Arkansas Department of Education
Special Education Unit

[redacted]
As Parent of
[redacted] Student **Petitioner**

VS. NO. H-14-03

Bentonville School District **Respondent**

HEARING OFFICER'S FINAL DECISION AND ORDER

Issues and Statement of the Case:

The Petitioner alleges that the Respondent has denied the Student with a free and appropriate public education (FAPE) by failing to evaluate and provide special education services for the Student in an appropriate placement during school year 2012-13 and by failing to provide an appropriate education and placement for school year 2013-14.

Issues raised by the Petitioner in the initial request for a hearing that were ordered by the hearing officer as non-judicable under the Individuals with Disabilities Education Act (IDEA) included allegations that the Respondent engaged in actions in violation of Section 504 of the Rehabilitation Act of 1973.

Procedural History:

On August 19, 2013, 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 "Parent"), the parent and legal guardian of [redacted] (Petitioner) (hereinafter referred to as "Student"). The Parent requested the hearing because she believes that the Bentonville 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 issue as stated.

The Department responded to the Petitioner's request by assigning the case to an impartial

hearing officer and establishing the date of September 19, 2013, 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 claim as noted above, was issued on August 21, 2013. The District notified the hearing officer on August 30, 2013, that a resolution conference was conducted as ordered, but that the conference ended without the parties resolving the issues contained in the Petitioner's complaint.

In addition to the District, the Parent alleged in her complaint that not only did the District deny the Student FAPE, but also that the Department and Vista Health Therapeutic Day Treatment of Bentonville, Arkansas (hereinafter referred to as "TDT"), had also denied the Student FAPE during school year 2012-13. As a privately owned and operated entity the Hearing Officer did not include TDT as a responsible party to the hearing. The Department responded to the complaint requesting that the Department be dismissed on various grounds, but including the affirmative defense of waiver, sovereign immunity, justification, unclean hands, and estoppel. As noted in their request to be dismissed, as well as in the Petitioner's response to that request, the Department ceased providing certification for day treatment centers in August 2012, and prior to the Student's placement at TDT. An order was issued on September 12, 2013, granting the Department's request to be dismissed.[1]

On September 23, 2013, the Petitioner filed a motion for contempt requesting that the District be ordered to comply with the IDEA stay put requirement during the process of the hearing. The Parent alleged that the District had violated the stay put provision by placing and providing the Student with special education services without parental consent or knowledge.

On September 24, 2013, the Petitioner submitted a motion for the Student to receive an independent evaluation to which the District responded requesting that the motion be denied on the grounds that the District had already made the offer and had the means with which to conduct the requested evaluation; however, the Parent were denied their consent request.

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[1] See the Department's response to the complaint and the Parent's response to the Department's request to be dismissed in the Hearing Officer's Pleadings and Orders.

On September 25, 2013, the Department received a second due process complaint requesting an additional hearing to address the allegation that the District had violated the Student's receipt of FAPE by removing him from his stay put placement during the pendency of the current due process case.

An order was issued on September 27, 2013, stating that regardless of the accuracy of either party's argument regarding the provision of stay put, the District was ordered to comply with the IDEA stay put provision (20 U.S.C. 1415(j)) with the Student remaining in his regular first grade classroom to which he was enrolled for school year 2013-14. The issue of such a violation was incorporated into the current hearing. The Petitioner's request for the Hearing Officer to order an independent evaluation was denied.[2]

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 Marshal Ney, Attorney of Rogers, Arkansas.

A pre-hearing conference was conducted with counsel for both parties on September 13, 2013, at which time the specific unresolved issues that would be addressed in the hearing were decided, as well deciding on the witnesses and evidence which would be necessary to address the issues. At that time it was also 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 were offered the opportunity to provide post-hearing briefs in lieu of closing statements. Those briefs are included as exhibits in the Hearing Officer Binder of Orders and Pleadings.

The hearing began as scheduled on September 19, 2013, and continued on September 20, 2013; however, it was necessary to grant three continuances on the record in order for both

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[2] See the District's response to the motion as well as the alleged stay put violation in the Hearing Officer's Pleadings and Orders.

parties to complete the presentation of their case. The hearing was concluded on October 24, 2013.

At the time the hearing was requested the Student was a six-year-old, first grade, male enrolled in the District; however, he had not been identified by the District as a child with a disability as defined in 20 U.S.C. §1401(3). He began kindergarten as a Student in the District for the contested school year (2012-13). After six weeks of attending a regular kindergarten class the District developed a Section 504 Accommodation Plan in order for him to be transferred to TDT for the remainder of the school year. A referral conference to determine eligibility for special education services was requested by the Parent at the end of school year 2013. He began his 2013-14 school year with the same Section 504 Plan in place as a first grade student assigned to one of the District's elementary schools.

Findings of Fact:

1. Did the District fail to evaluate and provide special education services for the Student in an appropriate placement during school year 2012-13?

The evidence presented by both parties and the testimony elicited by all of the witnesses who had first-hand experience with the Student, agreed that he presented with behavioral difficulties on entering the District's kindergarten classroom in August 2012. It was noted in testimony that School year 2012-13 was the first year of teaching for his kindergarten teacher. She testified that the Student's inappropriate acting out behaviors were unpredictable and varied from day to day over the course of the six weeks that he was assigned to her class. She testified that some of his behaviors generated fear for the safety of the other students as well as herself. She also testified that she had been made aware that he had been diagnosed with Attention Deficit Hyperactive Disorder (ADHD) prior to being assigned to her class. She further stated that she knew he had been receiving therapy for his behavioral problems and that she had been given permission by his mother to communicate with his therapist.[3] She testified that in her opinion the Student did not need a referral for special education services because "he knew all

[3] Transcript, Vol I, Page 251-252

kinds of academic kindergarten skills;" she went on to say however, that because of his behavior problems and because "he was outside of the classroom so much there was a lot of learning that wasn't happening."[4] She stated that "he's a smart, bright boy, he just has the behavior concerns, and so ... that played a big role in where he was at academically."[5] In other words the Student's ADHD and/or behavior problems that she was aware of were noted to have been interfering with his ability to make academic progress during the first six weeks in the regular education kindergarten classroom. She testified that during the six weeks that he was in her class that it was necessary to evacuate the classroom, leaving the Student in the room being attended to by others such the school's assistant principal. She also stated that "since there were so many behavior problems that came up, he was taken out of my classroom to speak with the counselor."[6] Thus in her opinion his behavior interfered not only with his educational progress, but also the educational progress of the other kindergarten students.

On September 27, 2012, the kindergarten teacher completed a referral form for Section 504 accommodations, in which she added the statement that the Student "has had multiple behavior concerns during the months of August and September" and that "these behaviors have been dangerous to myself and his classmates on multiple occasions this week alone."[7] The next day (September 28, 2013) a Section 504 conference was held at 7:30 a.m., attended by the Parent, the classroom teacher, and the assistant principal. The decision at the conference was to develop a Section 504 accommodation plan to address the Student's problem behaviors.[8] However, according to the classroom teacher the plan was never implemented in the classroom. It became clear in testimony by the parties involved, that the sole purpose for developing the accommodation plan was in order to transfer the Student to the TDT program. His therapist

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[4] Ibid, Page 217

[5] Ibid, Page 218

[6] Ibid, Page 217

[7] Parent Binder, Vol I, Page 43-45

[8] Ibid, Page 54

communicated via email to his classroom teacher and mother stating that "if he keeps up with this type of behavior, then he will suffer more consequences that land him somewhere else like a self-contained classroom or TDT."[9] Even though he did not attend the Section 504 conference he testified that he was recommending the TDT placement and that prior to the meeting he had already secured a place on the TDT waiting list.[10] In other words, it had already been decided prior to the conference that the District believed that the appropriate placement to address the Student's behavior problems and the appropriate placement for him to receive his kindergarten education was at the TDT. His therapist testified that he knew nothing about special education services or whether or not a student with behavioral problems such as those exhibited by the Student could receive special education services under the IDEA in a regular school classroom setting.[11]

According to the admission records for TDT the diagnosis for which the Student was receiving their services was ADHD. When he was transferred to their residential treatment program in June 2013 the treating psychiatrist gave him two additional diagnoses including oppositional defiant disorder (ODD) and a mood disorder.[12] As his kindergarten teacher testified and as his therapist discovered the Student's response to the interventions and therapy varied from session to session, stating that on "some days he was cooperative, other days he was not."[13] The therapist testified that he saw the Student for only five individual therapy sessions between May 5, 2013, and August 12, 2013, after which he recommended that the Student be transferred to the TDT center in lieu of remaining in the regular kindergarten classroom.[14] He testified that prior to recommending TDT that he took the Student to the center after he had started

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[9] Ibid, Page 157-158

[10] Transcript, Vol II, Page 302

[11] Ibid, Page 268

[12] Parent Binder, Vol I, Page 207

[13] Transcript, Vol II, Page 243

[14] Ibid, Page 259

kindergarten, stating that the purpose was to "just let him see that, you know, again natural consequences [and that] his actions and what he was doing at school was going to lead to a referral there."[15] What the Student was doing at school, according to the testimony of the therapist included being "verbally defiant in the beginning, then he became threatening, he threatened other students, he threatened peers, he threatened teachers, he threatened... there was a teacher's aide or another teacher... he said some pretty mean things..he threatened to kill, you know, 'I'm going to shoot you with a gun..' shooting with a gun was one of his favorites."[16]

Even though his acting out behaviors interfered with his ability to learn, according to the Section 504 accommodation plan, his kindergarten teacher testified that she did not believe he needed special education services because he did not have a learning disability.[17] The District's education supervisor acknowledged that the District has served students in special education with ADHD; however, she could not recall if they had ever served a student with an emotional disturbance such as the diagnoses given to the Student.[18] She testified that the Parent did not inform the District on enrolling the Student in kindergarten that he had a disability, even though his kindergarten teacher, as noted above, was aware that he was being seen by a therapist.[19] His therapist testified that he stayed in touch with the kindergarten teacher "from the get go."[20] She went on to testify that the Student's behavior and emotional problems could have required special education services in order for him to remain in the regular classroom; however, "they were doing interventions for his behavior, with TDT being one of those interventions."[21] Her position was that as a "kindergarten student" she "would expect the school to intervene and to

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[15] Ibid, Page 264

[16] Ibid, Page 265-266

[17] Transcript, Vol I, Page 255

[18] Ibid, Page 56

[19] Ibid, Page 58

[20] Transcript, Vol II, Page 256

[21] Ibid, Vol I, Page 105

provide interventions for his behavior, not do an automatic referral" for special education.[22] The interventions as testified to by his kindergarten teacher included giving a warning on the first violation of a classroom rule; if that's not successful the student had to change their card; and if that was not successful she would call the office for someone to help.[23] These interventions were apparently applied to all of her students in the classroom and prior to the development of the Section 504 accommodation plan which was never implemented in the classroom. Consequently, after failing to respond appropriately to the regular classroom behavioral interventions, the next intervention was to transfer the Student to the more restrictive environment at the therapeutic day treatment program.

As noted previously day treatment centers such as TDT are no longer certified to provide special education services by the Department. Each school district in the State must take responsibility for the appropriateness of the educational placement of their students with respect to day treatment programs. The director of education for TDT testified that she served as the supervisor of the school programs for the company that operated TDT where the Student attended during school year 2012-13. She testified that she was responsible for hiring and training of TDT teachers; that she was involved in the referral process for students entering their program; and that she meets with the school districts who refer their students.[24] She testified that TDT accepted students with both Section 504 plans as well as special education students with IEPs and that they "frequently have observers from the [District] that come in and see their kids while they're there [and that] we attend meetings with them."[25] She further testified that all of the students who are in TDT are receiving special education services simply because they are being taught by special education teachers, even though all of the students do not have individual IEPs. She later clarified her comment by stating that she meant to say "individual educational

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[22] Ibid, Page 164

[23] Ibid, Page 249

[24] Ibid, Vol V, Page 266-267

[25] Ibid, Page 283

services" rather than special education services.[26] According to her testimony TDT does not function as a school district in that they do not meet as an IEP or Section 504 team, and do not make referrals as a team, and do not provide any of the required special education related services. They are responsible for implementing IEPs and Section 504 accommodation plans and, according to her testimony, coordinate the progress of each student with the school district to which the student is assigned. She testified that in cases where a student with a special education IEP that includes related services that it is the responsibility of the school district to which the student is assigned to provide those services. Given that the Student in this case did not have an IEP and was never referred for consideration as to special education or related services prior to being transferred to TDT, he was not provided any special education related services by the District.

When asked about meetings or communications with District administrators or personnel during the Student's year at TDT, the response by his teacher at TDT was "I don't recall, you know, anything;" even though she understood that he continued to be enrolled as a student in the District.[27] To her knowledge there were no meetings between personnel from the District or personnel from TDT that met for the purpose of discussing his progress. The Student's schedule at TDT included weekly one-on-one therapy sessions as well as daily group therapy sessions. She also testified that even with these special therapeutic interventions that by the end of the school year she did not observe any improvement in the behavior problems for which he had been transferred to TDT.[28] TDT was not provided any educational records for the Student for the first two weeks of his kindergarten year in the District's program. TDT did not provide the District with any educational records for the eight months of services he received in their program prior to his entering the District's first grade. There was no record of any meetings that took place between TDT and District personnel regarding the Student's status or educational progress.

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[26] Ibid, Page 291

[27] Ibid, Vol III, Page 55 , 73 & 85-86

[28] Ibid, Page 71

As to the provision of educational services for the Student's kindergarten eight months at TDT his teacher testified that in regard to whether or not he exhibited a need for special education, that she saw no need to make a referral or to evaluate.[29] She described the makeup of her classroom of ten to twelve students including children from kindergarten age through second grade, with the desks used by the students as being too tall for the kindergarten children to touch the floor. She stated that she uses the common core standards for teaching kindergarten as adhered to by the District. Although she never met with anyone from the District with regard to the Student's progress she stated that she sends home a daily behavior report, as well as graded papers, and regular report cards on the same schedule as does the District. Her report cards, however, were significantly different and less informative to progress than those used by the District.[30] She reported having meetings with the Parent in the hallway, but no regular parent-teacher conferences were held and no meetings in the classroom due to HIPAA laws. Although the Student was considered a student within the District, she testified that she never contacted or talked with anyone from the District regarding his academic progress. Prior to entering TDT she was not provided with any academic status from the first eight weeks that he attended the District's kindergarten classroom. His kindergarten at the District was not able to produce or testify that she had completed an assessment or a report card on the Student. The TDT teacher was not able to provide in testimony or any evidence of educational progress for the Student during his tenure with her other than an end of the year core curriculum form.[31] She completed the core curriculum based assessment in May 2013; however, the evaluation form she used was not the same as used by the District, and in fact was an outdated form.[32] The content of the evaluation was testified to by the District's personnel; however, as being relatively the same as the more current edition.

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[29] Transcript, Vol III, Page 11

[30] Parent Exhibit, Vol I, Page 130-135 and Transcript, Vol I, Page 225

[31] Ibid, Page 33-36

[32] Parent Exhibit Binder, Page 136

The Student's TDT teacher testified that she had to use restraints and seclusion as a means of attempting to control the Student's behavior multiple times during the year.[33] She testified that restraints and seclusion were used when he was disrupting the classroom, such as running around screaming, throwing a sharp object, or running out of the classroom. According to her testimony, during restraint or seclusion of students the para-mental health staff "talks to them, helps them process what they're feeling....discusses better ways to handle what they are feeling, gives them alternative behaviors."[34]

In March 2013 the Student's lead behavioral therapist at TDT referred him for a pediatric therapy evaluation by an occupational therapist (OT). The evaluation was conducted on March 13, 2013, and the report was completed on March 29, 2013. The OT findings included a sensory disorder diagnosis, with the weaknesses being (1) difficulty processing tactile information, (2) difficulty modulating visual information, and (3) difficulty modulating emotional and behavioral responses in relation to sensory input.[35] The exhibit shows that she provided him with occupational therapy on four occasions between April 25, 2013, and May 9, 2013. When asked when she became aware of the Student's sensory disorder, the Parent stated only after she received a copy of the occupational therapist's evaluation and even then did not completely understand the consequences of the disorder.

The occupational therapist testified that she discovered the Student to be "very hypersensitive in his feet and the backs of his legs.... and for him,....it's very painful for someone to bump him, touching in those areas.... for us [without this hypersensitivity] it would feel like somebody hauling off and slugging us, but it just takes a light touch for him to have that feeling."[36] She noticed in the examination process that "when he runs he runs on his toes" which was explained that "he doesn't like the pressure, the sensation, the touch sensation on the

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[33] Transcript, Vol III, Page 24

[34] Ibid, Page 26-27

[35] Parent Exhibit Binder, Page 114-121

[36] Transcript, Vol V, Page 11

bottoms of his feet."[37] She went on to explain that for the Student with his multi-sensory deficits the question was whether or not the sensory deficits were working together or fighting each other and that for him "he's a very active child, he seeks sensory information, that's why he moves so much...visual information is stimulating to him..in a busy room even he can be very distracted... [during the examination] if I turned my attention to somebody else for even a second, he would run, and jump, and try to jump on a ball, and might do a flip over it."[38]

When questioned about the Student's deficits in modulation of sensory input she explained how he might over react to something that's irritating to him versus the same reaction of an adult or someone without such a deficit. Her explanation was that "something that's irritating to [someone with a sensory deficit] is not necessarily how an adult would act. So, for him... if somebody bumps into his legs.... he's liable to haul off and hit them, because it hurts that badly to him... he can't process... it's not a conscious thing, he doesn't think...it's more of a fight or flight response."[39] "If I wasn't paying a hundred percent attention to him, he might run off and go do something, get into something that he wasn't supposed to , he might...drag out a bunch of stuff that he wasn't supposed to..he would run right through..another kid and another therapist, what they were doing, he would run in between them and get in their way mostly...those types of things, just not stopping to think, it's more a reacting to what is going on around him as opposed to thinking about it first." She gave an example of the Student's over reaction to stimuli by an incident that occurred at TDT where on coming to a therapy session he reported being in a fight with another student at TDT telling her that while standing in line the other student had stepped on him, a simple stimulation that he reacted to as if he had been hit. Even though she testified that he had never observed the Student in either the TDT environment from which he came to her, or while in his kindergarten class at the District, she described the a lot of the Student's acting out behavior for which he had been referred to TDT. She was never invited to a conference to review her findings at either the TDT or the District. When asked what she would

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[37] Ibid, Page 11-12

[38] Ibid, Page 13-14

[39] Ibid, Page 15-16

expect in terms of behaviors in a classroom should the Student be over stimulated, she testified "that he would probably start having difficulty sitting in the seat, start fidgeting a lot, might actually get up, start trying to move around the room, run around the room."[40] When asked what she might expect if he was not getting adequate sensory input, she testified that the behavior would be "probably some of the same, because he's trying to get it in some way...with him being a sensation seeker, he seeks out that which he needs, in order to kind of orient and function."[41] When asked what other action other than touching him might result in his sensation of being hit, her response was "being restrained probably would."[42] When asked how effective or ineffective speaking with him in order to de-escalate his behavior might be her response was "because he's in that mode he's probably not listening;" and when asked what approach she would suggest her response was "not speak at all, because an adult talking to a child who is in that mode can actually be over stimulating because they're getting more sensory input..If you don't talk to them, but keep them kind of over here, and kind of just watch them, as they calm down, then you can talk."[43]

The Student's therapist while attending TDT testified that even with after eight months of the recommended therapeutic interventions the Student's behavior had not improved. Consequently, he recommended to the Parent that the Student receive "a higher level of care."[44] That recommendation involved placing the Student in the company's residential treatment program. According to the lead therapist at TDT the rationale was:

> "With the behaviors that [he] was demonstrating and from, frankly, with us feeling like we had done everything we could at the current level of care, the hope was perhaps to really provide something

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[40] Ibid, Page 33-34

[41] Ibid, Page 34

[42] Ibid, Page 35

[43] Ibid, Page 35-36

[44] Ibid, Vol III, Page 106

> more restrictive which also would include medication evaluation, perhaps even just trying things in a different setting for [him], perhaps, you know, he, you know, as a child he might — not necessarily sit down and say, "you know, I just don't know that I can go further with Mr. Chuck. I think I need to try another," you know, but perhaps trying a different setting and seeing if we could stabilize his behavior and also see if there was another medication perhaps that he could take. And frankly, just having a different set of eyes observe him, work with him, try to paint a more clear clinical picture, so whenever he was finished at that level of care and ultimately we got to the point that we felt confident to refer him back to the public school setting in a school with the most clear picture that we could provide as providers."[45]

When asked if he had been made aware of the Student's sensory deficits his testimony was that "we did note some sensory issues" and that he had encouraged the Parent to pursue that on an outpatient basis.[46] The TDT program was not responsible for evaluating or providing occupational services. As noted above the OT evaluation as testified to by the OT therapist adequately explained most of the Student's behavior responses as testified to by the TDT teacher as well as the kindergarten teacher and both of his behavior therapists. However, the OT therapist was never asked to attend a conference at TDT, nor was she aware of any of the behavior problems at school except as had been reported to her by the Student's mother.

Also during this time frame the Parent had the Student evaluated by a neuropsychologist. The purpose listed for the evaluation in the psychologist's report was to determine if he was experiencing a significant level of cognitive dysfunction and [to provide] a differential

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[45] Ibid, Page 108

[46] Ibid, Page 110

diagnosis.[47] Those findings concluded that the Student was functioning within the average range of intelligence; that he demonstrated a significant weakness in reading comprehension and reading composite, but not to the degree of meeting the criteria of a specific learning disability; that he demonstrated deficits in visual-spatial sequencing ability; that he demonstrated mild deficits in short-term auditory memory and consolidation into longer-term memory; that he exhibited significant deficits in attending and concentrating; that he demonstrated difficulty understanding the intentions and motivations of others; that he may be at risk for experiencing depressive symtomatology; and that by report, he exhibited aggressive behavior and conduct problems.

The Student's lead therapist at TDT stated that he recommended the Student receive the neuropsychological examination because he:

> "had a hope for [the Student] that the neuropsych testing would perhaps warrant him meeting with a neurologist and that there would be some neurological issues that could be brought to surface to maybe explain the dysfunction that he would have sometimes, maybe in the calm setting and even transferring to another calm setting, but then still having difficulty following through with a plan given the upset and there was no emotional stress or duress, it was all a positive step for him, and then frankly for him to come in and just develop kind of create some tracks for the teacher to be able to encourage him and support him when he was in the classroom setting with what the plan was....and this is just one example, but then for [him] to become so upset and seem to forget in just a matter of seconds what was going on."[48]

Hereto, as with the occupational therapy evaluation, once the neuropsychological evaluation was completed in May 2013, no conferences were conducted at TDT to consider the results. The neuropsychologist, as did the occupational therapist, ruled out an autistic disorder. He could only conclude from the evaluation that the Student exhibited ADHD, predominately the

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[47] Parent Exhibit Binder, Page 91-96

[48] Ibid, Page 181-182

hyperactive-impulsive type, as well as a disruptive behavior disorder.[49] The Parent testified that "towards the end [of the school year] they are wanting to put him in ... sub-acute...[because] he needed a higher level of care...we were trying to get him to where he's stable and it's like everything is working against – the psychiatrist isn't there...I went and did the occupational – the occupational therapy, did the neuropsych evaluation, and this was all at their recommendation, they wanted me to go do these things that they can incorporate it into his plan, but nothing changed."[50]

On June 14, 2013, the Student's mother presented the District with an IDEA referral form that included both the neuropsychological evaluation and the occupational therapy evaluation.[51] The District acknowledged receipt of the referral request and established June 28, 2013, as the date on which a referral conference was to be held.[52] The only two persons attending the conference other than the Student's mother was the District's director of special services and the District's director of student services. The decision made at that time was for the Student to remain in his current program with or without program modifications or adaptions. No decision was made with regard to conducting additional evaluations to determine the need for special education or related services. There was nothing in the record or in the testimony from those in attendance at the conference that any consideration was given to the two evaluations presented to the District.

Even though it is understandable that the District wanted to ascertain the Student's response to interventions on entering kindergarten, they knew from the beginning of the school year that he was receiving therapy for his behavior problems. They actively involved his therapist in multiple email communications as to what to do and how to respond to his classroom behaviors. Referring him to a day treatment program designed to address the behavioral issues

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[49] Parent Binder, Page 91-96

[50] Transcript, Vol V, Page 206-208

[51] Parent Binder, Page 28

[52] Ibid, Page 29-36

may have sounded appropriate at the time, but the record shows that it was not an appropriate placement considering the subsequent information provided by the occupational therapist. The Student's sensory deficits more than explain why the majority of his behavioral issues were more prominent in the school and classroom environment versus the home environment. Hindsight is obviously better than foresight; however, the TDT personnel also appeared no better off at understanding, nor addressing his behavioral issues. Although academic gain and loss during the kindergarten year cannot be determined by the evidence presented the record would reflect that he made no significant academic gains.

2. Did the District fail to evaluate and provide special education services for the Student in an appropriate placement during school year 2013-14 and did the District violate the stay put provision of the IDEA?

As noted above, at the end of school year 2012-13 on June 14, 2013, the Student's mother presented the District with an IDEA referral form that included both the neuropsychological evaluation and the occupational therapy evaluation.[53] The District acknowledged receipt of the referral request and established June 28, 2013, as the date on which a referral conference was to be held.[54] Also as noted above, the only two persons attending the conference other than the Student's mother was the District's director of special services and the District's director of student services. The Student had completed the 2012-13 school year at TDT with the recommendation from his lead therapist that rather than returning to school that he go to their residential treatment program. The Student's mother testified that at that time she was not sure she wanted him in a residential program. Which, according to her testimony is why she requested special education services from the District in June 2013. According to testimony the District's director of special education services was unaware at that June meeting that the Student

[53] Parent Binder, Page 28

[54] Ibid, Page 29-36

had been provided a Section 504 accommodation plan.[55] Even though she acknowledged having no first hand knowledge in the case of the Student during school year 2012-13 the District's special education director testified that the District not only had input on the Student's treatment plan at TDT, but that "they update us on the students that are there monthly, like how they are doing, they let us know, if they are having a staffing on that student."[56] At the same time she testified that she was not aware of any meetings that had taken place between TDT personnel and the District regarding the Student's progress. Thus, her introduction to the Parent's request for special education services was met without sufficient knowledge and with a conference being held without persons being present who might have had sufficient knowledge of the Student in order to make a more informed decision. Following a conversation with the Student's lead therapist at TDT, the District's director of special education stated that she recommended that the Student "finish his treatment with TDT...[and that she] would visit with TDT...with TDT employees to check on [the Student's] progress and how he was doing....and once they dismiss him from TDT, we will do a transition, the school will do a transition for him to come back...and at that time we would need to do a referral again for special education because he would probably come out with more testing information, more information that would allow us to make a good placement for [him] and would allow us to provide him with a placement that he needs."[57] Consequently, according to the District's special education director, and the documents completed at the June 2013 meeting, the decision was made to wait until the Student completed his treatment with TDT before attempting a transition back into the school.

The TDT personnel who recommended he be placed in residential care testified that it was their recommendation that he return to TDT before returning to a regular school classroom.[58] The Parent's testimony was that she intended for the Student to begin his first grade in a regular

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[55] Transcript, Vol V, Page 214 and Vol I, Page 117

[56] Ibid, Vol I, Page 120

[57] Ibid, Page 122-123

[58] Transcript, Vol III, Page 162

classroom in the District for school year 2013-14, whether or not TDT agreed that he had completed his treatment. The Parent testified that in her discussion with the TDT lead therapist about what they would have to do to get the Student back into the District's regular school program, was told "if he was to go to the school with everything that [he] is doing now, they will not take him back and they will place him on hold-down."[59] This statement was not challenged in examination; however, the lead therapist acknowledged that it was a parent's prerogative for a child to remain in their residential program, to return to the TDT program, or for the child to be withdrawn from their care and return to a regular classroom. He and the District acknowledged that the Parent chose the later. The Parent testified that she had the support of the Student's treating psychiatrist at the residential treatment program for him to go back to the regular classroom. She stated that returning to TDT following his residential program was not the plan. She stated "that's what they (TDT and the District) wanted, but that was not what was discussed with me and Doctor Snyder, who was [the Student's] psychiatrist at that time... in his paper, the discharge paper that I gave to the school, it is for outpatient, it is not for TDT...and I actually called to talk to Doctor Snyder after he was released and – just to clarify that it was not to go to TDT, because me and him discussed that it could ultimately be hurting him to be in that setting."[60]

On the first day of school year 2013-14 (August 19, 2013) the Parent met with the elementary school's special education and Section 504 Coordinator. The 504 Coordinator explained that in addition to the discharge papers from the residential program that the Parent provided the District with the additional diagnoses of a serious emotional disturbance (SED). She further testified that prior to the conference the documents were reviewed by the District's psychological examiner. She also stated in testimony that once the examiner reviewed the documents he determined that a special education referral was in order.[61] When challenged if she had discussed the Student's return to the school from TDT with the TDT or residential treatment

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[59] Ibid, Page 211

[60] Ibid, Vol V, Page 217-218

[61] Ibid, Vol III, Page 50

program personnel, she stated that "we did not have parent's permission of a release of records to TDT at that time" even though she acknowledged receipt of them from the Parent.[62]

On that same day (August 19, 2013) a referral form was developed for and signed by the elementary school principal.[63] The notice of conference provided by the District to the Parent was for the conference to be held the following day (August 20, 2013).[64] The Parent was unable to attend the conference on August 20, 2013, and signed the conference notice on August 21, 2013, with August 21, 2013, at 7:00 a.m. being the agreed to time for the conference.[65] The referral conference was held on that day with the Parent, the District's psychological examiner, the District's elementary school principal, the District's assistant for special education director, the District's special education designee, and the Student's elementary classroom teacher in attendance.[66] The referral conference decision was that no evaluation was needed and that the Student would remain in his current program with or without program modification(s) or adaptation(s).[67] The District believed, however, that in order to proceed with delivery of special education services that they needed additional information including a social/developmental history from the Parent, a communicative abilities evaluation, an assessment of his adaptive behavior or social/emotional development, a hearing/vision screening, along with a functional behavior assessment.[68] On August 21, 2013, the Parent acknowledged receipt of her rights under the IDEA as well as the District's prior written notice of the intent to provide the Student with an initial evaluation for special education.[69] Prior to the conference, on August 19, 2013, the

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[62] Ibid, Page 58

[63] Parent Binder, Vol I, Page 18

[64] Ibid, Page 19

[65] Ibid, Page 20

[66] Ibid, Page 21

[67] Ibid

[68] Ibid, Page 23

[69] Ibid, Page 25-26

District's psychological examiner noted on the District's informed consent request that the Parent refused to sign the request to allow the District to have access to the Student's residential and outpatient treatment records.[70] August 19, 2013, was also the date that the Department received the Parent's request for a due process hearing.

The District personnel came to the referral conference with an Individualized Education Program (IEP) draft which proposed "temporary" special education services for the Student in literacy, math, social studies, and science and for the remainder of his education including art, music, physical education, library, computer, lunch and recess in the general education setting.[71] The proposed IEP contained information acknowledging that the Student had been diagnosed with a mood disorder, ADHD, and oppositional defiant disorder. They did not have any academic reports available at the conference from TDT, even though he had technically been a student within the District for the past year. The plan according to the District's personnel who testified at the hearing was to provide him with a temporary IEP while a functional behavior assessment was being conducted. The Parent objected to the District's plan informing them that she had filed for a due process hearing.

Even after the filing for a due process hearing the District continued to offer to provide the Student with the evaluations as noted in the due process request for relief. The stumbling block was that the District would use their own personnel to conduct the examination and the Parent desired to make the choice of examiner. Had the District chosen to act on the referral request in June 2013 rather than waiting until August, the due process complaint may never have been submitted. It is understandable that the District needed additional information; however, given that the TDT placement was at the suggestion of the District a closer coordination and exchange of information might also have avoided a need for a referral request. Had the TDT acted on the results and with the advise of the occupational therapist the Student's behavior issues may also have taken a different course.

There was no evidence or testimony presented that would indicate that the District

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[70] Ibid, Page 24

[71] Ibid, Page 1

violated the Student's stay put provision on entering his first grade. The District did attempt to modify the existing Section 504 accommodation plan and provided individual academic assistance to the Student; however, there was no evidence that their actions were in violation of the stay put rule of the IDEA.

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.[72] 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.[73] The term "special education" means specially designed instruction.[74] "Specially designed instruction" means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery of instruction.[75] As noted in this case the Student presented as being a child potentially eligible to receive special education services based on the possibility that his initial diagnosis of attention deficit disorder (ADHD) and his behavior issues, which may or may not have been related to his ADHD, may have qualified him for special education under the disability category of other health impaired (OHI). The District; however, did not elect to make a referral for an evaluation on his entering the kindergarten and experiencing his multiple disruptive behaviors. Their choice to elect how he might respond to interventions, although laudable, are not provisions of the IDEA. The District decided he was

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[72] 20 U.S.C. § 1412(a) and 34 C.F.R. § 300.300(a)

[73] 20 U.S.C. § 1401(3)(A)

[74] 20 U.S.C. § 1402(29)

[75] 34 CFR § 300.26(b)(3)

eligible for special education services and drafted a temporary individualized educational program (IEP), but only after the Student experienced a year of inadequate educational opportunities and inadequate treatment of his behavior issues.

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 it is critical to understand in making a decision about the Parent's 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?[76]

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.[77]

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.[78] Too often this hearing officer has

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

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

[78] 20 U.S.C. § 1400(d)(1)(A); § 1401(14); and 34 C.F.R. § 300.300(a)(3) (emphasis added)

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 exhaustive behavior difficulties were not only being associated with his ADHD, but also with his sensory disorder as illustrated through testimony by the occupational therapist.

In reviewing the elicited testimony and the evidence, in this case there is ample testimony and evidence that the District attempted to focus on what they believed to be the unique needs of the Student. However, by adopting the conventional interventions applicable to all students in a regular classroom and failing to design a plan to implement a behavior plan in a self-contained behavior classroom versus referring him to an outside agency was shown not to be considering his unique needs. As noted by both his regular classroom kindergarten and his TDT teacher his behavior problems interfered with his academic progress even though he was assessed to be functioning within the average for intellectual ability.

It is necessary, therefore for this hearing officer to look at the facts in this case as to whether or not the District responded to the unique needs as expressed by the Student on entrance into their kindergarten program. The evidence and testimony indicates that they, in cooperation with the Parent, elected to transfer him with a Section 504 accommodation plan rather than assess his unique needs for special education intervention in the regular classroom prior to removal to a more restricted setting. This decision was not made by an IEP team because the District elected not to assess for special education. The testimony by District personnel elicited in the course of the hearing suggest that they truly believed that the unique needs of the Student were being met at the TDT placement with a Section 504 accommodation plan in place; however, once transferred there was no communication as to his behavior progress or his academic status. To further exacerbate the problem, once a referral for special education consideration was made by the Parent, the District elected to delay conducting an evaluation for services until he had completed the previous program to which they had referred him and the one in which he made no academic or behavior progress. For the District to come now stating in

their post-hearing brief that the Parent "agreed" with the TDT placement is also absent of any factual information as to parental knowledge of how the placement in the TDT program was going to meet the Student's unique needs.

The District recognized and responded to the Student's unique needs for special education consideration on entering his first grade year and had the Parent given the District opportunity to evaluate him at that time, this hearing may not have been necessary. The Parent's challenge that FAPE was denied on entering the current school year can not be justified by the evidence. The evidence and testimony show that the District, apparently recognized the error of their way and were attempting to respond to the request of the Parent in requesting permission to evaluate the Student in order to determine an appropriate educational plan and placement .

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.[79]

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 record shows that the District, although belated, attempted to provide a more adequate program of services.

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

Although this case does not involve the question of the denial of FAPE because of an inadequate IEP, it does however, address the question as to whether or not the District failed to evaluate for special education services and the development of an appropriate IEP when the Student first entered the District. The findings of fact show that he was provided an education by the District under a Section 504 Accommodation Plan. The complaints that the Parent presented involving violations of Section 504 of the Rehabilitation Act were deemed as non-hearable under the Act. At the same time the adequacy of the educational placement and the consequent results did play a part on the question of whether or not the District failed to evaluate the Student for consideration of a need for special education services.

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. The Department in this case was dismissed as a party to the complaint because the Department was not responsible for the certification of the placement for services to which the District chose for implementation of the Student's Section 504 plan. Thus the question as to whether or not the Student was denied FAPE by the District for failure to evaluate requires: (1) looking at each individual issue raised by the Parent to determine whether or not the District has been in compliance with the definition of FAPE under the IDEA, 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[80] 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.[81] 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

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

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

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)."[82]

The Eighth Circuit Court of Appeals has addressed the issue of the appropriateness of an education 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.[83]

A major question with regard to the current case and whether or not FAPE was denied is whether or not the District between August 2012 and October 2012 failed to refer the Student for an evaluation to determine the need for special education and in so doing if they placed the Student in an inadequate educational environment. Also, whether nor not the District failed to proceed with an evaluation to determine special needs after the Parent submitted a referral request in June 2013. Further, by not proceeding in June 2013 for consideration of the need for services, did the District fail to have in place an appropriate IEP for implementation when the Student entered the first grade.

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.[84] 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

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[82] *Light v. Parkway C-2 School District*, 41 F.3d 1223, 1227 (8th Cir. 1994), cert. denied, 515 U.S. 1132 (1995)

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

[84] 20 U.S.C. §§ 1400(c); 1401(20); 1412(7); 1415(b)(1)(A), (C)-(E); 1415(b)(2)

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 the resulting IEP against a substantive standard."[85] In this case there is no doubt that the Parent participated in the process of following through with District recommendations for placement and on her own began the process of a referral for consideration of special education. The culmination of her efforts were confirmed by the District in August 2013, when the District agreed that the Student needed a temporary IEP and that additional evaluation data was needed in order to develop a permanent IEP. Although she may not have agreed with all of the decisions reached by the District, her testimony 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 she meets 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."[86] 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 TDT program was addressed and illustrated by the evidence. Whether or not the District should have known that he would not be able to make progress in such a setting or that a school-based program 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 in a regular classroom setting first was a due process procedural failure 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 educational

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

[86] *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)

program. From the documents entered as evidence and the testimony of the educational professionals this would appear to have been the case for this Student when he initially became the educational responsibility of the District. The decision was made to place him in a more restrictive environment without implementing any programed interventions in the regular classroom. Without sufficient evaluative information they chose to refer him to an outside agency's program where there was no evidence through coordination or feedback as to improvement in the behavior issues for which was referred or his academics.

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.[87] The alleged violation of not following the IDEA's due process procedure such as not conducting a comprehensive evaluation for determination of eligibility for services after a referral has been made would appear on face to meet that level of a violation of FAPE. Further, for the District to have not included appropriate school personnel as well as other persons knowledgeable of the Student's disabilities in the initial referral conference has been shown to be of sufficient violation to warrant a judgment for the denial of FAPE.

Order

The Parent has introduced sufficient evidence in the record to reflect that the decisions made by District on being approached with the challenge to meet the educational needs of the Student failed to comply with the standards set forth by the IDEA and the Department. Those decisions do not appear to have been intentional or malicious, but rather the accumulatively basis of first impression – that being that the Student would not qualify for special education

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[87] *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 County*, 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).

services because there was not believed to exist a learning disability. The immediate and subsequent failures to address and assess all of the Student's needs on entering the District as a kindergarten student and the subsequent failure of the intervention placement to adequately address either his behavior or educational needs contributed to the Student's failure to receive FAPE. Unfortunately these decisions were made not only by the District, but also by the private agency involved in this saga, as well as the decisions that were made under their guidance by the Parent.

From the testimony and evidence the District has attempted to remedy their failure by attempting to implement a temporary IEP and conduct a comprehensive evaluation; however, the Parent has thwarted those efforts by not agreeing with the District's suggested temporary IEP or their choice of an evaluator. In order to insure compliance with their efforts it is hereby ordered that:

1. The District will immediately upon receipt of this order, but no later than December12, 2013, develop a temporary IEP and begin the process of providing the Student with a comprehensive evaluation which will include an assessment of any behavior, sensory, or emotional disorders, as well as any learning deficits as defined by the Department.

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 District or independent evaluators.

3. The comprehensive evaluation as ordered in (1) above will be completed no later than January 17, 2014.

4. Upon completion of the evaluation as ordered in (1) above and no later than January 22, 2014, the District's director of special education services 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 District will provide the Student with opportunities and number of hours as deemed agreeable to by the Parent

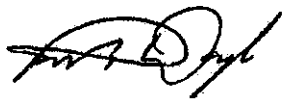
for compensatory educational opportunities consistent with the known levels of educational functioning. The specific educational opportunities are not being ordered; however, the amount of time will be no less than eight (8) hours per week until item (4) above is completed.

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

November 25, 2013
Date