

ARKANSAS DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION SECTION

[ ]  
AS PARENTS OF  
[ ]

PETITIONERS

VS. NO. H-16-27

TEXARKANA SCHOOL DISTRICT

RESPONDENT

**HEARING OFFICER'S FINAL DECISION AND ORDER**

**Issues and Statement of Case**

**Issues:**

The Hearing Officer identifies the issues as:

- (a) failing to provide an appropriate Individualized Education Program (IEP) for the Student, by failing to provide the behavioral supports and services needed for the Student;
- (b) failing to train staff on the implementation of the Student's IEP;
- (c) failing to provide the services on the IEP;
- (d) failing to provide a functional behavior assessment (FBA) and behavior support plan (BSP);
- (e) failing to provide social skills training and related therapy services for the Student to benefit educationally;
- (f) failure to educate the Student in the Least Restrictive Environment (LRE);
- (g) failure to hold an Annual Review Conference to discuss the Student's progress.

**Procedural History:**

On December 14, 2015, a request to initiate due process hearing was received by the Arkansas Department of Education (Department) from [ ] (Parent or Parents), the Parents and Legal Guardians of [ ] (Student). The Parents

requested the hearing because they believe that the Texarkana Arkansas School District (District or T ASD) failed to comply with the Individuals with Disabilities Education Act (20 United States Code (USC) Section 1400-1485), as amended) (IDEA) (also referred to as the “Act” and Public Law 108-446) and the regulations set forth by the Department in providing the Student with appropriate special education services as noted above in the issues as stated.

The Department assigned the case to Garry J. Corrothers an impartial hearing officer. January 7, 2016, was designated as the first hearing session date. However, as explained below, an expedited request for hearing was filed by the District, which proceeded first and the hearing did not begin until May 23, 2016, subsequent to the expedited proceedings and continuance granted at the request of the parties.

The Parents also alleged violations by the District of Section 504 of the Rehabilitation Act of 1973. The Hearing Officer determined that these issues were not within his jurisdiction while conducting a hearing under the IDEA.

Initially, the Parents filed their first Due Process Complaint on or about March 14, 2015. *See* Case No. H-15-21. On May 18, 2015, the Parents filed another Due Process Complaint, *see* Case No. H-15- \_\_\_\_ (No case number assigned), and a Motion for Contempt and Order to Return Student to Stay Put Placement in Case No. H-15-21. Six days of due process hearings were subsequently conducted on May 27-29 and Jun 16, 17, and 19, 2015 in Case No. H-15-21. On August 11, 2015, the Parents filed yet another Motion for Star Put Order. The Parents’ Motion was denied on August 16, 2015 on the basis that the Parents signed the January 27, 2015, IEP which confirmed the Parents’ agreement that the Student would be placed in

homebound services and concluded as a matter of law that homebound placement was the Student's stay put placement during the pendency of the proceedings.

The day after the decision on the Motion for Stay Put Placement was issued, on August 7, 2015, the Parents filed both a Due Process Complaint and a Due Process Complaint for Expedited Due Process Hearing. *See* Case Nos. EH-16-10 and H-16-11. The Due Process Complaint for Expedited Due Process Hearing in Case No. EH-16-10 and the Due Process Complaint in Case No. H-16-11 were both dismissed based on the Parents' Motion to Withdraw Complaint on October 8, 2015. On September 20, 2015, a Final Decision was issued in Case No. H-15-11.

The District filed a Response to Due Process Complaint and Counter-Complaint and Request for Expedited Hearing on December 15, 2015. The Counter-Complaint was designated as EH-16-29 by the Department. On February 16-17, 2016, an expedited due process hearing was conducted in Case No. EH-16-29. At the conclusion of the hearing, a Final Decision was issued finding that the District had met its burden of proof under 20 USC Section 1415(k)(2) that the Student was substantially likely to injure himself or others. *See* 34 CFR Section-352(b) and 20 USC Section 1415(j). The Student was ordered to be placed in an Interim Alternative Educational Setting.

On May 23-24, 2016, due process hearing sessions were conducted in Case No. H-16-27, after which time the record was closed and closing statements were waived in lieu of submitting Post Hearing Briefs.

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. Garry J. Corrothers, Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. The Parents were represented by Theresa L. Caldwell, Attorney at Law of Little Rock, Arkansas, and the District was represented by Jay Bequette, Attorney at Law of Little Rock, Arkansas, and Richard N. Dodson, Attorney at Law of Texarkana, Texas.

### **FINDINGS OF FACT**

1. The Student has been diagnosed with Reactive Attachment Disorder (RAD); Mood Disorder; Oppositional Defiant Disorder (ODD); and Attention Deficit Hyperactivity Disorder (ADHD). Parents' Ex, p8. As a function of the RAD diagnosis, the Student's brain constantly functions on "high alert," which means he is on edge, continually scanning for perceived danger that may be triggered by an internal or external trigger. TR Vol II, p151. As a result, the Student goes from "0 to 60 in less than a second," an "involuntary emotional volatile reaction." TR Vol II, p151-152.
2. The Parents filed their Due Process Complaint on December 4, 2015. Parents' Ex, p196-206.
3. The Student's biological mother was addicted to cocaine base and alcohol, which had a detrimental effect on him in utero and impacted the organic development of his brain. TR Vol II, p134; Parents' Ex, p8. The Student was taken away from his mother before he was two years old, never knew his father, and was moved from placement to placement in foster care. TR Vol II, p134-135. He was placed in residential care in Jonesboro around the age of three. *Id.* The instability and frequent moves during the Student's early years, combined with being exposed to

multiple traumas and unsafe behavior by the adults charged with his care significantly impacted his neurodevelopment and caused many issues in the areas of social, emotional, and behavioral ability, and later resulted with him being diagnosed with RAD. TR Vol II, p135; TR Vol II, p136. The Student has been in therapy since he was adopted by the Parents. Parents' Ex, p8; TR Vol III, p95-96.

4. The Student began receiving early intervention services when he was eighteen months old. Parents' Ex, p8; TR Vol II, p139.

5. The Student has been continuously enrolled in the Texarkana School District since kindergarten in August 2009. Parents' Ex, p10.

6. On March 19, 2010, a special education referral conference was held to determine whether a formal evaluation was needed to assess the Student's eligibility for special education services. T ASD p130. According to the District's documentation, the reason for the referral was "Behavior problems at school. Diagnosis of ADHD." D. Ex p130; Parents' Ex, p10; TR Vol II, p141. The District noted that the Parent provided medical, psychoeducational, and speech language evaluations from the Dennis Development Center. Parents' Ex, p10; TR Vol II, p141.. The Parents' expert testified that the behavior scales that the Parents and Kim Boyles, the classroom teacher completed, indicated that the Student had clinically significant indicators that indicated he was having a lot of social, emotional, and behavioral issues. TR Vol II, p141; Parents' Ex, p10-13.

7. In first grade, on October 20, 2010, the Parents made another special education referral to get the Student evaluated, stating "numerous outburst related to medical dx: ADHD, Reactive Attachment Disorder, Mood Disorder." TR Vol II, PI 42; Parents' Ex, p13. The District denied this request at meeting held on November 18, 2010, stating "Child remains in current program [504 plan] with or without program modification(s)/adaption(s)." TR Vol II, p142;

Parents' Ex, p13.

8. On January 18, 2011, the Parents initiated third referral for special education. TR Vol II, p143; Parents' Ex, p14.

9. The District held a Referral Conference on January 21, 2011, where it was determined that a comprehensive evaluation was needed. TR Vol II, p143; Parents' Ex, p14. The Parents provided written consent for an evaluation to be conducted by Dr. Elizabeth Speck-Kern. TR Vol II, p142-143; Parents' Ex, p14.

10. On March 28, 2011, the District reviewed Dr. Speck-Kern's evaluation, which noted that the Student has exhibited significant behavioral disturbances for a long time. His early life was extremely unsafe and unstable. He was exposed to a lot of dysfunctional behavior. He also learned a lot of bad behaviors while surviving multiple traumas and changes of residence." Parents' Ex, p14. Dr. Speck-Kern diagnosed the Student with RAD, ODD, ADHD, and Rule Out Mood Disorder. Parents' Ex, p15. The District qualified the Student for special education services under the disability category of Other Health Impaired. Parents' Ex, p16.

11. The Student ended his second grade year with thirty (30) minutes of indirect consultative services, and no related services. Parents' Ex, p17; TR Vol II, p144L2-L11.

12. On January 28, 2013, in the middle of his third grade year, the IEP team met to revise the Student's IEP, adding 900 minutes of special education services, 0 general education minutes, and no related services, with his placement listed as "School-Based Day Treatment." Parents' Ex, p18; TR Vol II, p144-145.

13. On April 17, 2013, the Student began his day at Fairview Elementary and attended Vista Therapeutic Day Treatment beginning at noon each day. Parents' Ex, p18. The IEP team

revised his IEP on this date to indicate general education minutes of 1270 and 570 special education minutes in math.

14. The IEP team met again on May 13, 2013, to develop the Student's 4th grade IEP, which provided 1700 general education minutes, 100 special education minutes in math (20 minutes per day).

15. On January 17, 2014, the Student's 4th grade IEP was revised during a facilitated IEP meeting to provide 1700 general education minutes, 100 special education minutes in math. Parents' Ex, p18; TR Vol II, p146.

16. On January 28, 2014, the District issued a Notice of Conference for a February 10, 2014, IEP meeting, indicating initial or continued eligibility and classroom based assessments would be discussed. Parents' Ex, p19; TR Vol II, p147.

17. On January 29, 2014, the District conducted its first evaluation of the Student. Parents' Ex, p19.

18. On February 20, 2014, the District dismissed the Student from special education.

19. On March 5, 2014, a referral was made for a 504 plan. Parents' Ex, p20; TR Vol 11, p148.

20. On April 30, 2014, the Student was suspended for 10 days with a recommendation for expulsion for a verbal outburst. Parents' Ex, p20; TR Vol II, p148. He was admitted to Methodist Behavioral Hospital the same day. Parents' Ex, p20; TR Vol II, p148.

21. The Student was discharged from Methodist on May 12, 2014. On May 13, 2014, the District referred him to Vista Therapeutic Day Treatment based on his behaviors. Parents' Ex, p20; TR Vol II, p148.

22. On June 11, 2014, the Student's Parents made another referral for special education after a mediated agreement with the District. Parents' Ex, p20; TR Vol II, p148-149. The reason for the referral was listed as "severe behavioral emotional issues." Parents' Ex, p20. At this meeting, the Parents requested that he be provided with an aide to help direct the Student and help manage his behavior. Parents' Ex, p21.

23. On June 16, 2014, the District issued a Notice of Conference for a June 24, 2014, referral conference. The Parents' requested an independent evaluation by Dr. Speck-Kern. Parents' Ex, p21.

24. On August 18, 2014, the District issued a Notice of Conference for an IEP meeting on August 27, 2014. Parents' Ex, p21.

25. On August 27, 2014, the IEP team met to discuss Dr. Speck-Kern's evaluation, the RAD diagnosis, that the Student qualified for special education under Emotionally Disturbed disability category. *See* Parents' Ex, p302-303; Parents' Ex, p295-299; Parents' Ex, p 304-305; Parents' Ex, p21. At this meeting the District identified the Student as eligible for special education under the disability category Emotionally Disturbed.

26. On September 18, 2014, the District sent a Notice of Conference for a September 24, 2014 IEP meeting. Parents' Ex, p21.

27. On September 19, 2014, a disability related behaviors incident occurred where the Student threatened to kill himself and another student, which resulted in him being admitted to Methodist Behavioral Hospital the same day. Parents' Ex, p22.

28. On September 29, 2014, the Student was discharged from Methodist with diagnoses of Mood Disorder, RAD, and ADHD, with a recommendation that he have a mental health paraprofessional throughout his school day. Parents' Ex, p22.



29. On October 3, 2014, the District issued a Notice of Conference for an IEP meeting on October 8, 2014 to discuss a Manifestation Determination Review of an incident where the Student brought a taser to school. Parents' Ex, p22. The Student was suspended for 10 days with a recommendation for expulsion. Parents' Ex, p22.

30. On October 8, 2014, the IEP team held a Manifestation Determination Review where it was determined that the Student's behavior was directly and substantially related to his disability and recommended that a functional behavior assessment be conducted, but this was never done. Parents' Ex, p22; TR Vol III, p162. The District consulted with a behavioral specialist from the Southwest Arkansas Education Cooperative, who recommended three strategies to help manage the Student's outbursts, again indicating that the Student needed a clinical, psychological, mental health perspective to help teach him coping and anger management strategies, social skills for positive interactions with peers and adults, and conflict resolution strategies. TR Vol II, p 163-164. Dr. Knoff indicated although the District added two behavioral goals, the Student was not provided with any supports that would allow him to make progress towards these goals. TR Vol II, p169-170.

31. On December 12, 2014, a facilitated IEP team met to revise the Student's IEP and again discussed the need for a functional behavior assessment to be conducted. Parents' Ex, p337. The IEP team filled out a functional behavior assessment and a behavior support plan. The IEP team refused to provide a paraprofessional, indicating that the behavior support plan needed to be tried before recommending a paraprofessional. The Parents disagreed with the IEP team's decision to delay the support of a paraprofessional. Parents' Ex, p23.

32. On January 27, 2015, the IEP team met to discuss a disability related behavior incident that occurred on January 23, 2015 where the Student had an outburst, struck a teacher,

and eloped from the classroom, and ultimately left campus. Parents' Ex, p342-344; Parents' Ex, p24; TR Vol II, p165-166. At the IEP meeting, the team conducted a Manifestation Determination Review and changed the Student's placement to four hours homebound instruction with 30 minutes per week of occupational therapy. Parents' Ex, p345-347. The Student was not provided any supports that would address his social, emotional, and behavioral deficits. Parents' Ex, p345-347. The Student was served with a "homebound" IEP developed January 27, 2015. This IEP expired August 27, 2016. Parents' Ex, p345-347.

33. The Parents began paying for a tutor out of their own pocket because they were concerned he was falling further and further behind his peers. Parents' Ex, p348-352A; TR Vol 11, p167; TR Vol III, p100.

34. The Student's Parents filed for due process after the January 27, 2015, IEP meeting, triggering the Stay Put provision under the IDEA. Parents' Ex, p25.

35. The Hearing Officer issued his Final Decision and Order on September 20, 2015.

36. The Student's 2014-15 IEP expired on May 29, 2015. Parents' Ex, p306; TR Vol III, p24. Testimony by District staff indicated that the Student was provided homebound services from January 2015 through September 2015. TR Vol III, p23; TR Vol III, p22; TR Vol III, p11. The Special Education Director, Ms. Sherrie Young, had no data or evidence to indicate that the Student was making any progress on his IEP goals and objectives since he was placed on homebound in January 2015. TR Vol III, p25-26.

37. The Hearing Officer issued his Final Decision and Order in the Parents' due process hearing on September 20, 2015, finding *inter alia*, that the District denied the Student a FAPE by failing to conduct a comprehensive evaluation to identify all areas of suspected disability when the Parents first submitted a referral for special education in 2010; failing to implement the

Student's IEP goals and objectives; failing to use the Student's goals and objectives to tailor his instruction, which resulted in him making no academic progress; failing to provide the Student evidence based services, supports, and interventions to address his disability related behaviors and continuing to provide inadequate services over a period of years; and violated due process by failing to return the Student to his last agreed upon placement. Parents' Ex, p91-137; Parents' Ex, p25-26. The Hearing Officer awarded the Parents compensatory education; a functional behavior assessment and behavior intervention plan to be conducted, written, and monitored by an independent Board Certified Behavior Analyst (BCBA) who would monitor the data and implementation for a minimum of two years; the independent BCBA would develop and monitor a comprehensive IEP which addressed all of the Student's disabilities and academic deficits; staff and Parent training on the behavior plan and evidence based techniques; and training by the Arkansas Department of Education for District staff and administrators. Parents' Ex, p28.

38. Around August 13, 2015, the Parent took the Student to an open house at the District to begin preparing for the upcoming school year. TR Vol III, p103-104. She quickly found out after emailing the Special Education Supervisor, that no programming was in place and the District was unprepared for his return to school. TR Vol III, p103-107; Parents' Ex, p84-85.

39. On October 8, 2015, an IEP meeting was held to develop the Student's sixth grade IEP. See Parents' Ex, 139-151; Parents' Ex, p155-161. The District documented the Parents' concern that they wanted the District to comply with the Hearing Officer's Final Decision and Order and begin implementation of the Order. Parents' Ex, p155; Parents' Ex, p29; TR Vol II, p172. The District's documentation noted that the District was appealing the Hearing Officer's Decision, implying the District's justification for refusing to comply with the Hearing Officer's

Order was based on its disagreement with the decision. Parents' Ex, p155; Parents' Ex, p29. At this meeting, the IEP team developed an IEP that provided 1700 minutes of general education and 60 minutes of special education, with a "transition schedule" to integrate the Student into full day programming. Parents' Ex, p162-178; Parents' Ex, p30. A Behavior Intervention Plan was developed to address extreme "explosive behaviors towards peers and staff." Parents' Ex, p179-184; Parents' Ex, p30. Significantly, the Student was not provided any supports that would address his social, emotional, and behavioral deficits. Parents' Ex, p173B. Ms. Shelly Dunn, Case Manager and Teacher, indicated that she gave everyone a copy of the Student's IEP and Behavior Plan, however, District staff were given no behavioral training on how to implement the IEP or the Behavior Plan to respond appropriately in the event the Student exhibited behaviors consistent with his disability, TR Vol II, p35; TR Vol II, p65; TR Vol II, p177. Staff were not provided any hands on training, such as simulations to address the Student's behaviors as well as the Student was not provided any behavioral training. TR Vol II, p177-178.

40. On October 10, 2015, the District made a CIRCUIT referral for a behavior support specialist through the Dawson Educational Cooperative. Sharon Adams was retained and assigned to develop a functional behavior assessment, that would be used to develop a Behavior Intervention Plan for the Student. Parents' Ex, p31. Ms. Adams was not given permission to access the Student's records until November 2015, thus the Student began school with no supports in place to address his social, emotional, and behavioral deficits. Parents' Ex, p31.

41. The Student began a partial day scheduling beginning on October 13, 2015. T ASD  
124.

42. The Student began attending full day programming on November 2, 2015. T ASD  
143.

43. A behavioral incident occurred on November 4, 2015, where the Student grabbed another student and pushed him down on the playground. Parents' Ex, p32. Mr. Shedrick Franklin was called to "shadow" the Student to the office. The Student was suspended for three days in school suspension. Following this incident, the Student was provided a "shadow person" during lunch and recess. Parents' Ex, p32.

44. An incident occurred on November 11, 2015, which was reported to the Parent via email by Ms. Dunn, wherein the Student asked for hand sanitizer after working on an art project, the art teacher, Ms. Livingston refused to provide it to him, and he left the classroom as he had been instructed to do in accordance with his IEP. TASD, p153; TASD, p149; TR Vol II, p174.

45. However, a similar incident occurred on December 2, 2015, in Ms. Livingston's art class, after she initiated "kinesthetic activity to raise awareness of body language," where the IEP was not followed, resulting in extreme behaviors. Parents' Ex, p213A-213H; Parents' Ex, p33; Parents' Ex, p47. The Student attempted to leave the classroom to go to his quiet place in accordance with his IEP, but Ms. Livingston told him he couldn't leave and that he had to stay and watch the activity. TR Vol II, p175-176. When he again tried to leave the classroom to go to his quiet place, Ms. Livingston followed him and requested assistance from Mr. Franklin, which resulted in the Student slapping, hitting, and kicking Franklin while making threats to kill staff. Parents' Ex, p33; Parents' Ex, p47. TR Vol II, p174-176. The Parents' expert, Howard M. Knoff, Ph.D., indicated that the Student's response was in large part due to the RAD diagnosis and his distrust for adults; he was very uncomfortable with the exercise that he was asked to do, and then when he attempted to leave, he was blocked and not permitted to escape the situation. TR Vol II, p175-177. The Student was suspended for six days for this incident. As Dr. Knoff noted in his

report, the Student followed the instructions that he had been given, but Ms. Livingston either hadn't been trained on the Student's IEP and BIP or ignored them. Parents' Ex, p33.

46. Ms. Adams observed the Student approximately six times before Christmas break 2015, met with staff, and worked with them to collect data for the Functional Behavior Assessment. Parents' Ex, p32.

47. On December 4, 2015, the Parents initiated a due process complaint seeking compensatory education, a BCBA approved by the Parents to develop an appropriate IEP, and reimbursement for their out of pocket costs to provide FAPE to the Student, which was docketed as H-16-27. Parents' Ex, p48.

48. On December 10, 2015, an IEP meeting was held to revise the Student's IEP and hold a Manifestation Determination Review. Parents' Ex, p219-241; Parents' Ex, p34-35; Parents' Ex, p214-218. At the meeting the team determined the behavior was directly and substantially related to his disability but took no further action. Parents' Ex, p34-35. The IEP team's documentation indicated the Student's behavior was directly related to his RAD diagnosis because their paperwork indicates his disability was Emotionally Disturbed. Parents' Ex, p210; Parents' Ex, p212-213. The District's documentation noted that the Student had been suspended for six days. Parents' Ex, p212. The Student's BIP was updated to add a "shadow at recess/lunch," use of social stories, and provide the Parents Behavior Tracking Forms. Parents' Ex, p35; Parents' Ex, p48.

49. On December 15, 2015, the District filed its response to the Parents' request and included a Counter Complaint for an Expedited Due Process hearing, which was docketed as EH-16-29. In its complaint, the District sought to place the Student in an Interim Alternative Educational Setting. Parents' Ex, p245-255.

50. On January 7, 2016, the IEP team met to review the Student's IEP. Parents' Ex, p35; Parents' Ex, p48.

51. On January 19, 2016, an incident occurred where the Student and another student pushed each other and the Student threw a rock at the student, hitting him on the wrist. T ASD, p184; Parents' Ex, p35; Parents' Ex, p271-272.

52. On January 27, 2016, an incident occurred where the Student made an obscene gesture to a friend in the cafeteria. T ASD, p187-190; Parents' Ex, p35. In accordance with his BIP, the Student left the cafeteria and was sitting by himself in the hallway. A staff approached the Student and told him to go to Ms. Dunn's room, which escalated him and resulted in him attempting to kick the ramp, a wall, a glass door. Parents' Ex, p36. He left the building and began to throw asphalt pieces at a portable building. The Parent was called to pick the Student up; the Student calmed down. Parents' Ex, p36.

53. On February 11, 2016, the IEP team met to discuss how to handle the absence of a team member for an undetermined amount of time and discuss the Student's electives for the 4th nine-week period. Parents' Ex, p36; Parents' Ex, p48.

54. On February 12, 2016, an incident occurred where the Student had a verbal altercation with a female student in his class. Parents' Ex, p36; Parents' Ex, p49. He left the classroom to find his quiet place, and was followed by a staff member. Parents' Ex, p36. The Student then kicked out a glass window, punched and kicked the walls, and left the building and went off campus, outside the school's fence. Parents' Ex, p36. The Student calmed down while he was walking outside; his mother was called to pick him up. Parents' Ex, p36; Parents' Ex, p49.

55. On February 16-17, 2016, the expedited due process hearing was held. Parents' Ex, p36-37; Parents' Ex, p49.

56. On February 19, 2016, the Student was placed on homebound. Parents' Exhibit, p280A- 280R.

57. Dr. Knoff testified that the Student needed both intensive psychological therapy at home and at school along with drug therapy to address his "involuntary emotional volatile reactions" to internal and external triggers. TR Vol II, p152-153. Dr. Knoff indicated the District's actions demonstrated that staff didn't understand the Student's disabilities, specifically the social, emotional, and behavioral aspects of his RAD diagnosis. TR Vol II, p154.

58. Dr. Knoff testified that like a baseball player with a hitch in their swing, who needed a good coach that reconditioned the player to swing appropriately, the Student needed to be reconditioned to respond appropriately. TR Vol II, p155-156. Dr. Knoff indicated the Student needed to be working with someone who is familiar with his disabilities, who utilized multifaceted training and therapy. TR Vol II, p154. Dr. Knoff indicated that the Student needed to be taught to be aware of his physiological responses through biofeedback so that when his heart rate goes up, he feels pressure in his forehead, or staff observe him clenching his fists, he can be trained to relax through progressiveness relaxation therapy. TR Vol II, p156-157.

59. Dr. Knoff indicated the Student needed a psychological consult and needed the expertise of other professionals knowledgeable about complex behaviors such as Dr. Speck Kern and Andrea Woodruff, the consultant from the Cooperative. II, p165.

60. Dr. Knoff testified that the District should have requested a consultation with an expert familiar with how to address the complex behaviors that the Student was exhibiting, but the District did not do that. TR Vol II, p168. Dr. Knoff's review of the District's documentation and due process paperwork indicated that the District provided the Student with no services and supports to address his social, emotional, and behavioral deficits, which would allow him to make progress on his IEP goals and objectives. TR Vol II, p170; Parents' Ex, p8-50.



61. Patti Pena was the Student's homebound teacher during September and October 2015. She testified that he was probably on grade level because they were sending grade level material. She testified that he was making progress and was a very good student. TR Vol. III, p6-10.

62. Ms. Dunn also testified that the Student made progress. A portion of the homebound instruction that she delivered to the Student was one-to-one math instruction. She further testified he earned a 92 for math for the third nine weeks. TR Vol. III, p40-41.

### **FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

The first and foremost purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d).

A "free appropriate public education" includes "special education and related services that . . . have been provided at public expense . . . and are provided in conformity with the individualized education program ["IEP"] of the Student." 20 U.S.C § 1401 (9); see, 34 C.F.R. §§ 300.101- 300.109. "Special education" means "specifically designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability . . ." 34 C.F.R. 300.39(a)(1).

To provide FAPE, a school formulates an IEP during a meeting between the Student's parents and school officials. *See* U.S.C. Section 1414 (d)(1)(A)-(B). Specially designed instruction means adapting, as appropriate to the needs of an eligible child . . . the content, methodology, or delivery of instructions – "to address the unique needs of the child that result in the child's disability", and to ensure access of the child to the general curriculum, so that the child

can meet the educational standards within the jurisdiction of the public agency that apply to all children. *See* 34 C.F.R. § 300.39. Prior to putting a child with a disability on an IEP, the District is required to conduct a comprehensive evaluation to identify all areas of suspected disability. *See* 20 U.S.C. 1414(a)(1); 20 U.S.C. 1414(b)(2); 34 C.F.R. § 300.15; ADE Regulation § 6.00. In addition, the District is required to use a variety of instruments, evaluations and information provided by the Parents, assessments and classroom observations, and observations by service providers, to ensure that "the child is assessed in all areas of suspected disability," and to determine the nature and extent of the special education and related services that the child needs. 20 U.S.C. 1414(b)(2); 34 C.F.R. § 300.15.

An IEP must be established for a student with a disability at the beginning of the school year and reviewed and revised periodically as needed, "but not less than annually, to determine whether the annual goals for the child are being achieved." 20 U.S.C. §1414(d)(4)(A) (i); 34 C.F.R. §300.314(b)(1)(I). The school administering the IEP must revise the IEP "as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum. . . the results of any reevaluation . . . information about the child provided to, or by, the parents . . . the child's anticipated needs; or other matters." 20 U.S.C. §1414(d)(4)(ii)(I)-(V).

In this case, the District was aware and amassed substantial documentation of the Student's social, emotional, and behavioral deficits — the RAD diagnosis —which negatively impacted the Student's ability to learn and benefit from the instructional program. Despite the fact that the Student's behavior indicated he suffered from crippling social, emotional, and behavioral deficits related to his RAD diagnosis, the IEP team never fully addressed these disabilities in his programming and never provided any related services or additional supports despite documenting the need for such supports and services. Dr. Knoff testified that a functional behavior assessment

and a behavior support plan that was based and driven by data has not been conducted on the Student despite several discussions by the IEP team. TR Vol II, p162-163.

In *Bd. Educ. Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 203 (1982), the Court explained that FAPE is satisfied when the state provides "personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction, and that this instruction should be reasonably calculated to enable the child to advance from grade to grade." *See Rowley*, 458 U.S. at 203. In this case, the Student needed individualized instruction that addressed the behaviors that adversely impacted his ability to learn.

The achievement of goals and objectives is one measure of educational benefit. *See Walczak v. Florida Union Free Sch. Dist.*, 27 IDELR 1135 (2d Cir. 1998); *M.B. v. Hamilton Southeastern Schs.*, 58 IDELR 92 (7th Cir. 2011); and *M.N. v. state of Hawaii, Dep't of Educ.*, 60 IDELR 181 (9th Cir. 2013, unpublished) The key question is whether the student made gains in his areas of need.

In this case, there was no evidence or data to suggest that the Student was making any progress towards social, emotional and behavioral goals, no action was taken by the District when he did not make progress, and testimony indicated that he was never provided any related services or supports that were needed to help him progress.

Regarding the Student's academic progress, the undersigned Hearing Officer finds that the Student has received educational benefits. It is well settled that the analysis of claims brought under the IDEA involves a two-part part determination: first, whether the procedures set forth in the IDEA have been complied with; second, whether the IEP was reasonably calculated to enable the child to receive educational benefits. *See Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). "If these requirements are met, the State has complied with the obligations imposed by

Congress and the courts can require no more.” *Id.* at 207. A laundry list of technical deficiencies cannot support a claim that FAPE was denied. *See Indep. Sch. Dist. No. 283 v. S.D.*, 948 F.Supp. 860, 882 (D.Minn. 1995). “An IEP must provide only ‘sufficient specialized services’ to enable a student to benefit from her education, and it need not be designed to ‘maximize’ a student’s potential or provide the best possible education at public expense.” *Fort Zumwalt Sch. Dist, v Clynes*, 119 F.3d 607, 612 (8<sup>th</sup> Cir. 1997), cert. denied, 523 U.S. 1137 (1998).

Here, the District complied with IDEA procedures regarding the Student’s academic programming. The IEP and the services provided were “reasonably calculated” to allow the Student to “receive educational benefits.” An IEP “need not be designed to maximize a student’s potential commensurate with the opportunity provided to other children. The requirements are satisfied when a school district provides individualized education and services sufficient to provide disabled children with some educational benefit.” *M.M. ex rel. L.R. v. Special Sch. Dist. No 1*, 512 F.3d 455, 461 (8<sup>th</sup> Cir. 2008), cert. denied, 555 U.S. 979 (2008).

However, the evidence does indicate that once the Student was placed on homebound instruction, there was no consideration given to social, emotional, or behavioral goals. As he was not around other students, these issues did not manifest themselves. Once the Student returned to school, he continued his extreme behaviors to the point where the District asked for an Interim Alternative Educational Setting after several incidents that the District classified as major. To the extent that these types of goals were on the Student’s IEP, he should have continued to receive the services indicated on his IEP. Furthermore, based on the evidence presented, the Student’s behavior far exceeded the Student’s programming and the District’s capacity to deal with this type of student with the resources that were available to them. He

continued to miss instructional time. For example, significant delays occurred each time he was removed in order to procure alternative instructors for homebound placement.

The IDEA requires that the IEP team address behavior management whenever a student's behavior interferes with the child's ability to benefit from his educational programming. Specifically, the IDEA states that the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning and that of others." 34 CFR 300.324 (a)(2)(i); 64 Fed. Reg. 12,620 (1999); see also 71 Fed. Reg. 46,643 (2006) ("If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted."); 71 Fed. Reg. 46,683 (2006)(a student's need for behavioral interventions and supports must be decided on an individual basis by the student's IEP team.); 64 Fed. Reg. 12,620 (1999) ("IEP teams need to be able to address the various situational, environmental and behavioral circumstances raised in individual cases.")

The IDEA provides a two-step approach to addressing problematic behavior that interferes with a student's learning or the learning of others: the Functional Behavior Assessment, ("FBA") which analyzes the student's behavior and the need or function that it serves and seeks to replace it with desired behavior, and the Behavior Intervention Plan ("BIP"), which specifically identifies problematic behaviors, outlines procedures to follow when the problematic behavior occurs, and specifies an intervention plan to address inappropriate behaviors and increase positive behaviors. See 20 U.S.C. 141 5(F)(i-ii); 34 C.F.R. § 300.530(d)(1) (ii) and (f)(1) (i-ii). See generally 64 Fed. Reg. 12,618 (March 12, 1999); Turnbull, *IDEA, Positive Behavioral Supports, and School Safety*, 30 J.L. & EDUC. 445, 456-58 (2001).

The Arkansas Department of Education echoes the IDEA in requiring the use of positive behavior supports and other strategies to address problem behavior, including conducting an

FBA and developing a BIP to address the problem behaviors. ADE Regulation 8.00 states:

8.07. 1.2 Consideration of special factors. The IEP Team must -

***A. In the case of a child whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.*** Such consideration may include the need to conduct a functional behavioral assessment (FBA) of the child and/or develop a behavior intervention plan (BIP) to address identified behavioral needs of the child. (*See* § 11.00 of these regulations).

8.07. 1.3 Additional FAPE considerations. The IEP Team must -

A. Consider whether the child has available to him the variety of educational programs and services available to nondisabled children, including art, music, industrial arts, consumer and homemaking education, vocational education. This list of program options is not exhaustive and could include any program or activity in which nondisabled children participate.

B. Consider whether the child is being afforded an equal opportunity for participation in nonacademic and extracurricular services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency and assistance in making outside employment available.

ADE Regulation 8.00.

As in this case, ongoing disciplinary issues, recurring problematic behaviors, or a student's inability to benefit from the instructional program serve to put a district on notice that a student is in need of an FBA and a BIP. *See, e.g., School Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928 (E.D. Va. 2010) (holding although District records contained little information documenting Student's behavioral pattern, the guidance counselor's records, which were much more thorough, indicated a series of disciplinary events which placed the School Board on notice that Student was in need of a functional behavioral assessment and a BIP). In *R.K. v. New York City Department of Education*, 56 IDELR 212 (E.D.N.Y. 2011), *aff'd* 59 IDELR 241 (2d Cir. 2012), a 5-year-old with autism required a BIP because she was unable to access her education due to self-stimulatory behaviors, inappropriate vocalizations, and inability to focus. See also 64

Fed. Reg. 12,405; 64 Fed. 12,586 (1999). In this case, the evidence collected during the course of this case indicate that the Student's behavior issues are directly related to his RAD diagnosis; when he is escalated, he does not possess the skills to know how to self-regulate, think through a course of action sequentially, and evaluate the best course of action. Parents' Ex, p8-50. His inappropriate behaviors adversely impact his ability to learn and have resulted in disciplinary suspensions and recommendations for expulsion.

A district's failure to develop an appropriate BIP may deny a child FAPE. *See C.F. v. New York City Dep't of Educ.*, 62 IDELR 281 (2d Cir. 2014) (the lack of an FBA led to the development of an inappropriate BIP and caused the district to offer an inappropriate placement); and *Pencader Charter Sch.*, 113 LRP 21474 (SEA DE 05/10/13); *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003) (any slight academic benefit the student received was lost because of ongoing behavior problems that interfered with his ability to learn); *see also Kingsport City Sch. sys. J.R.*, 51 IDELR 77 (E.D. Tenn. 2008) (finding a denial of FAPE where the BIP was not appropriate for the behavior management needs of the student); *New York City Dep't of Educ.*, 49 IDELR 270 (SEA NY 2008) (holding that without appropriate behavior interventions in place, the child could not receive a meaningful educational benefit in a district program). In this case, Dr. Knoff testified that the Student's IEPs and BIP were inappropriate, did not provide appropriate behavioral instruction using evidence based practices to recondition and teach the Student appropriate behaviors, were not implemented by staff with sufficient knowledge and training in dealing with complex behaviors, and did not provide related services that would help the Student benefit from the instructional program, such as biofeedback, clinical relaxation therapy, and behavior reconditioning.

In addition, failure to properly or consistently implement the behavioral interventions identified in a student's BIP can amount to a denial of FAPE. *See Guntersville City Bd. of Educ.*,

47 IDELR 84 (SEA AL 2006) (district failed to implement a teenager's BIP by taking disciplinary action in response to certain incidents of misconduct while allowing other outbursts and disruptions to be ignored); *Stroudsburg Area Sch. Dist. Jared M.*, 28 IDFLR 284 (Pa. Commw. Ct. 1998) (district's failure to implement an appropriate BIP required it to reimburse the parent for the costs of the student's out-of-state residential placement). In this case, the testimony at the due process hearing indicated that the Student's IEP and BIP were not followed consistently by District staff.

Dr. Knoff's report summarized the evaluations, the evidence in terms of the behavioral documentation the District, which demonstrated that he needed additional supports, related services, and instructional modifications that were never provided by the District. Parents' Ex, p8-50. Dr. Knoff discussed the importance and the need to conduct behavioral observations to determine the Student's interpersonal social problem solving conflict prevention resolution and emotional coping skills that he demonstrates in the classroom and other settings, when he exhibits appropriate behaviors, the context of both inappropriate and appropriate behaviors, and whether there are any skill deficits that contribute to the behaviors. TR Vol II, p196. Dr. Knoff testified that part of evidence based social skills training would be teaching the Student an internal cognitive script so that once he is able to control his emotions, he is able to stop and think in a concrete and sequential way about what the appropriate response should be instead of reacting instinctually. TR Vol II, p158-159.

Ms. Dunn testified that she downloaded social stories from the internet to teach the Student social skills based on what she thought was appropriate. TR Vol II, p28; TR Vol II, p51. Ms. Dunn kept no data about how the Student was doing. TR Vol III, p56L7. Dr. Knoff testified that Ms. Dunn did not possess the training, experience, or skill set necessary to teach the Student social skills, given that he needed someone with clinical skills to address his multiple psychiatric



disorders using strategic behavioral interventions. TR Vol II, p172-173; TR Vol II, p224. Dr. Knoff indicated the danger with having a person like Ms. Dunn, who was not qualified or trained how to address the Student's behaviors using evidence based practices, is that it may potentially make the Student more resistant to the next intervention or may make the behavior problems worse. TR Vol II, p225.

Dr. Knoff explained the key difference between social stories and social skills. A social story increases the Student's awareness of behavior, but it doesn't recondition the Student's behavior or teach the student how to react appropriately. TR Vol II, p159-160. Dr. Knoff gave an example of a mechanic who is given a Lexus manual, but has never worked on a Lexus before; the mechanic can read and understand the manual, but he doesn't have the skills to work on the Lexus until he has been trained to work on repairing the different parts of the Lexus. TR Vol II, p159-160. In a similar way, teaching the Student a social story makes him more aware of inappropriate behavior but doesn't provide behavioral instruction, behavioral practice, and simulations to practice the appropriate responses. TR Vol II, p160.

Dr. Knoff also discussed the ADE regulation that requires the Student's IEP be implemented while he was in the homebound placement. ADE Regulation 17.10.2.5; TR Vol II, p214-215. Dr. Knoff testified that the homebound IEP was not appropriate to meet the Student's emotional and behavioral needs. TR Vol II, p222-223. The Student was given a behavioral goal, but was not provided with any related services that would allow him to meet his goal. TR Vol II, p223. *See also* R97/R98.

The Hearing Officer would note the Parents agreed to most, if not all of the IEP's and BIP's. However, the undersigned Hearing Officer finds that the Parents may still challenge an IEP to which they agreed. *See Letter to Lipsett*, 52 IDELR 47, 109 LRP 6755 (2008), stating that

“Parents may also file a due process complaint regarding an IEP even when they previously agreed to it”.

For the reasons discussed herein, the Texarkana School District denied the Student a Free Appropriate Public Education.

## **LEAST RESTRICTIVE ENVIRONMENT**

The plain language of 20 U.S.C. §1412(5)(B) provides that "[t]o the maximum extent appropriate, children with disabilities ... [must be] educated with children who are not disabled, and ... special classes, separate schooling or other removal of children with disabilities from the regular educational environment [shall occur] only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *See also* 34 CFR 300.114; OSEP Memorandum 95-9, 21 IDELR 1152 (OSEP 1994). The IDEA requires a school district to do more than simply provide educational instruction — that is, educate children with disabilities in the least restrictive environment ("LRE") which means the disabled student is to be educated with non-disabled students to the "maximum extent appropriate." 34 C.F.R. § 300.114; *Pachl v. Seagren*, 453 F.3d 1064, 1067 (8th Cir.2006) (citing 20 U.S.C. § 1412(a)(5)). Consequently, “a disabled student should be separated from his peers only if the services that make segregated placement superior cannot 'be feasibly provided in a nonsegregated setting.' " *Id.* (quoting *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983)); see also *T.F v. Special Sch. Dist. of St. Louis County*, 449 F.3d 816, 820 (8th Cir. 2006) (noting IDEA reflects a "strong preference" that disabled children attend regular classes with non-disabled children and a presumption in favor of public school placement). Arkansas law and special education regulations are consistent with the IDEA in mandating that

children with disabilities be provided an inclusive environment with their non-disabled peers. In sharp contrast to the vagueness provided in the statute as to the meaning of FAPE, the IDEA has a very specific prescription for the educational environment for a child with a disability. Particularly, the IDEA requires a balancing of the need for the provision of a free and appropriate public education with the need for providing such an education in the least restrictive environment. *See Sacramento City Unified School Dist. v. Rachael H.*, 14 F.3d 1398 (9th Cir. 1994); *Daniel R.R.* 874 E2d at 1044-45; *Lachman v. Illinois State Board of Educ.*, 852 F.2d 290, 295 (7th Cir. 1985), *cert denied*, 488 U.S. 925; *A.M. v. Northwest R-1 School Dist.*, 813 F.2d 158, 162 (8th Cir. 1987), *cert denied*, 484 U.S. 847 (1987).

Under the Act, a school district is required to ensure:

That, ***to the maximum extent appropriate***, children with disabilities, including children in public or private institutions or other care facilities, ***are educated with children who are not disabled***; and

That special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . . .

34 C.F.R. § 300.114(a)(2).

With this provision, Congress created a strong presumption for mainstreaming, i.e., placing students in the least restrictive environment. However, as recognized by the Court in *Rowley*, sometimes regular classrooms and regular school settings are unsuitable for the education of children with disabilities. *See Rowley*, 458 U.S. 181 n.4. That is not to say that the IDEA and its regulations contemplate "an all or nothing educational system in which students attend regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services." *Daniel R.R.*, 874 F.2d at 1050; *Lachman*, 852 F.2d at 296, n. 7 (citing

*Wilson v. Marana School Dist. No. 6 d Pima County*, 735 F.2d 1178, 1183 (9th Cir. 1984). *See also*, 34 C.F.R. 300.551.

IDEA mandates a "continuum of placements," often referred to as the "LRE Continuum" or the "Placement Continuum." The continuum begins in a general education classroom and continues to get more restrictive at each placement on the continuum. 34 CFR 300.115 (a). The IDEA requires that each public agency have a continuum of alternative placements available to meet the needs of children with disabilities. The continuum should include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR 300.115 (a) and 34 CFR 300.39. *See Letter to Anonymous* - 11/08/2000. The district also must make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with placement in a general education setting. 34 CFR 300.115 (b)(2). Each child's educational placement must be determined on an individual case-by-case basis depending on each child's unique educational needs and circumstances, rather than by the child's category of disability, and must be based on the child's IEP. 71 Fed. Reg. 46,586 (2006). Congressional policies indicate a preference for educating disabled children in a mainstreamed classroom whenever possible. *Neosho R-V School Dist. v. Clark*, 315 F.3d 1022, 1026 (8th Cir. 2003); *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1034 (8th Cir. 2000); 20 U.S.C. § 1400(c)(5)(D).

The IDEA is very specific about what factors should be considered prior to changing the child's placement or moving down the continuum to a more restrictive placement. The burden of proof for educational benefit in a given placement is on the school district; the law specifies that movement down the continuum to more restrictive placements should occur only following reasonable, appropriate, and failed attempts for success in the current placement.

\*300.116 Placements. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that --

(a) The placement decision—

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

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

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(c) Is as close as possible to the child's home; Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Authority 20 U. S. C. 1412(a)(5))

34 C.F.R. § 300.116. See also ADE Regulation 13.3 Placement.

In this case, the District never offered a continuum of placements to the Student. On or about January 27, 2015, he was placed in homebound. He remained in homebound subsequent to March 14, 2015, the agreed date of jurisdiction for the present due process hearing request. This placement was not appropriate and individualized to the Student's unique needs and none offered the supports and services to address his social, emotional, and behavioral deficits. Further, the District moved to place the Student in the TDT or homebound placement without attempting to offer more supports, without contacting an expert familiar with addressing complex behaviors.

Dr. Knoff testified that the District "jumped the continuum" by moving him to a homebound placement without ever trying a general education classroom with the services and supports that Dr. Knoff discussed in his report and throughout his testimony or a self-contained classroom with similar supports and services. TR Vol III, p184. Both the TDT and homebound

placements were completely segregated settings where the Student had no contact with his same aged non-disabled peers. Further, after the Student was in the homebound setting, the District discontinued any services with the BCBA, Sharon Adams, who they contracted with to assist the Student. TR Vol II, p185-186.

For the reasons discussed herein, the Texarkana School District failed to educate the Student in the Least Restrictive Environment.

### **CONCLUSION**

The evidence and testimony introduced during the due process hearing demonstrated that the Student was denied FAPE and his right to an education in the least restrictive environment. The undersigned Hearing Officer issued a ruling in a prior due process hearing covering the time period prior to March 14, 2015. H-15-21 was filed on March 14, 2015. In case number H-15-21, the Hearing Officer determined that the Student was denied FAPE. The parties represented to the Hearing Officer that H-15-21 is being appealed by the District. The prior order did indicate that the Hearing Officer no longer had jurisdiction regarding H-15-21. It appears to the Hearing Officer that the Parents desire a more favorable ruling on issues wherein they received, at least in part, a favorable ruling. The undersigned construes his jurisdiction in this hearing to be subsequent to March 14, 2015.

## **ORDER**

The Hearing Officer finds that the District violated the IDEA and denied the Student FAPE in the following areas: failing to provide an appropriate IEP for the Student, specifically, by failing to provide the behavioral supports and services needed for the Student; failing to train staff on the implementation of the Student's IEP; failing to provide the services on the IEP; failing to provide an appropriate Behavior Support Plan; failing to educate the Student in the Least Restrictive Environment, and failing to hold an Annual Review Conference to discuss the Student's progress.

The Parents are awarded the following relief:

1. **Functional Behavior Assessment and Behavior Intervention Plan** – comprehensive behavior assessment and behavior plan conducted, written, and monitored by an outside BCBA or doctoral-level school psychologist within three weeks of the date when the final report and recommendations by the Hearing Officer for this case are filed. The individual will monitor the data and plan implementation for three years.

The personnel involved should complete a well-designed FBA that is then linked with specific, evidence-based social, emotional, and behavioral goals, strategies, and completed and approved by November 15, 2016.

Parent, staff, administrator, and student training on the interventions written into the Plan then should begin within two weeks, such that the interventions are implemented by December 1, 2016. The expert will then be responsible for evaluating and monitoring (with designated district related services and mental health personnel) the BIP as it is being implemented throughout the

school year. The consultation year will culminate in an end-of-year summative evaluation meeting in early May that will also develop an action plan for transiting and continuing to implement needed interventions into the next school year.

2. **Training in IDEA Due Process Procedures, by the ADE** – specifically to include all District administrators.

3. **Staff and Parent Training** – Staff (including school administrators) and parents should be trained on the behavior plan and techniques to be used with academics to transfer to homework tasks in the home setting. The training should consist of training on the particular disability, appropriate interventions, and on the IEP and FBA/BIP by an outside BCBA or doctoral-level school psychologist. This training should occur at the end of each semester of the school year – until the Student graduates from high school – to include all of his (new) teachers (academic, elective, and any others) when he changes each new semester of the school year. This should also include any long-term substitutes who may need to cover any of the Student’s classes due to a prolonged staff illness or absence.

### **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 of 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.

DATED:

September 12, 2016

SIGNATURE:

/s/ Garry J. Corrothers

GARRY J. CORROTHERS,  
HEARING OFFICER