

ARKANSAS DEPARTMENT OF EDUCATION
Special Education Unit

XXXXXXXXXXXXXXXXXXXXX
GUARDIANS OF XXXXXX

PETITIONER

VS.

CASE NO. H-20-10

JACKSONVILLE NORTH PULASKI
SCHOOL DISTRICT

RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

ISSUES PRESENTED

Whether the Jacksonville North Pulaski School District (hereinafter "District" or "Respondent") denied XXXXXX(hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE") between April 23, 2019, and October 7, 2019, in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. 140001485, as amended (hereinafter "IDEA"), by failing to make a timely referral; failing to conduct a comprehensive evaluation; failing to identify student as a child with a disability in need of special education services; failure to develop an appropriate individualized education plan (hereinafter "IEP"), in the Least Restrictive Environment ("hereinafter "LRE"); and failure to provide occupational therapy services. ¹

¹ See Due Process Complaint and Guardian's Post-Hearing Brief.

PROCEDURAL HISTORY

On October 7, 2019, the Arkansas Department of Education (hereinafter “Department”) received a written request from Guardians, through counsel, to initiate due process hearing procedures on behalf of Student. Based on Guardians’ complaint, Guardians requested a due process hearing because they believed the District failed to comply with the IDEA by failing to timely evaluate student, failing to make a timely referral; failing to conduct a comprehensive evaluation; failing to identify student as a child with a disability in need of special education services; failing to develop an appropriate individualized IEP, in the LRE; and failing to provide occupational therapy services.²

In response to the Guardian’s request for a hearing, the Department assigned the case to an impartial hearing officer. Thereafter, the date of November 12, 2019, was set as the date on which a hearing would commence if the Guardians and District failed to reach a resolution prior to that time.³ On November 7, 2019, a pre-hearing conference was conducted via telephone. Counsel for both parties participated in the pre-hearing conference call. During the prehearing conference, the parties discussed unresolved issues to be litigated at the hearing of this matter, as well as potential witnesses and evidence necessary to address the same.⁴

On November 12, 2019, the closed hearing of this matter commenced. Testimony was heard on November 12, 2019, November 13, 2019, November 14, 2019, November 22, 2019, and December 5, 2019. All testimony was heard in person. November 12, 13, and 14, 2019 testimony was heard at the Jacksonville North Pulaski Administration Building. On November 28, 2019, Guardians filed a motion requesting reasonable accommodations, including a new location for the continued hearing and a microphone system so that XXXXXXXXX, Guardian, who is hard of hearing, could fully participate in the hearing. The District secured a new location and Department secured a sound field system to be used

² See Due Process Complaint.

³ See Pre Hearing Con. Tr., See hrg. Tr., Vol. 1.

⁴ See Pre hearing Con. Tr.

during the rest of the hearing. The testimony on November 22, 2019, and December 5, 2019, was heard at the Jacksonville North Pulaski School District, Adkins PreK Center. When asked if the accommodations were satisfactory to the Guardians, counsel answered affirmatively.⁵ The hearing concluded on December 5, 2019.

The following witnesses testified in this matter: Belinda Lawrence, special education teacher, Gregory Hodges, Supervisor of Elementary principals and Support services for the District⁶; Brianna Boyce, School Psychology specialist with the District; Hope Ericson, Assistant Principal at Bayou Meto elementary school⁷; Pashawna Jones, Principal at Bayo Meto Elementary School; Erin Brakebill, speech pathologist; Ashley Griffin, Occupational therapist⁸; Whitney Hillman, classroom teacher⁹; Robin Gardner, Occupational Therapist with Jacksonville North Pulaski School District; XXXXXXXX, Guardian grandparent; XXXXXXXX, Guardian Grandparent; XXXXXXXX, Grandparent; and XXXXXXXX, Grandparent.

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. Guardians were represented by Theresa L. Caldwell, and the District was represented by Scott Richardson.

Both parties were offered the opportunity to submit post-hearing briefs. Counsel for both parties timely submitted a brief for consideration by this hearing officer.

⁵ See Hrg. Tr., Vol IV.

⁶ See Hrg. Tr., Vol I. and Voll II.

⁷ See Hrg. Tr., Vol II, and Voll III.

⁸ See Hrg. Tr., Vol III, and Vol IV.

⁹ See Hrg. Tr., Vol IV.

FINDINGS OF FACT

Student is a five-year-old male who is enrolled in the Jacksonville North Pulaski School District. Student is in kindergarten at Bayou Meto Elementary school.

Student has diagnoses of, Sensory Processing Disorder, ADHD combined type and Autism spectrum disorder.¹⁰ Student has a history of developmental delays. Records indicate Student was the product of a 41-week gestation. There was reportedly drug use in the biological home, although mother denies drug use during pregnancy. Student was placed in the care of his maternal grandparents at 3 weeks old due to alleged neglect. November 5, 2014, maternal grandparents XXXXXXXXX (Guardians) were granted permanent guardianship of student.¹¹ Student attended Pediatrics plus developmental preschool in Sherwood before enrolling in Jacksonville North Pulaski School District.¹² Guardians requested a waiver for student to stay in preschool an additional year. In March 2019, Guardians were notified that their waiver request had been denied.

On April 23, 2019, Guardian went to Bayo Meto Elementary (student's zoned school) and registered student for kindergarten. Also on April 23, 2019, Guardian took a letter addressed to the Principal, Dr. Jones, requesting student be evaluated for special education services.¹³ On May 31, 2019, Guardian completed paperwork for Student to attend kindergarten at the Jacksonville Lighthouse Charter School.¹⁴ In July 2019, Guardian dropped of the Dennis Developmental evaluation diagnosing Student with ADHD-Combined type, to the Bayou Meto Elementary School.¹⁵

Student attended school at Jacksonville Lighthouse Charter School August 14-16, 2019. On August 16, 2019, Hope Ericson, the Assistant Principal and 504 Coordinator contacted Guardian to see if

¹⁰ Parent Ex. Vol I, Pgs 14, 33, & 84.

¹¹ Parent Ex. Vol I, Pg. 135.

¹² Parent Ex. Vol I, Pg. 11.

¹³ Parent Ex. Vol1, Pgs. 1 & 2

¹⁴ District Ex. Vol III, Pg. 9.

¹⁵ Parent Ex. Vol I, pg. 3.

Student would be attending Bayou Meto Elementary, and tell her she would be contacted by Ms. Lawrence, the school secretary. On August 19, 2019, Ms. Lawrence called Guardian and inquired why Student wasn't in school. Guardian explained Student was attending school at Light House Charter School. After Dr. Phshuna Jones, principal of Bayou Meto Elementary explained the referral process to the Guardian, he explained that Student was being evaluated for Autism Spectrum Disorder and would be at school (Bayou Meto Elementary) the next day.

August 20, 2019, was Student's first day of school at Bayou Meto. Also on August 20, 2019, Guardian took a letter to Dr. Jones, Principal at Bayou Meto, again requesting an evaluation of Student for special education services. The letter explained that Student has diagnoses of Sensory Processing Disorder and ADHD combined, and that on August 19, 2019, Student was tested for Autism Spectrum Disorder and it would be 3 weeks before those results are available.¹⁶

On August 20, 2019, a Special Education referral form was completed by the District. Notice of conference form was provided to the Guardians on August 20, 2019, setting a referral meeting for August 22, 2019. The purpose of the meeting was to consider a referral for special education and related services.¹⁷ On August 22, 2019, a referral conference was held and it was determined not to test at this time because there was no data to support academic deficits. It was noted on the notice of action form that Student had been evaluated for Autism and Guardians would provide results when available.¹⁸ There was a consent signed by Guardians for an occupational therapy screening.¹⁹

On August 27, 2019, Student received 2 days of in-school suspension Aug. 28-29, 2019. While in line for the bathroom Student had pushed other students, would not stand still, and pulled Mrs. Hillman's hair while she held his hand. In-school suspension involved Guardian bringing Student to

¹⁶ Parents Ex. Vol I, pg. 72 & 73.

¹⁷ Parents Ex. Vol I, pg. 75.

¹⁸ Parents Ex. Vol I, pg. 82.

¹⁹ Parents Ex. Vol I, pg. 79

Bayou Meto, Student loading a bus and being transported to Bobby Lester, another campus within the district. On September 3, 2019, as Guardian and Mrs. Hillman were speaking Student began turning lights off and on, and when Mrs. Hillman got between student and the light switch, Student clawed at her face stating the lights hurt his eyes.

September 5, 2019, Guardian took a copy of the REACH evaluation diagnosing Student with Autism Spectrum Disorder to the Principal at Bayou Meto elementary. September 6, 2019, the District held a meeting about 504 eligibility for Student. The decision was that Student qualified for services under 504 plan.²⁰ A 504 plan was developed and it was determined that an occupational evaluation was needed.²¹

On September 10, 2019, Student scratched another student in the face because he wanted to sit in the chair the other student was sitting in. On September 11, 2019, Student received 4 days in-school suspension for hitting other students, headbutting Mrs. Hillman in the stomach and not following directions.²²

On September 16, 2019, Mrs. Haywood, the Assistant Principal at Bobby Lester (in school suspension), called Guardian and stated that Student was being very aggressive, hitting his teaching, etc., and that Student would need to spend the remaining in school suspension time at home.

On September 17, 2019, Guardian was contacted and informed that since Student was on a 504 plan they needed to meet to discuss Student's behavior because they were getting close to 10 days of suspensions. In addition, Guardian was told they would be discussing the possibility of Student attending

²⁰ District Ex. Ex Vol. III, pg 26.

²¹ District Ex. Ex. Vol. III, pg 28.

²² District Ex. Ex. Vol. III, pgs 30-31.

the Alternative learning environment along with other options. ²³ The meeting was scheduled for September 20, 2019.

On September 19, 2019, Guardian was contacted by the District to inform her that Student had hit another student while on the slide and when the teacher tried to get him off the slide he kicked him. Starting September 20, 2019, Student would begin two days of out of school suspension and that his Occupational evaluation would not be completed, and would be rescheduled upon his return to school on September 24, 2019. A behavior intervention observation and recommendations and an occupational therapy evaluation were conducted on Student's return to school on September 24, 2019. ²⁴ As a result of the occupational therapy evaluation, Robyn Garner, OTR/L, occupational therapist stated, "It is recommended that XXXXXX(Student) receive school-based occupational therapy services for 60 minutes a week to address ADL's and sensory processing skills that appear to be interfering with his academic environment with learning and participation." ²⁵

On September 20, 2019, a discipline review conference under Section 504 was held. Guardians attended with their Attorney Mrs. Caldwell, and at that time it was stated that Guardians wanted Student evaluated for IDEA, or they would proceed with a due process hearing. Admittedly this meeting became contentious between the guardians and the District. ²⁶

On October 1, 2019, after the development of the 504 plan and the behavior intervention observation and recommendations were put in place, Guardian received discipline notice stating Student was being suspended out of school for four days.²⁷ On the Work, Attitude, and Conduct (WAC) report completed by the classroom teacher Whitney Hillman under academic performance, she checked waste

²³ Hr'g Tr. Pgs., 140-145.

²⁴ District Ex. Ex. Vol. III, Pgs, 58-66.

²⁵ District Ex. Ex. Vol. III, Pg. 66.

²⁶ District Ex. Ex. Vol. III, Pg. 35.

²⁷ District Ex. Ex. Vol. III, Pgs, 68-70.

class time and incomplete work. Under attitude and conduct Mrs. Hillman checks inattentive, temper flare-ups, speaks out often, disruptive, defiant, defensive, withdrawn, talks back to the teacher, responds negatively to correction, disrespectful to classmates, difficulty accepting mistakes. In addition under comments, Mrs. Hillman writes that “XXXXXXXXX(Student) is often disruptive in the classroom the teacher tries her hardest to keep him separated in the classroom because he often likes to touch other students.”²⁸ Between August 28, 2019, and October 7, 2019 student was suspended for 12 days. On October 7, 2019, Guardians filed a Due Process Hearing Request.²⁹

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). 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. 20 U.S.C. §1401(3)(A). The term “special education” means specially designed instruction. 20 U.S.C. 1402(29). “Specially designed instruction” means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery of instruction. 34 C.F.R. §300.26(b)(3).

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 (8th Cir. 2011)*. The

²⁸ District Ex. Ex. Vol. III, pg 70.

²⁹ See Due Process Hearing request.

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 pursuant to IDEA procedures was reasonably calculated to enable the student to receive educational benefit. *Id.*; *K.E. ex rel. K.E.*, 657 F.3d at 804. In the present case, there was no IEP developed so we must only decide whether the District has complied with the procedures set forth in IDEA and whether that noncompliance rises to a substantive denial of FAPE.

PROCEDURAL VIOLATIONS OF FAPE

We must determine whether the District complied with the procedures set forth in the IDEA between April 23, 2019, and October 7, 2019. In the present case, Guardians allege the District failed to timely hold a referral conference, failed to timely evaluate Student, failed to identify Student as a student with a disability in need of special education services, and failed to timely provide occupational therapy services.³⁰

Some circuits have expressly stated that child find claims are procedural in nature and, therefore, must be analyzed prior to determining whether there was a substantive violation of the IDEA. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249-250 (3rd cir. 2012); *D.A. ex rel. Latasha A. v Houston Indep. Scho Dist.* 629 F.3d 450, 453 (5th Cir. 2010); *Bd. Of Educ. of Fayette Cnty. V. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007).

Congress enacted the IDEA for the purpose of ensuring that all children with disabilities have access to a “free appropriate public education.” 20. U.S.C. 1400(d)(1)(A). In order to ensure that all children with disabilities receive a FAPE, school districts are required to satisfy a “child find” obligation. 20 U.S.C. 1412(a)(3). Specifically, districts must ensure that:

All children with disabilities residing in the State, regardless of the severity of

³⁰ See Due Process Complaint and Guardians post hearing brief.

their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. §1412(a)(3)(A).

Child find extends to children who are suspected of having a disability and in need of special education, even though they are advancing from grade to grade and performing on grade level. 34 C.F.R. §300.111(c)(1). Once a child is identified as potentially have a disability, the child's school district is required to conduct a full and individual evaluation to determine whether the child has a disability and is in need of special education and related services. In the present case the Student presented to the District prior to his kindergarten year with multiple diagnoses.

On April 23, 2019, Guardian provided a letter to the District requesting Student be evaluated for special education services. In the letter, the Guardian stated that Student had been receiving Speech and Occupational therapy since April of 2017 and had been attending Pediatric Plus Developmental preschool since March 2018. Additionally, the letter stated that Student had been diagnosed with Sensory Processing Disorder and ADHD-Combined Type.³¹ As a result of said letter, the District failed to set and hold a referral conference as required by IDEA. The ADE spec. Ed. Rules 4.03.1 states that a referral conference must be scheduled within seven days of a written referral. The District suggests the signature obtained by the Gaurdian on the April 23, 2019 letter was not dated and therefore there was no proof the Guaridan provided the letter to anyone at the District on April 23, 2019.³² The Hearing officer finds this argument unpersuasive, and somewhat disingenuous. In July 2019, the District was provided the UAMS evaluation which diagnosed Student with ADHD combined type. Once again the District failed to act. Child find is an ongoing responsibility for the District.

³¹ Parent Ex. Vol I, pg 1.

³² See District Post hearing brief.

On August 20, 2019, the Guardians made their second request for Student to be evaluated for special education services. In addition, the Guardians stated that on August 19, 2019, Student had been evaluated for Autism Spectrum Disorder and that evaluation would be completed in approximately 3 weeks. On August 20, 2019, a referral for special education service was completed by the District and a referral conference scheduled for August 22, 2019. On August 22, 2019, a special education referral conference was held. Notice of action form states the team reviewed Occupational Therapy evaluation, speech evaluation, psychological evaluations, guardians input and a one-day observation by the teacher. All of the evaluations at the referral conference were provided by the guardians. Although there were several District personnel in attendance, per documentation and testimony there was no one was present and qualified to explain the psychological evaluations or occupational evaluations which is required under IDEA. Even though evaluations and Guardian input provided extensive information about behavior deficits, diagnoses, and concerns, the decision was not to evaluate at that time because Student did not show any deficits in academics.³³ Student had only been in school for two (2) days at the time of the referral conference. Student's behavioral challenges began almost immediately and resulted in 12 days of suspension between August 20, 2019 -October 7, 2019. The behavior deficits exhibited by Student during this time could certainly have been attributed to his diagnoses of ADHD, Autism Spectrum Disorder and Sensory Processing Disorder.

On September 5, 2019, the District was provided the REACH evaluation diagnosing Student with Autism Spectrum Disorder. Even with the Autism diagnosis, the District decided not to refer for special education and instead held a meeting for placement on a 504 plan on September 6, 2019. Testimony by the District suggests the District did not agree with the Autism Spectrum Diagnosis provided by the REACH evaluation, however, they included an Autism diagnosis on Student's 504 plan, suggesting they would be programming for said diagnosis.³⁴ The District's choice to elect how Student might respond to

³³ Parent Ex. Vol I, pg 83.

³⁴ District Ex. Vol III, pg 26.

behavioral intervention through a 504 plan, although laudable, are not provisions of IDEA. Testimony from the District suggested there was a behavior plan component to Student's 504 plan. Indeed there was a behavior Intervention Observation and Recommendations drafted by Kristie Newborn on September 24, 2019³⁵, but there is no functional behavior assessment or formal behavior plan in the record. From September 6, 2019, when the District developed the 504 plan until October 7, 2019, when Guardians filed for due process, Student was suspended for 10 days. From September 24, 2019, when the Behavior Intervention and Observation and Recommendations were put in place, Student was suspended 4 more days prior to October 7, 2019, Thus suggesting the "behavioral recommendations" developed by the District were ineffective in addressing student's behavioral deficits.

From District personnel testimony they misunderstood their obligations under the IDEA with regards to evaluation and eligibility, as they continued to contend since Student had no academic deficit, he did not need to be evaluated because there was no way he would qualify for special education services. All personnel who testified stated Student could perform academically and was learning, and therefore could not possibly qualify for special education and related services. The hearing officer does not deny Student was performing academically. However, the lack of academic deficit cannot be the sole reason for not referring or evaluating a student.

The United States Department of Education (USDE) continues to reiterate its position in this regard, stating:

"I am writing to draw your attention to the Office of Special Education Programs'(OSEP) December 20-2013 letter to Dr. Jim Delisle (letter to Delisle) regarding determining Eligibility for special education and related services under the Individuals with Disabilities Education Act (IDEA) for children with disabilities with high cognition; student who Dr. Delisle terms "twice exceptional students" or "2E students." Letter to Delisle pointedly Addresses children with hight cognition who may be eligible for special education and Related services as a student with a specific learing disability, but also cites to the Broader requirements in 34 C.F.R. 300.304(b)(I) and (2) that state in part-

... "in determining whether a child has a disability..the IDEA requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental

³⁵ District Ex. Vol. III, pgs, 58-61.

And academic information about the child, and prohibits the use of any single measurement or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.”

‘In spite of the guidance provided in the Letter to Delisle, we continue to receive letters from those who work with children with disabilities with high cognition, particularly those with emotional disturbance or mental illness, expressing concern that some local education agencies (LEA) are hesitant to conduct initial evaluations to determine eligibility for special education and related services for children with high cognition. In transmitting OSEP Memo 15-08, I am requesting that you widely distribute Letter to Delisle to the LEAs in your State, and remind each LEA of its obligation to evaluate all children, regardless of cognitive skills, suspected of having one of the 13 disabilities outlined in 34 CFR 300.8’³⁶

‘The IDEA does not specifically address “twice exceptional” or “2E” students. It remains the Department’s position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations.’ The District's contention that Student can not qualify for special education services solely on the fact that he doesn’t have an academic deficit fails under the IDEA requirements. Per the discussion above this hearing officer finds a number of IDEA procedural violations by the District. As such, we must now look to see if those procedural violations rise to the level of a substantive denial of FAPE.

Substantive Violations of FAPE

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that District failed to appropriately evaluate Student and engage in child find activities pursuant to IDEA, it is now necessary to consider whether the District’s actions resulted in a substantive denial of FAPE to Student. Even if a school district violated IDEA procedures, it does not automatically follow that the school district has denied the child a FAPE. *K.E. v. Indep. Sch. Dist. 15*, 647 F.3d 795, 804 (8th Cir. 2011). Rather, a school district’s educational plan for a given student will only be set aside

³⁶ OSEP Memo-15-08.

for IDEA procedural violations “if the procedural inadequacies compromised the pupils right to an appropriate education, seriously hampered the parent's opportunity to participate in the formulation process, or caused a deprivation of educational benefit.” Id. At 804-805.

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 the educational benefit. *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), 137 S.Ct. 988 (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.*, 137 S. Ct. at 1000.

The Court state 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 miminis progress for thos 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. 137 S.Ct. at 1001. The Court held that the IDEA requires, even demands, more. Specifically, the IDEA requires that students under the Act be provided with an “education program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Id.

The IEP is the guiding dicoument and primary method for providing special education services to disabled children under 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. 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 is not possible, the education of a disabled child still needs to be "appropriately ambitious" in light of a student's individual circumstance. Id.

In the present case, regarding the issues of child find, and evaluations, it is the opinion of this Hearing Officer that the District's failure to properly evaluate Student in a timely manner, to properly consider all evaluations provided by the Guardians, to provide qualified professionals to interpret evaluations and to properly consider Student for special education and related services between April 23, 2019, and October 7, 2019, resulted in a substantive denial of FAPE.

CONCLUSION

After hearing each witness and evaluating their credibility and having considered Parents' allegations of procedural and substantive due process violations, and in the light of the findings and conclusions supra, it is the conclusion of this hearing officer that Student was denied FAPE between April 23, 2019, and October 7, 2019, as a result of procedural and substantive violations of IDEA.

ORDER

The results of the testimony and evidence warrant a finding for the Guardians. Specifically, Guardians introduced sufficient evidence in the record to establish by a preponderance of the evidence that District denied Student FAPE between April 23, 2019, and October 7, 2019. The district is hereby ordered to take the following actions regarding Student:

1. The District shall secure the services of an independent behavior analyst within fifteen (15) school days.
2. The District shall conduct a Comprehensive evaluation within thirty (30) school days to address all areas of suspected disabilities. The evaluation shall include at a minimum, psychological testing, a functional behavior assessment, speech therapy evaluation to include testing for receptive and expressive language deficits and pragmatics; Occupational Therapy evaluation to address toileting and feeding deficits and any other evaluations determined necessary by the IEP team.
3. The District shall utilize the services of the behavior analyst to provide expertise in the development and implementation of a functional behavior assessment and the subsequent development of a behavior support plan(BIP), if necessary to address the Student's social skills, emotional, behavioral and ADL's deficits, and to provide the District staff any necessary training in the incorporation and implementation of the BIP in the IEP if said IEP is found to be necessary after all evaluations are complete.
4. Upon completion of all evaluations, but no later than March 12, 2020, the District shall convene an IEP meeting to determine if Student is eligible for special education services and if so to develop an appropriate IEP.

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

1/16/2020
DATE