

**ARKANSAS DEPARTMENT OF EDUCATION**  
**Special Education Unit**

**XXXXXXXXXX, as Parent of  
XXXXXXXXXX**

**PETITIONER**

**VS.**

**CASE NO. H-20-07**

**LITTLE ROCK SCHOOL DISTRICT**

**RESPONDENT**

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

**ISSUES PRESENTED**

Whether the Little Rock School District (Hereinafter “District” or “Respondent”) denied XXXXXXXXXXXX (hereinafter “Student”) a free, appropriate public education (hereinafter “FAPE”) between May 10, 2019, and September 11, 2019,<sup>1</sup> in violation substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. 1400-1485, as amended (hereinafter “IDEA”), by: (1) failing to develop and implement an individual education plan (hereinafter “IEP) which

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<sup>1</sup> The time period covered by this action is extremely limited. This is because Parent previously filed two due process requests. One on January 24, 2019 that was dismissed with prejudice on February 20, 2019 (Case H-19-17), and a second request on May 9, 2019, covering February 21, 2019 – May 9, 2019 (Case H-19-28) in which a hearing officer entered a final decision on July 23, 2019. A comparison of the complaints filed in H-19-17, H-19-28, and the above-captioned matter indicated that Parent’s claims in all three cases were essentially the same. As such, all claims prior May 9, 2019 cannot be relitigated pursuant to res judicata.

includes appropriate goals and programming designed to provide educational benefit, i.e. allow Student to make progress appropriate in light of her circumstances.<sup>2</sup>

### **PROCEDURAL HISTORY**

This is the third of three Due Process Hearing Requests filed by Petitioner in the past eight months. The first request was filed on January 25, 2019 and dismissed with prejudice on February 20, 2019. The second was filed on May 9, 2019, and had limited coverage between February 21, 2019 – May 9, 2019, and a final decision from the hearing officer was filed on July 23, 2019. On September 11, 2019, the Arkansas Department of Education (hereinafter “Department”) received a written request from Parent, acting pro se, to initiate due process hearing procedures on behalf of Student.<sup>3</sup>

In response to Petitioners’ request for hearing, the Department assigned the case to an impartial hearing officer. Thereafter, the date of October 28, 2019, was set as the date on which a hearing would commence if Petitioner and Respondent failed to reach a resolution prior to that time. On October 25, 2019, a prehearing conference regarding this matter was conducted, via telephone. XXXXXXXX (hereinafter “Parent” or “Petitioner”), Pro Se, Mr. Khayyam Eddings, attorney for the District, and Cassandra Steele, Director of Special Education Little Rock School District, were all present on the call. During the prehearing conference, the parties discussed unresolved issues to be litigated at the hearing of this matter, as well as the witnesses and evidence necessary to address same.<sup>4</sup> It was also discussed that the issues, in this case, would be confined in time to May 10, 2019 to September 11, 2019 because of res judicata.<sup>5</sup> All parties agreed. In addition, it was discussed that Parent would be using the notebook of

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<sup>2</sup> See Due Process Complaint and Transcript, Prehearing Conference

<sup>3</sup> See Due Process Complaint

<sup>4</sup> See Telephonic Prehearing Conf. Tr.

<sup>5</sup> Id. Hr’g Tr. Vol 1. Pp. 5-6.

exhibits from her previous hearing held on May 9-10, 2019. However, Parent did not bring said notebook of exhibits to the hearing.

On October 28, 2019, the hearing in this matter commenced.<sup>6</sup> Testimony was heard on October 28, 2019, and October 29, 2019.<sup>7</sup> All testimony was heard in person at the Little Rock School district Administrative Offices. The hearing concluded on October 29, 2019. The following witnesses testified in this matter: Cassandra Steele, Kim Hart (testified telephonically) and Diann Skelton (testified telephonically).<sup>8</sup> Parent did not testify at the hearing but did give a closing statement. Parent had the burden of proof regarding the issues raised in this case.

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated §6-41-202 through §6-41-223, Dana McClain, J.D., Hearing Officer for the Arkansas Department of Education conducted a closed, impartial hearing. Parent represented herself, Pro Se, and the District was represented by attorney, Mr. Khayyam M. Eddings.

Both parties were offered the opportunity to provide post-hearing briefs. Parent submitted a brief for consideration by this Hearing Officer.

### **FINDINGS OF FACT**

Student is a fifteen-year-old female (XXXXXXX) who is enrolled in the Little Rock School District. Student is in the ninth grade at XXXXX.

Student has a long history of medical issues. Specifically, Student has been diagnosed with Attention Deficit Hyperactivity Disorder (hereinafter “ADHD”) and seizure disorder to include absence epilepsy; however, the record indicates that Student was born premature and weighed two and one-half

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<sup>6</sup> Hr’g Tr. Vols I-II.

<sup>7</sup> Id.

<sup>8</sup> Id.

pounds at birth. At birth, she had seizures, hypertension, jaundice, irregular heartbeat, and underdeveloped lungs. <sup>9</sup> Since 2014, Student has received special education services pursuant to the IDEA, with the eligibility category being that of other health impairment. <sup>10</sup>

Student's most recent psychoeducational evaluation was completed on January 22, 2018, by Kim Hart, M.S., School Psychology specialist. At the time of the evaluation, Student was in the seventh grade. Student was administered the Kaufman Assessment Battery for Children, Second Edition.<sup>11</sup> Student's performance on this test indicated that Student's overall functioning was within the "Below Average" range noting that Student was performing at that time at or better than 5% of same-aged peers. <sup>12</sup> It was further noted that Student had below average short-term memory, "suggesting poorly developed ability to encode, maintain and manipulate information in immediate awareness". <sup>13</sup> As a result, Student struggles to decode multisyllabic words, orally retell or paraphrase what she has read, and comprehend what she has read. <sup>14</sup>

In addition, Student was administered the Wechsler Individual Achievement Test, Third Edition, for the purpose of evaluating academic achievement. <sup>15</sup> Student's performance on this test indicated that she was a fast, but inaccurate reader. It was concluded that Student's word reading speed, pseudoword decoding speed, and oral reading rate were within the average range; however, she exhibited difficulty with word reading and word attack skills resulting in significant inaccuracies in her reading. <sup>16</sup> She further demonstrated below-average skills resulting in significant inaccuracies in her reading. In addition, the student scored below average in reading comprehension and spelling skills. <sup>17</sup> Student also struggled

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<sup>9</sup> Hr'g Tr., Ex Vol 1 Ex. 6.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

with math computation and application, with evaluator noting that Student demonstrated an understanding of single-digit addition but was unable to perform on single-digit subtraction or multiplication. <sup>18</sup>

Student was also administered two assessments to determine adaptive behavior and social skills. Specifically, Student was administered the Conners, Third Edition, and the Behavior Rating Inventory of Executive Function, Second Edition. <sup>19</sup> These assessments indicated that Student exhibits a typical level of activity, but has difficulty learning and/or remembering concepts in reading, spelling, and math. It was noted that Student may also have difficulty completing projects, may procrastinate, and may have poor planning and organizational skills. <sup>20</sup>

In summary, the evaluator concluded that Student had a cognitive profile typical of a “slow learner”. As such, Student “may exhibit immature language patterns or speech problems, use poor judgment, demonstrate immature social behavior...easily frustrate, demonstrate proficiency with particular tasks rather than a subject area, demonstrate poor memory, experience difficulties understanding several steps in a task, require new information linked to previously learned information, and...experience difficulty transferring information learned in one situation to others. <sup>21</sup> It was also concluded that Student would likely have reading difficulties to include confusing similar words and letters, losing place while reading, repeating words, exhibiting poor reading fluency, using incorrect order of letters in words, having difficulty with associating correct sounds with appropriate letters, and reversing letters. <sup>22</sup>

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<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

The evaluator made five pages of recommendations to address deficits regarding short-term memory, visual processing automaticity of mental operations, acquisition of specific culturally related information, sustained attention, shifting, working memory, planning, and organizing.<sup>23</sup>

On April 26, 2019, a Notice of Conference scheduling an IEP committee meeting for May 15, 2019 was sent to Parent.<sup>24</sup> On May 15, 2019, the IEP committee met to conduct an annual review of Student's progress. In addition, the IEP committee developed an IEP for the upcoming 2019-2020 school year to address Student's deficits.<sup>25</sup> The Team considered the current Psych report, Parent and teacher input, OT reports, Speech reports, and Dyslexia Intervention results in the development of the 2019-2020 IEP.<sup>26</sup> The Parent and her advocate attended the May 15, 2019 IEP meeting.<sup>27</sup> It is this IEP that is in question.

The May 15, 2019 IEP developed for Student for the 2019-2020 school year indicates that Student will continue to receive special education and related services.<sup>28</sup> Regarding the content of the May 15, 2019 IEP, in the portion designated for the description of present level of academic achievement, the IEP provides that Student is "pleasant" and "self-motivated", but that she continues to have achievement and language deficits that need to be addressed.<sup>29</sup> It was reported that Student's handwriting was legible, but that the mechanics of handwriting were an issue for the Student at times.<sup>30</sup> It was also stated that Student has been administered a dyslexia screener in the spring of 2019 and appeared to exhibit some characteristics of individuals with dyslexia.<sup>31</sup> The IEP explained that Student had been receiving interventions between the time the screener was administered and May 15, 2019 when the IEP was

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<sup>23</sup> Id.

<sup>24</sup> Hr'g Tr., Ex. Vol. 1, Ex 18

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

developed.<sup>32</sup> It was stated that Student struggles with short and long vowel sounds, as well as control “r” vowels and that Student continued to have difficulty with reading comprehension during her dyslexia intervention sessions.<sup>33</sup>

Both Kim Hart and Cassandra Steele testified, that although the District is providing certain dyslexia interventions because they are helpful to Student, Student has not been diagnosed with dyslexia. Student does not meet the criteria for a child with dyslexia because of her intellectual ability and because of the multiple medical conditions that she has that would affect her cognition, such as seizure disorder, and the multiple medications that she is on.<sup>34</sup> She has the profile of a slow learner which means her reading difficulties can be explained by low cognitive processes, which rules out a diagnosis of dyslexia.

<sup>35</sup> Ark. Code. §6-41-602(1).

The May 15, 2019, IEP provides that Student is to receive 90 minutes of direct instruction in math in the special education classroom (10x per month), 90 minutes of direct instruction in reading in the special education classroom (10x per month), 45 minutes of co-taught services in English in the special education classroom (10x per month), 30 minutes of direct instruction in occupational therapy (1x per week), and 30 minutes of speech therapy (1x per week).<sup>36</sup> Also addressed were program modifications and accommodations to be received by Student, including, but not limited to: (1) extended time for classwork and homework; (2) small group instruction; (3) preferential seating; (4) reduced assignments; (5) reduction of open response questions; (6) ability to orally respond to test questions; (7) use of speech to text for writing assignments; (8) breakdown of instructions into small steps; (9) use of an agenda book in class; and (10) use of visual supports.<sup>37</sup>

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Hr’g Tr., Vol I, pp 19-20.

<sup>35</sup> Hr’g Tr., Vol I, pp 37-38.

<sup>36</sup> Hr’g Tr., Ex. Vol. 1, Ex 18.

<sup>37</sup> Id.

Student's May 15, 2019, IEP includes a total of nine goals. Specifically, there are three math goals, two reading intervention goals, one English/writing goal, and three speech therapy goals. <sup>38</sup>

Student did not begin school until five or six weeks after the start of the 2019-2020 school year. (approx. 2<sup>nd</sup> week of October 2019)<sup>39</sup> Parent filed her due process complaint September 11, 2019, almost a full month before Student began receiving services under the 2019-2020 IEP. <sup>40</sup>

Student is receiving instruction in the Wilson reading program. Student was given the pre-test to the WADE and the WISC (pretests in the Wilson reading program) the first week she was present at school and she was able to read every word except the words that were tenth, eleventh, and twelfth-grade words. <sup>41</sup> Student is currently in the ninth grade and these tests indicate student is on or very close to grade level. Student's grades are; Eng 1, 88; Phy Sci, 90; Civics, 79; Pe 1, 81; Survey of Business, 92; Avid 9, 81; Reading Enrichment 91; Math 1, 74.<sup>42</sup>

### **CONCLUSION OF LAW AND DISCUSSION**

Pursuant to Part B of the IDEA, states are required to provide a FAPE for all children with disabilities between the ages of three and twenty-one. §20. U.S.C. 1412(a); 34 C.F.R. 300.300 (a). In *Hendrick Hudson Dist. Bd. Of Educ. v. Rowley*, the United States Supreme Court addressed the meaning of FAPE and set forth a two-part analysis that must be made by courts and hearing officers in determining whether a school district has failed to provide FAPE as required by federal law. *458 U.S. 176, 206-207 (1982)*; *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 804 (8<sup>th</sup> Cir. 2011)*. The first inquiry that a court or hearing officer must make is whether the local educational agency or district, has complied with the procedures set forth in IDEA. Thereafter, it must be determined whether the IEP developed

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<sup>38</sup> *Id.*

<sup>39</sup> Hr'g Tr., Ex Vol. II, pp. 11,15.

<sup>40</sup> See Due Process Hearing request.

<sup>41</sup> Hr'g Tr., Vol. II, pp. 23-24.

<sup>42</sup> Hr'g Tr., Ex. Vol. 1, Ex. 22.



pursuant to IDEA procedures was reasonably calculated to enable the student to receive educational benefits. *Id.*; *K.E. ex rel. K.E.*, 657 F.3d at 804.

### **PROCEDURAL VIOLATIONS OF FAPE**

We must first determine whether the District complied with the procedures set forth in the IDEA. In the present case, Parent has alleged no procedural violations of the IDEA in her complaint, at the prehearing conference or during the due process hearing. Parent acknowledges that Student has an IEP but alleges that the IEP lacks appropriate goals and programming to provide FAPE to Student. As these allegations are purely substantive, there are no allegations of a procedural nature stated by Parent that require analysis by this hearing officer.

### **SUBSTANTIVE VIOLATIONS OF FAPE-WHETHER THE 2019-2020 IEP WAS APPROPRIATE IN LIGHT OF STUDENTS CIRCUMSTANCES**

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that no such violations occurred, it is now necessary to consider whether the District's actions resulted in a substantive denial of a FAPE to Student. Prior to March 22, 2017, Eighth Circuit law provided that if a student received "slight" or "de minimis" progress, then he or she was not denied educational benefit. *K.E. ex rel. K.E.*, 647 F.3d at 810; *Paris Sch. Dist. v. A.H.*, 2017 WL 1234151 (W.D. Ark 2017). On March 22, 2017, however, the United States Supreme Court "rejected the 'merely more than de minimis' standard that had previously been the law of the Eighth Circuit." *Paris Sch. Dist.*, 2017 WL at 4 (citing *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1 No. 15-827*, 2017 WL 1066260, 580 U.S. \_\_\_ (2017)).

In *Endrew F.*, the standard set forth by the Court is "markedly more demanding" as compared to the "merely de minimis" test outlined in *Rowley*. *Endrew F.*, 2017 WL 1066260, at \*1000. The court stated the following;

It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom but is satisfied with barely more than de minimis progress for those who cannot. When all is said and done, a student offered an educational program providing “merely more than de minimis” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly...awaiting the time when they were old enough to “drop out”.

Endrew F., 2017 WL 1066260, at \*1001 (citations omitted). The Court held that the IDEA requires, even demands, more. Specifically, the IDEA requires that students under the Act be provided with an “educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Id.

The IEP is the guiding document and primary method for providing special education services to disabled children under the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988). “Through the development and implementation of an IEP, the school provides a FAPE that is ‘tailored to the unique needs of a particular child.’” *Paris sch. Dist.*, 2017 WL 1234151, at \*5 (citing *Endrew F.*, 2017 WL 1066260, at \*1000). An IEP is not designed to be merely a form but, instead, a substantive document that is developed only after a district has carefully considered a student’s “present levels of achievement, disability, and potential for growth.” Id. (citations omitted). Pursuant to *Endrew F.*, a district “must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 2017 WL 1066260, at \*1000. For most students, to comply with this standard, providing FAPE “will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade.” Id. However, in the event that this is not possible, the education of a disabled child still needs to be “appropriately ambitious” in light of a student’s individual circumstances. Id.

Every IEP, pursuant to the IDEA is required to include: (1) a statement of a student’s present levels of academic achievement and functional performance; (2) a description of how a student’s disability affects his or her involvement and progress in the general education curriculum; (3) annual

goals that are measurable, as well as a description as to how progress toward stated goals will be measured; and (4) a description of special education and related services provided to student. 20 U.S.C. 1414 (d)(1)(A)(i)(I)-(IV).

In the present case, Parent alleges that Student was denied FAPE because programming, services, and goals stated in the 2019-2020 IEP are not reasonably calculated to enable Student to make appropriate progress in light of her circumstances. This hearing officer disagrees. The 2019-2020 IEP document meets the requirements set forth in the IDEA.<sup>43</sup>

The District began classes for the 2019-2020 school year on August 13, 2019. Parent filed for due process on September 11, 2019. Student did not begin classes until sometime mid-October 2019. Because the Student was not in school, and therefore not receiving services under the 2019-2020 IEP, prior to the Due Process hearing request being filed, there was zero evidence presented to support the Parents allegation that the programming, services, and goals stated in the 2019-2020 IEP are not reasonably calculated to enable the Student to make appropriate progress in light of her circumstances. To the contrary, although outside the time frame for this hearing, the testimony by Student's teacher Diann Skelton, showed that since Student has been present in school, Student, "knows everything, she answers every question, you know. But she does have trouble. The worst she has ever done for me is on spelling dictation. By the time I got to the point that she was missing words, they were tenth, eleventh, and twelfth-grade words".<sup>44</sup> Student is currently in the ninth grade and all evidence presented suggests not only is Student making progress but from the Students grades on her report card also indicate student is learning as her lowest grade is a 74 with most grades in the 80s and 90s.<sup>45</sup> Based on these facts, this hearing officer finds that Parent has failed to present sufficient evidence to support her allegation that the District denied Student a FAPE between May 10, 2019 and September 11, 2019, specifically that the

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<sup>43</sup>Hr'g Tr., Ex. Vol. 1, Ex. 18.

<sup>44</sup> Hr'g Tr. Vol. II. Pp. 24-26

<sup>45</sup> Hr'g Tr., Ex. Vol. 1, Ex. 22

2019-2020 IEP did not include appropriate goals and programming designed to provide education benefit and allow Student to make progress appropriate in light of her circumstances.

### **CONCLUSION**

Having considered Parent's allegations, and in light of the findings and conclusion above, it is the conclusion of this Hearing Officer that Student was not denied FAPE between May 10, 2019, and September 11, 2019 as a result of substantive violations of IDEA.

### **ORDER**

The results of the testimony and evidence warrant a finding for the District. Specifically, Parent introduced insufficient evidence in the record to establish by a preponderance of the evidence that District denied Student FAPE between May 10, 2019, and September 11, 2019.

### **FINALITY OF ORDER AND RIGHT TO APPEAL**

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which 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**

**/S/ Dana McClain**  
**HEARING OFFICER**

**11/25/2019**  
**DATE**