) by failing to consider supports and service necessary to address the Student's disabilities in a lesser restrictive environment?

The failure by the District as evidenced above in the initial hearing in June 2010 was having not taken the time and effort needed to ascertain as to whether or not the IEP developed by the LRSD was appropriate for the Student by conducting their own assessment once he entered the school, and whether or not the IEP developed by LRSD could actually be implemented in their educational setting in a lesser restrictive environment than the one selected. It would appear from the testimony that the District decided in advance, based only on the information contained in the IEP they received from LRSD, that he could best be served in one of their two self-contained behavior classrooms referred to as STAR. There was no evidence provided that a consideration was given as to how it might be implemented in a less restrictive environment since the IEP prepared by the LRSD intended for him to be placed for services, both academically and behaviorally, in a self-contained classroom. Personnel from the District's proposed school which met the placement criteria were not present at the time the placement decision was made. Nor were personnel from the proposed self-contained classroom

asked to assess any of the evaluation data or even to review the LRSD IEP that proposed such a setting prior to the meeting on June 8, 2010. Neither the Parents, nor the two personnel representing the District at the IEP programming conference had any knowledge as to the program and placement they ultimately decided on.[28]

Once enrolled and after a few weeks of attendance in the new school setting another separate programming conference was set to meet on September 13, 2010. According to the conference notice sent to the Parents the purpose of the meeting was to program for an "initial IEP" and "related services."[29] Other than the Parents, this time the only other person noted to be in attendance at the conference was his self-contained classroom teacher; however, the conference decision form was signed by his occupational therapist and she indicated in testimony that she was present at the conference. The IEP developed at the meeting did not contain any academic course activity other than indicating that all course/activity would be "STAR."[30] STAR stands for "Strategic Teaching to Acquire Responsibility" and was testified to by the instructor of the class as being equivalent to what other school district's refer to as alternative learning classes for students primarily with behavior problems. She stated that children referred to her program all are recipients of special education and "that [the] school environment or other environments they have been in have exhausted other measures of trying to deal with behavioral components."[31] She further testified that students referred to her class would have already been placed in lesser restrictive environments with support services in place to address their behaviors, but that for some reason they have not worked for the student. At the time the Student was present her classroom consisted of students from kindergarten through fifth grade. On cross examination she stated that at time the Student was in her class (e.g., first semester of 2010-11) she had four other students, along with three para-educators and at times

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[28] Transcript, Vol I, Pages 44, 55, 78, 146, & 147

[29] District Binder, Tab 3, Page 5

[30] Ibid, Page 1

[31] Transcript, Vol I, Page 169

only two other students.[32]

Contrary to the indications on his IEP of September 13, 2010, that he would be receiving all of his school activities in the self-contained behavior classroom, his STAR teacher testified that he was in recess with other same-age and non-disabled students; that his lunch period was at the same time as these other non-disabled students; that on Monday's he went to a physical education class with same-aged, non-disabled students; and that on Thursdays in addition to physical education, he attended art and music classes outside the self-contained classroom. Although it was argued that by altering the Student's IEP developed on June 8, 2010, and again without any indication on the September 13, 2010, IEP that he would be receiving his education in a more restrictive environment than proposed by the LRSD IEP team, there was insufficient evidence to show that had the IEP been implemented in the LRSD that he would have been in a less restrictive environment than what he experienced as a result of the IEP changes by the District.

3. Did the District change the Student's educational placement without due process by not obtaining parental consent for an evaluation; or by not performing an evaluation; or by discontinuing direct occupational therapy services without proper evaluation and/or consent?

Prior to the September 13, 2010, programming conference the District's occupational therapist conducted classroom observations and developed an addendum to the occupational therapy evaluation and re-evaluation conducted in the previous school years.[33] Contrary to the Petitioner's contention she did not conduct another re-evaluation which would have required parental consent. As she testified she conducted a screening by observing the Student in the classroom and decided that providing him with direct occupational therapy services as indicated on the IEP was not warranted. Her professional opinion was that she would provide monitoring on a monthly basis because from her observation assessment "he was functioning at an optimal

[32] Ibid, Page 237

[33] District Binder, Tab 3, Page 4

level" and did not require direct therapy services as indicated from the evaluation conducted by the LRSD and as proposed on the IEP they developed or that which was adopted by the District in June 2010.[34] There was no evidence presented contrary to the occupational therapist's judgment as to the need for services, nor was their a change in placement as alleged by the Petitioner for having decreased the related services to that of monitoring. As noted above neither of his parents requested an occupational therapy evaluation to assess either his integration sensory needs or to rule out the possibility of autism.

4. Did the District deny the Student with FAPE by allegedly failing to provide a continuum of educational placements by not (a) educating him alongside his non-disabled and same-aged peers; (b) not providing him with an age appropriate curriculum; and (c) by not providing his education in his home-based school?

As noted above that even though his IEP of September 13, 2010, was inadequate in describing the continuum of services or the curriculum that the Student would be engaged in, his special education teacher explained that he did participate alongside non-disabled and same-aged peers under some conditions. She further testified that the only goals and objectives necessary for the Student were his behavior goals and objectives, because he did not exhibit any deficits in his academic areas. The District's Resource Teacher who was responsible for leading the IEP team meeting in June 2010, testified that it was her assumption that the Student would receive instruction in his regular academic curriculum while in the STAR program.[35] She stated that the Students deficits were behaviors and not academics and that it was her understanding that in the STAR classroom they would be "working on the framework and the general curriculum within that classroom while addressing his specific needs and goals for behavior in that classroom, and that is why there are probably only behavioral goals on the IEP."[36] She stated that it was her belief that the Student "was receiving [special education] services for

[34] Transcript, Vol II, Page 18

[35] Transcript, Vol I, Page 57

[36] Ibid, Page 59

behavior, not academics [and that for] his academics, they would be following the regular framework for the State of Arkansas within that setting while addressing his spec ed needs, which were behavioral needs."[37] At the same time the IEP the District adopted and subsequently implemented clearly indicated that the Student would be receiving special education services in all of his academic areas excluding art and music in a setting designed to address the behavior problems he exhibited in the school environment.[38]

When challenged as to whether or not the Student could have received his special education services in his home-based school the District's Resource Teacher who participated in the June 8, 2010, IEP programming conference replied that "he is a highly intelligent student and our self-contained classroom [at his home-based school] is a community based instruction program for kids who are mentally retarded."[39] Additionally she stated that "when we get a new student to our district, we follow the current IEP as closely as possible, and within 30 days, we will a lot of times rewrite the IEP, if there needs to be changes to it."[40] This statement was in response to being challenged as to why there were no goals and objectives in the LRSD IEP they adopted and implemented for the Student's academic areas. The Student's home-based school Assistant Principal testified that the Student could have been provided all of the special education services developed and planned by the LRSD in her school with the exception of the recommended "intensive behavior management plan."[41] She further testified that it was her understanding that the LRSD IEP recommendation was "a program, not a formula....that he attend a behavior management program."[42] Her testimony was that the only services that they would not be able to provide at his home-based school was providing him with "intensive instruction in a small classroom due to the severity of behaviors impeding his progress in the

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[37] Ibid, Page 60-61

[38] District Binder, Tab 2, Page 16

[39] Transcript, Vol I, Page 56

[40] Ibid, Page 63

[41] Ibid, Page 131

[42] Ibid, Page 132

general curriculum."[43] The Student's father testified that the word "behavior" was never addressed in the IEP meetings; however, he testified that he brought all of the Student's school records to the IEP meeting on June 8, 2010, and those records clearly indicate that the LRSD recommended addressing the Student's behavior problems in a small classroom setting.[44] At the same time the Parents were also aware that the LRSD was in the process of searching for a day treatment placement outside of the school setting to address the same behavior issues.[45]

His STAR classroom teacher testified that she did not have goals and objectives on his IEP for any of the academic areas taught in her classroom. She testified that academically she was very impressed with the Student; that "he is a very bright, very intelligent little boy; not only was he able to do third grade work, but he also showed a lot of interest in things beyond that level."[46] She further stated she discussed with the Student's father and his concern that the Student "might not have been challenged enough [academically]..... and that] if he was bored, perhaps, that might even cause issues with behavior."[47] However, she testified that she disagreed with his belief, stating as an example that she "went to a fifth grade teacher that's next door to me, and she has extra workbooks on different subjects. . . she has a writing series on workbooks, and I came to get that, brought it in, gave it to [the Student] to use."[48] She stated that she used her daily grades on his work to determine the grades he would receive on his report card and that his interim grades at the four week mark of the school year were A's and B's with a C in handwriting.

When challenged in testimony as to whether or not the Student could have received the same special education services in his deficit area of behavior in his home-based school environment, the answers were consistently that because the previous school district indicated a

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[43] Ibid, Page 142

[44] Transcript, Vol II, Page 195 and 193

[45] Ibid, Page 213

[46] Transcript, Vol I, Page 208

[47] Ibid, Page 208-209

[48] Ibid, Page 209

need to address the behavior deficits in a self-contained classroom that the placement in one of their STAR programs was the appropriate placement. The District's personnel assigned to assess the needs of the Student failed to consider placement in any lesser restrictive environment simply because they interpreted the previous District's placement as being consistent with their self-contained behavior classroom. The District personnel suggesting the placement in their STAR program were aware that special education services had not been provided by the LRSD in a regular classroom setting. They knew that he only received accommodations under a Section 504 plan.

The decision for placement in their STAR program was made without direct knowledge of the program by anyone at the IEP programming conference on June 8, 2010, and without any consideration of providing the same services with supports in a regular classroom in his home-based school prior to moving to the more restrictive setting.

5. Did the District fail to follow due process procedures by (a) discontinuing direct OT services; (b) not determining the Student's present level of performance; (c) not developing a BIP; (d) failing to obtain parental consent for an OT evaluation; (e) failing to provide the Parents with notice of an IEP meeting; (f) holding an IEP meeting without proper personnel present; (g) failing to consider the need or a BIP after a disciplinary episode; (h) not providing the Parents with reports of progress on the Student's goals and objectives; (i) failing to provide goals and objectives to address the Student's deficits; and by (j) not providing the Parents meaningful participation in IEP meetings?

The majority of the due process violations alleged by the Petitioners have already been addressed in the findings of facts on the other issues as noted above, but are reiterated here for purposes of clarity with respect to specificity of the alleged violations to the due process procedures as determined necessary under the IDEA.

There was no evidence presented that would indicate that the District discontinued occupational therapy services. The IEP developed by the LRSD for school year 2010-11 anticipated the need for direct occupational therapy services twice weekly for thirty minutes each.[49] The evidence and testimony was that the District's occupational therapist determined

[49] Parent Binder, Tab 1, Page 13

by direct observation in the first few weeks of implementing the IEP that the Student was performing at an optimal level and that he needed only be provided with monitoring services. To have continued to provide unnecessary services would have been a disservice to the Student. The District did not fail to seek parental consent either to alter the amount of occupational therapy services provided nor did they violate the IDEA due process procedures in failing to obtain consent for an evaluation, because an evaluation was not conducted. The occupational therapy addendum to the existing evaluations provided a summary of the therapist's observations and appropriately made her recommendation for the amount of services needed. It should also be noted that the current IEP developed on January 6, 2011, after the filing for a due process hearing as was testified to by both Parents as being adequate to meet his educational needs, also stipulated that occupational therapy services would be monitored once monthly for thirty minutes.[50]

The Student's present level of performance as noted above, was determined and stated in the initial IEP developed by the LRSD and implemented on the first day of school by the District as noted in the discussion above. In their development of a new IEP on September 13, 2010, the District did not alter the findings on his level of performance as testified to by his STAR classroom teacher because there was not enough information on which to alter those statements.[51] When asked about assessing his present levels of functioning for a planned meeting in November 2010, the STAR classroom teacher stated that she "had already started going through the thought process of what do we need to do in recording, and then we didn't get to have the conference to do it."[52] Hereto the IEP developed after filing for due process, to which both Parents expressed satisfaction contains the same statements as to the Student's present levels of performance relative to the general curriculum/appropriate activities.[53] Consequently, there is insufficient facts in evidence or testimony to find that the District failed

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[50] Transcript, Vol II, Page 151, 202, 214 and District Binder, Tab 6, Page 6

[51] Transcript, Vol I, Page 243

[52] Ibid, Page 243-244

[53] District Binder, Tab 5, Page 6

to follow due process procedures in determining the Student's present level of functioning.

The District's receiving school's resource teacher who conducted the first programming conference on June 8, 2010 testified that the behavior plan developed by the LRSD when he was under their Section 504 Plan was to be implemented when he came to the District's STAR program.[54] She made this comment without having any knowledge of the STAR program as previously noted above. She also acknowledged in testimony that according to the Department's regulations implementing the IDEA, that when a child's behavior impedes his learning that a district must consider the needs for a behavior intervention plan and the need to conduct a functional assessment of behavior.[55] The IEP developed by LRSD that was adopted and implemented by the District did not contain a behavior intervention plan. Thus the implementation of the regulation became the responsibility of the District and as the resource teacher testified they failed to do so.[56] The STAR classroom teacher charged with implementing behavior intervention plans for students in her classroom testified that when students are placed in her class that "first and foremost, those children have a behavior plan....the majority come to me with one...we have to tweak and adjust based on our environment, or I have to do a functional assessment of behavior and do it for my students....but we follow the behavior plan first and foremost."[57] She stated that the plan she implemented for the Student was "the one developed by the LRSD [and that] we were in the process of trying to redo [his plan]....but he left and had issues before we ever got to have our conference to do that."[58] Nonetheless, the Student's BIP was one developed for a regular education classroom with accommodations under a 504 plan and one not necessarily conducive to the self-contained behavior classroom to which he was assigned for implementation of an IEP where the only disability deficit indicated was his behavior in the educational setting.

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[54] Transcript, Vol I, Page 51 and Parent Binder, Tab 3, Page 52

[55] Ibid, Page 63 and Ibid, Page 72

[56] Ibid, Page 64

[57] Ibid, Page 173

[58] Ibid, Page 175-176

The failure to notify the Parents with notice of an IEP meeting was never addressed in testimony and no evidence was presented to confirm or deny the allegation. At the same time the evidence does support the allegation that the IEP programming conferences in June and in September did not include the appropriate personnel as specified by the Department in its regulations implementing the IDEA.

Both parties spent considerable time eliciting testimony and presenting evidence pertaining to a disruptive behavioral episode on November 11, 2010, which led the District to implement disciplinary action by suspending the Student for three days.[59] The incident involved acting out and property destruction by the Student in concert with a classmate in the STAR program. From the testimony provided by those involved in the process of containment, the District took appropriate actions to protect the Student, the other students in the classroom, and the teaching staff. The record shows that this was the second incident within nine days in which the Student was suspended for acting out behavior.[60] One week after the second incident, on November 18, 2010, the Parents initiated their due process complaint, placing the Student under the stay-put provision of the IDEA. Thus failing to develop a behavior intervention plan following either the first or second incident is beyond reasonableness and the District cannot be found to have failed to follow due process procedures in this regard. However, adopting a plan designed to provide accommodations in a regular education classroom as had been previously established to manage his behaviors was not necessarily an appropriate plan for the STAR classroom. As such the District did fail to develop an appropriate behavior intervention plan prior to the incidents in November 2010.

The STAR classroom teacher testified that they did not develop new goals and objectives for any of the Student's special education needs at the September 13, 2010, programming conference. A progress report copy of the Student's behavioral/affective and English language arts goals and objectives as programmed in the IEP of June 4, 2010, were

[59] Parent Binder, Tab 5, Page 116

[60] Ibid, Page 127

provided to the Parents only after the start of the hearing.[61] The progress report on the forms indicate that the STAR classroom teacher assessed and measured his progress on October 14, 2010. In testimony she stated that by October 14, 2010, he had reached those goals at about forty-five percent of the one-hundred percent needed for mastery.[62] All District personnel testified to the effect that the only deficits exhibited by the Student were behavior and that since he did not exhibit deficits in any of his academic areas that no goals and objectives were necessary. Such belief obviously is contrary to the requirements as set forth by the Department.

It was unclear from the testimony as to what the Parents meant by not being provided with meaningful participation in the IEP meetings. Both of the Student's parents testified to the effect that they were not knowledgeable about special education or special education services. The evidence supports the fact however, that they were provided with ample notification and were present at all of the meetings called for, and that they participated at least to some degree based on their knowledge of the IEP process.

Conclusions of Law and Discussion

[61] Ibid, Tab 1, Page 6a, 6b

[62] Transcript, Vol I, Page 183

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.[63] 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.[64] The term "special education" means specially designed instruction.[65] "Specially designed instruction" means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery of instruction.[66] As noted in this case the Student presented as being a child eligible to receive special education services according to the results of an assessment conducted by the LRSD under the disability category of other health impaired (OHI). The LRSD, however, did not provide any special education services in that the evaluation and decision making process took place towards the end of the school year that the Student attended in their district. His eligibility for a free and appropriate education (FAPE) was adopted by the District for which an individualized educational program (IEP) was adopted with plans to implement the suggested special education services.

The Department has addressed the responsibilities of each local education agency with regard to addressing the needs of all children with disabilities such as the Student in it's regulations at Section 2.00 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." Given that this is the crux of the Parent's contention in this case

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[63] 20 U.S.C. § 1412(a) and 34 C.F.R. § 300.300(a)

[64] 20 U.S.C. § 1401(3)(A)

[65] 20 U.S.C. § 1402(29)

[66] 34 CFR § 300.26(b)(3)

it is critical to understand in making a decision about the Parents' allegations of the District's failure to provide FAPE. The Court noted that the following twofold analysis must be made by a court or hearing officer:

> (1). Whether the State (or local educational agency (i.e., the District)) has complied with the procedures set forth in the Act (IDEA)? and
>
> (2). Whether the IEP developed through the Act's procedures was reasonably calculated to enable the student to receive educational benefits?[67]

Six years later the Supreme Court addressed FAPE again by emphasizing the importance of addressing the unique needs of a child with disabilities in an educational setting by addressing the importance of a district's responsibility in developing and implementing specifically designed instruction and related services to enable a disabled child to meet his or her educational goals and objectives.[68]

Congress established and the courts have consistently agreed that FAPE must be based on **the child's unique needs and not on the child's disability**.[69] Too often this hearing officer has found that parents, school administrators and attorneys representing them, agree on the basis but do not make this distinction in their arguments on the complaints or the differences they've encountered. The charge to education professionals is to concentrate on the unique needs of the child rather than a specific disability such as in this case, the Student's behavior difficulties associated with his eligibility criteria of other health impairment (OHI).

In reviewing the elicited testimony and the evidence, in this case there is ample testimony and evidence that the District attempted to focus on the unique needs of the Student. However, by adopting a behavior management plan designed for a regular classroom and failing to design a plan to implement in a self-contained behavior classroom was shown to not be considering his unique needs. Contrary to the Parents allegations there was insufficient evidence that one of his unique needs could have been associated with autism; however, there

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

[68] *Honig v. Doe*, 484 U.S. 305 (1988)

[69] 20 U.S.C. § 1400(d)(1)(A); § 1401(14); and 34 C.F.R. § 300.300(a)(3) (emphasis added)

was sufficient evidence to attest to his behavior issues being associated with his attention deficit disorder. Despite the devastating manifestation of his behavior problems the evidence also shows that due to his high level of intellectual skills he continued to progress on grade level.

It is necessary, therefore for this hearing officer to look only at the facts in this case as to whether or not the District in cooperation with the Parents developed an IEP which concentrated on the unique needs of the Student and not specifically at his disability and that the IEP team considered his unique needs in deciding on an appropriate educational placement which was most appropriate to implement his education program. The testimony by District personnel elicited in the course of the hearing suggest that they truly believed that the unique needs of the Student as indicated in the IEP developed by the LRSD with regard to his behavior problems could best be implemented in their STAR program. To have accepted the previous district's decision without the presence of the persons whose responsibility it was going to be to implement the IEP was totally inappropriate. For the District to come now stating in their post-hearing brief that the Parents "agreed" with the placement is also absent of any factual information as to parental knowledge of how the placement in the STAR program was going to meet the Student's unique needs. Had the Parents taken the time and given the opportunity by the District to investigate the placement prior to "agreeing" they might have not have signed the IEP in June 2010. The question of whether or not FAPE was denied in this case also pertains to the specialized instructional intention of the Student's IEP.

In more specifically defining what is meant by FAPE, the Court 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

(4). They comport with the student's IEP.[70]

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

The definition of children covered under IDEA; however, is seen as being doubly circular in that a child with disabilities must be so disabled as to require special education and related services. Again, as noted above, special education and related services 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.

The issues addressed in this case have been presented by the Parents as being such egregious violations of procedural requirements of the Act that they have denied the Student with FAPE. Keeping in mind, 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. Thus the question boils down to: (1) looking at each individual issue to determine whether or not the District has been in compliance with that definition, and (2) whether or not any single violation, or the accumulation of violations, is severe enough to constitute a denial of FAPE.

The Court of Appeals for the Eight Circuit in *Zumwalt v Clynes*[71] agreed with the Supreme Court's decision in *Rowley* in stating that the IDEA requires that a disabled child be provided with access to a free appropriate public education and that parents who believe that their child's education falls short of the federal standard may obtain a state administrative due process hearing.[72] Further, Rowley recognized that FAPE must be tailored to the individual child's capabilities. The Court of Appeals for the Eighth Circuit has also outlined the procedural process by which a parent and student may pursue their rights under the IDEA:

> "Under the IDEA, parents are entitled to notice of proposed changes in their child's educational program and, where disagreements arise, to an 'impartial due process hearing.' [20 U.S.C. § 1415(b)(2).] Once the available avenues of administrative review have been exhausted, aggrieved parties to the dispute may file a civil action in state or federal court. Id. § 1415(e)(2)."[73]

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[71] *Zumwalt v Clynes*, (96-2503/2504, U.S. Court of Appeals, Eight Circuit, July 10, 1997)

[72] *Board of Education v. Rowley,* (458 U.S. 176-203, 1982)

[73] *Light v. Parkway C-2 School District*, 41 F.3d 1223, 1227 (8th Cir. 1994), cert. denied, 515

The Eighth Circuit Court of Appeals has addressed the issue of the adequacy of an IEP in meeting the standards established in IDEA in order to provide FAPE. In *Fort Zumwalt School District v. Clynes*, the majority is quoted as stating that the IDEA does not require the best possible education or superior results. The court further states that the statutory goal is to make sure that every affected student receive a publicly funded education that benefits the student.[74] In their decision the court relied on the previously cited Rowley case by quoting Rowley at 203 (grades and advancement from grade to grade "an important factor[s] in determining educational benefit").[75]

A major question with regard to the current case and whether or not FAPE was denied is whether or not the IEP adopted by the District in June 2010 and revised in September 2010 provided sufficient instruction and services to enable the Student to progress from grade to grade. The fact that his parents believed that he may not have been sufficiently challenged academically is not relevant as to whether or not the IEP was appropriate with regard to providing FAPE. FAPE cannot be said to have been denied if, as noted above, the instruction and services comported with the Student's IEP. However, the IEP's adopted, developed, and implemented by the District did not contain any indication of specialized instruction in any academic areas.

It was the intent of the IDEA to encourage parental participation in the development of a disabled student's IEP. The value of parental participation in the development of an IEP has been consistently emphasized in the IDEA.[76] As the Supreme Court stated in the previously cited Rowley case "It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of

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U.S. 1132 (1995)

[74] *Fort Zumult School Dist. v. Clynes*, 96-2503,2504, (8th Cir. 1997)

[75] Ibid, at 26 IDELR 172

[76] 20 U.S.C. §§ 1400(c); 1401(20); 1412(7); 1415(b)(1)(A), (C)-(E); 1415(b)(2)

the resulting IEP against a substantive standard."[77] The previously cited Eighth Circuit case regarding the necessity of there needing to be serious procedural violations in order to declare a violation of FAPE, on the other hand, takes a strong opinion in the other direction when it comes to the requirement of parental participation: "An IEP should be set aside only if 'procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.'"[78] In this case there is no doubt that the Parents participated in the development of the Student's IEP in June 2010 and September 2010, even though they may, as they now state, to have had very little knowledge of special education, and even though they may not have agreed with all of the decisions reached by the IEP team, their testimonies reflected a history of active involvement in the Student's health, welfare, and education which can only be admired by those of us without such challenges as those that they meet daily.

Also, as noted earlier, the courts have agreed that an IEP must be designed to provide the possibility for a student to obtain an educational benefit from the proposed instruction. What constitutes an educational benefit or meaningful benefit has also been the discussion of multiple court decisions. Again, going back to the Rowley standard, progress according to the courts should be measured in terms of educational needs of the disabled child and should be more than "trivial" or "de minimis."[79] In evaluating whether FAPE was furnished the courts have demanded an individual inquiry into a child's potential and educational needs. In this case the Student's lack of academic progress in the STAR program was addressed and illustrated by the evidence, but only in contrast to his subsequent advancement when returned to his home-based school. Whether or not the District should have known that a more aggressive and advanced

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[77] *Bd. of Educ. of Henrick Hudson Cent. Sch. Dist. v. Rowley*,458 U.S. 176, 189, 205 (1982)

[78] *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556 (8th Cir. 1996) and *J.P. v. Enid Public School*, No. CIV-08-0937-HE (W.D. Okla. 9-23-2009)

[79] *Polk v. Central Susquehanna Intermed. Unit 16*, 853 F.2d 171 (3rd Cir. 1988); *Ridgewood B. of Educ. v. N.E.*, 172 F.3d 238 (3rd Cir. 1999); and *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)

academic curriculum may have decreased some of the behavior problems is impossible to tell from the evidence. However, to have failed to address his unique academic needs was detrimental and was a failure to provide him the educational opportunity for which the IDEA advocates. It is not a mandate of the IDEA that a parent, anymore than a district, be able to forecast with ultimate certainty of the adequacy of a particular IEP. The IDEA, as noted above, must however, be developed in such a manner as to allow a student the opportunities to achieve an educational benefit from the educational program. From the documents entered as evidence and the testimony of the educational professionals this would appear to have not been the case for this Student when he initially became the educational responsibility of the District. Their subsequent decision with regard to moving him into a less restrictive environment where he is said to be making significant academic progress could have been considered in the initial placement.

The Supreme Court supported Congress' emphasis on the importance of procedural compliance; however the accusation that a student has been denied FAPE has not been supported by the court when the alleged violation has been based solely on procedural violations.[80] The alleged violations of not following the IDEA's due process procedures such as discontinuing occupational therapy services, not determining the Student's present level of performance, failing to obtain parental consent for an occupational therapy evaluation, failing to provide the Parents with notice of an IEP meeting, and not providing the Parents with reports of progress on the Student's goals and objectives, were not shown by the evidence or testimony to warrant a judgement that they failed to follow due process procedures in regard to these allegations. However, for the District to have not included appropriate school personnel as well as other persons knowledgeable of the Student's disabilities in their initial and subsequent

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[80] *Board of Education of the Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 206-207 (1982). See also *Evans v. District No. 17 of Douglas Cou*nty, 841 F.2d 824 (8th Cir.1988). (See also *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556 (8th Cir. 1996). More recently see: *Hiller v. Board of Education,* (16 IDELR 1246) (N.D. N.Y. 1990); *Bangor School Department* (36 IDELR 192) (SEA ME 2002); *Jefferson Country Board of Education,* (28 IDELR 951) (SEA AL 1998); *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); *School Board of Collier County v. K.C..*, 285 F. 3d 977 (11th Cir. 2002), 36 IDELR 122, *aff'g* 34 IDELR 89 (M.D. Fla. 2001); and *Costello v. Mitchell Public School District 79,* 35 IDELR 159 (8th Cir. 2001).

programming conferences, and failure to develop and implement an appropriate behavior intervention plan, along with appropriate academic goals and objectives have been shown to be of sufficient violation to warrant a judgment for the denial of FAPE.

For the District to have accepted only the IEP developed by the LRSD in deciding, without additional evaluative information or further assessment by education professionals, prior to the Student being placed in their STAR program is a reflection of a dereliction of responsibility in not considering 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 results of the testimony and evidence warrant a finding for the Parents, but only in part. The Parents have introduced sufficient evidence in the record to reflect that the decisions made by District on being approached with the challenge to meet the unique 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 result of basing their placement decision on insufficient information. The immediate and subsequent failure to address and assess both the behavior and academic needs on entering the District proved to be decisions which contributed to the Student's failure to receive FAPE.

In order to compensate the Student for a failure to provide FAPE for the first semester of school year 2010-11 it is hereby ordered that:

1. The District will upon receipt of this order conduct, or cause to be conducted, a comprehensive evaluation which will include an assessment of any emotional disorders, attention problems, as well as his current level of academic achievement, and any special academic needs 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 an examiner that the Parents, in coordination with their council, agree is qualified to conduct the examination.

3. The comprehensive evaluation as ordered in (1) above will be completed no later than May 2, 2011.

4. Upon completion of the evaluation as ordered in (1) above and no later than May 31, 2011, the District's special education coordinator will assemble an appropriate IEP team, to include the examiner conducting the evaluation, to consider the results of the evaluation and to develop an IEP if indicated by the results of the evaluation.

5. Between the date of this order and the completion of item (4) above, the District will provide the Student with compensatory education services in the amount of 9,900 minutes, with the dates and times of services as well as the content of the services being those agreed to by the Parents.

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

March 22, 2011
Date