

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT**

**XXXXXXXXXXXXXXXXXX
as PARENTS of
XXXXXX**

PETITIONERS

VS.

**NO. H-22-19
NO. H-22-24**

LITTLE ROCK SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

Issue Presented:

Whether the Little Rock School District (hereinafter "District" or "Respondent") denied XXXXXXXXX (hereinafter "Student") a free, appropriate, public education (hereinafter "FAPE"), during the 2021-2022 school year in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §1400-1485, as amended (hereinafter referred to as "IDEA"), by Discharging Student from Special Education on November 11, 2021?

Procedural History:

On November 18, 2021, the Arkansas Department of Education (hereinafter referred to as the "Department") received a request to initiate a due process hearing from XXXXXXXXX (hereinafter referred to as "Parents", or "Petitioners"), the parents and legal guardians of XXXXXXXXX (hereinafter referred to as "Student") against the Little Rock School District (hereinafter referred to as "District" or "Respondent"). Parents requested the hearing because they believed the District failed to comply with the Individuals with Disabilities Education Act of 2004, 20 U.S.C. 1400-1485, as amended (hereinafter referred to as "IDEA") and the regulations set forth by the Department by not providing Student with appropriate special education services, as noted supra in the statement of issues.¹ At the time that Parents filed their request for a due process hearing, Student was a 7-year-old male enrolled in the kindergarten, specifically enrolled in the Little Rock School District, and attending the XXXXXXXXX elementary school.² Student was a student with a disability under IDEA. Student carried diagnoses of Apraxia, Sensory Processing Disorder (SPD), Asthma, and ADHD.³

¹ See hearing officer File-Petitioner Complaint.

² Parents' Exhibits, pg. 1.

³ Id., at Pg. 156.

In response to the Parent's request for a Due Process hearing, the Department assigned the case to an impartial hearing officer. Thereafter, a prehearing conference was scheduled for December 17, 2021, and the hearing was scheduled for December 20-23, 2021.⁴ On December 14, 2021, Respondent filed a Motion for a Continuance.⁵ Respondent's motion stated that the Little Rock School District was closed for winter break from December 20, 2021-January 3, 2022.⁶ Petitioner did not object to this continuance. The continuance was granted the prehearing conference was rescheduled for January 10, 2022, and the due process hearing rescheduled for January 12-14, 2022. On December 29, 2021, Petitioners filed their second Due Process Hearing request.⁷ On January 9, 2022, Petitioners filed a motion for a continuance and to consolidate Due Process Hearing request one (H-22-19) and Due Process Hearing request two (H-22-24).⁸ Petitioner's Motion stated that the mother of Student had tested positive for COVID-19 on January 8, 2022. Respondent did not object to this continuance or the consolidation of Due Process Hearing Request H-22-19 and H-22-24. The second continuance was granted and the pre-hearing conference rescheduled for January 31, 2022, and the Due Process Hearing was rescheduled for February 1, 2, and 4, 2022.⁹

A prehearing conference was held by Zoom on January 31, 2022. Counsel for both the Parents and the District participated in the prehearing conference. Also present on the Zoom was XXXXXXXXXXXX, parent, Cassandra Steele, Special Education Director for the District, and Sophia Williams, Special Education Supervisor for the District.¹⁰ Discussion was held regarding potential witness issues, where the hearing was to be held, where the witnesses would be, etc.

⁴ See Scheduling order, Due process file

⁵ See Hearing Officer File-Respondent's Motion for continuance.

⁶ Id.

⁷ See Hearing Officer File-DPH H-22-24.

⁸ See Hearing Officer File-Motion for continuance and to consolidate H-22-19 and H-22-24.

⁹ See Hearing Officer File-Order Granting Continuance and Consolidating H-22-19 and H-22-24.

¹⁰ See Prehearing Conference transcript.

Additionally, there was discussion about the Independent Education Evaluation (IEE) and that one had already been secured by the District and therefore the issue raised in H-22-19 by petitioners regarding the completion of an IEE would no longer be an issue for this hearing officer.¹¹ Additionally, the continuation of services under IDEA "stay put" rule was also resolved as the District had restarted IEP services to Student upon his return from Christmas break.

Thereafter the Due Process hearing in this matter began as scheduled on February 1, 2022. Testimony was heard by Zoom February 1, 2, 7, 8, 9, 2022.¹² There was a snowstorm in Little Rock, AR and we were unable to hold the hearing on February 4, 2022. Additionally, there were internet issues throughout the hearing, causing delays.

Present for the Hearing were Theresa Caldwell, attorney for Petitioners, Khayyam Eddings, Attorney for the District, Darlene Hogancamp, Ms. Caldwell's Assistant, Audie Alumbaugh, advocate, XXXXXXXXX, mother, and Cassandra Steele, Direction of Special Education for the District.

The following witnesses testified in this matter: Leeann Griffith, Kathleen Hartnedy, Jamie Ristaino, Liza Smith, Wendy Lyon, Lauren Jones, and XXXXXXXXX.¹³

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.

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements, and both timely submitted briefs in accordance with the deadline set by this Hearing Officer.¹⁴

¹¹ See Prehearing Conference Transcript Pgs. 12-13.

¹² See trail Transcripts Vol. I-V.

¹³ Id.

Findings of Fact

1. Student is a 7-year-old boy in the Little Rock School District. Student is in kindergarten during the 2021-2022 school year.¹⁵ Student is diagnosed with Apraxia, Sensory Processing Disorder (SPD), Asthma and ADHD.¹⁶ Student currently takes Focalin and Clonidine to control symptoms associated with his ADHD.¹⁷
2. During May and June, 2021, Mom exchanged emails and had discussions with District Staff, explaining that her son would be attending kindergarten during the 2021-2022 school year and asking what she needed to do to make sure his needs were met.
3. On July 7, 2021, a Written Referral for special education was made by the Parent.¹⁸
4. On the referral form Mom explained that:

"xxxxxx currently receives speech and occupational therapy via Kidsource, see attached evaluation reports. He previously received early childhood services via LRSD when enrolled at Fair Park Early Childhood during the 19-20 school Year (see additional information section below). Kindergarten was waived for the 20-21 school year. XXXXXX will be entering kindergarten this fall at xxxxxxxx. His mom has requested this conference to review existing data from early Childhood services, current data from outside agency providers, consider Need for additional evaluations, and discuss eligibility for special education Services."¹⁹

¹⁴ See Hearing Officer File-Post Hearing Briefs.

¹⁵ Parents' Exhibits, pg. 1.

¹⁶ Id., pg. 156.

¹⁷ District's Exhibits, pg. 75., Hearing Transcript, Vol. IV., pg. 135.

¹⁸ Parents' Exhibits, pg. 34.

¹⁹ Id.

5. On July 14, 2021, a notice of conference form was sent to mom stating that a meeting would be held by zoom on July 29, 2021, at 10:00 a.m. to consider a referral for special education and related services.²⁰
6. On July 29, 2021, a referral/transition conference was held following a kindergarten waiver year (2020-2021). The team reviewed data including occupational therapy data (from KIDSource, private provider), speech/language data (from KIDSource, private provider), the information provided by the parent, achievement data, and District evaluations of Student from 2019-2020 school year when he attended the District's pre-k program.²¹ Student was assessed by KIDSource on August 24, 2020 in the areas of Speech and Occupational Therapy. Each of his private therapists participated in his referral and evaluation conferences and assisted in the development of his school age IEP. Student's private Speech language pathologist reported scripts for apraxia and phonological disorder and reported the following to the team based off of recent evaluations: articulation abilities within normal limits (AAPS-3 standard score of 87), executive functioning difficulties specifically in task initiation and completion and impulse control associate with ADHD and Sensory Processing Disorder (BRIEF Global Executive Composite of 79), low average phonological awareness skills (CTOPP-2 phonological Awareness score of 82), moderate delays in narrative language (TNL Narrative Language Ability Index of 76), age appropriate receptive and expressive language skills (CELF-5 Core Language Score of 82), and mild to moderate delays in auditory memory and cohesion (TAPS-3 Auditory Memory score of 79, Auditory Cohesion 75). KIDSource Occupational Therapy

²⁰ Parents' exhibits, pg. 35.

²¹ Id. pg. 37.

evaluations were completed on September 14, 2021 and revealed delays in the areas of fine motor and sensory process. The District also had an early childhood comprehensive evaluation that was completed on August 16, 2019, when Student was in the District's pre-k program that was considered by the IEP team, as well as input from mom. After review of all of the information available, the team determined that Student was eligible for special education and related services under the eligibility category of speech or language impairment.²² Further the team decided that additional evaluations were needed. Mom agreed and gave verbal consent. However, the team determined that some of the evaluations they needed could only be completed after Student turned seven years old and therefore in order to stay within the IDEA timelines for evaluations, they delayed mom signing consent until August 16, 2021.²³ An IEP was developed by the IEP team during this July 29, 2021, meeting. The IEP Contained a statement of Student's present level of academic achievement, a statement of measurable annual goals and a statement of the special education and related services to be provided to Student.²⁴ Student was to receive 510 minutes of speech language therapy per quarter, and 30 minutes of occupational therapy per week.²⁵

7. On August 3, 2021, a notice of action was emailed to the parent stating that the team determined that review of existing data revealed the need for additional evaluations and a comprehensive evaluation was recommended. Additionally, it was noted that Consent is required for initial placement, and re-evaluation/comprehensive

²² Id. pg. 39.

²³ District Exhibits, pgs. 313-314.

²⁴ Parents' Exhibits, pgs. 1-11.

²⁵ Id.

evaluation, but no written consent was requested at this time because the team determined mom needed to sign consent on the first day of school, August 16, 2021.²⁶

8. On August 9, 2021, mom sent an email stating she had been able to thoroughly review the IEP and made the following suggested changes:

- "1. Under Background (top of page 3) will you please add all his existing diagnosis...ADHD, Asthma, phonological and Sensory Processing Disorder, and Sleep Disorder.
2. Under supplementary aids and services, program modification and accommodations, and/or supports for personnel in general education or other education-related settings (toward to bottom of page 5) please include the following classroom modifications/accommodations in addition to the ones already written...
 - a. Repeat instructions and check for understanding
 - b. Direct verbal addresses by teacher for transitions, changes to schedule, and warning before alarms/drills
 - c. A chewy, fidget toys, resistance band, weighted lap blanket, noise cancelling headphones, and wiggle seat should be available and utilized as needed as long as it is not disruptive to others
 - d. short sensory breaks during class
 - e. Student should be allowed to stand while completing assignments
 - f. Use reinforcers to help complete a task and manage behaviors
 - g. All injuries should be assessed by the school nurse and parents notified due to Student having extremely high pain tolerance
 - h. Monitor for putting non foot items in mouth (only when Student is seeking oral input)
 - i. Make sure Student has a coat on in the cold and rests/drinks water when too hot due to students inability to regulate body temperature

²⁶ Parents' Exhibits, pgs. 41-42, District Exhibits, pgs. 313-314.

3. Under special education-direct instruction in speech/language therapy (top of page 8) please add the time/amount of ST minutes per quarter."²⁷
9. On August 9, 2021, by email, mom also requested a time to meet with Student's teacher to discuss a safety plan for his kindergarten year.²⁸
10. On August 11, 2021, notice of conference was sent to mom stating that a meeting would be held by Zoom on August 13, 2021, in order to meet with Student's teacher prior to the first day of school.²⁹
11. Informed consent was given by mom, but it is unclear in the IEP documents what the informed consent applied to as there was nothing discussed at the August 13, 2021 meeting that required informed consent. Additionally, the informed consent electronically signed by mom is dated August 17, 2021.³⁰ Through testimony and emails, it is clear that although the special education paperwork fails to iterate what mom's informed consent was specifically for, mom was fully aware and understood that her informed consent was to implement Student's 2021-2022 IEP and for a comprehensive evaluation that was to be conducted by the District.³¹ The IEP was amended to address special factors and parent agreed to immediate implementation of the action being proposed. A safety plan was also discussed at this meeting.³²
12. On August 11, 2021, KIDSource (private therapy provider) completed a speech evaluation on Student. The Arizona Articulation Proficiency Scale-Third Edition (Arizona 3), Behavior Rating Inventory of Executive Function-Second Edition

²⁷ District Exhibits pgs. 314-315.

²⁸ District Exhibits, pg. 305.

²⁹ Parents' Exhibits, pg. 43.

³⁰ District Exhibits, pg. 26. Parents' Exhibits pg. 44.

³¹ Id. at pgs. 311-314.

³² Parents' Exhibits, pgs. 45-46.

(BRIEF2)-parent form, Test of narrative language (TNL), Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5), Hearing screening, and oral facial examination were completed. Summary stated:

- "1. His AAPS-3 Standard score of 97 falls .2 standard deviations below the norm Indicating no delay.
2. XXXXXXXX CELF-5 scores are as follows: Core Language Score -90-falls .67 standard deviations below the mean, indicating no delay; Receptive language Index-98-falls .13 standard deviation below the mean, indicating no dela; Expressive Language Index-89-falls standard deviations below the mean, indicating no delay; Language Content Index-94-falls .4 standard deviations below the mean, indicating no delay; Language Sturcture Index-90- falls .67 standard deviations below the mean, indicating no delay. His Pragmatic profile score of 4 falls 2.08 standard deviations below the mean indicating a severe delay.
3. Based on the BRIEF and the CELF-5 Pragmatic Profile pragmatic (social) language and executive functioning skills are severely delayed. Results from the BRIEF indicate that XXXXXXXX social communication and executive functioning skills are delayed when compared to age matched peers.
4. XXXXXXXX Reading Comprehension score of 74 on the OWLS-2 falls 1.73 standard deviations below the mean, indicating a moderate delay. His Written Expression score of 120 falls above the mean, indicating no delay.
5. Danial qualifies for speech language therapy at this time. It is recommended he receive speech services 2-3 times per week for a total of 120 minutes."³³

13. On September 16, 2021, and September 20, 2021, KIDSource (private therapy provider) completed an occupational therapy evaluation on Student. The Bruininks-Oseretsky Test of Motor Proficiency-Second Edition (BOT-2), Behavior Rating Inventory of Executive Function-Second Edition (BREIF2)-Parent form, Child Sensory Profile 2, and the Testing of Handwriting Skills-(THS-R) were completed.

The evaluator summarized the results as follows:

Based on clinical observation, standardized, and non standardized assessments, XXXXXXXX demonstrates a delay in fine motor and sensory processing skill development. His performance on the BOT-2 assessment placed him with an overall z-score of -1.1 for all subtests and a score of -1.4 for fine motor precision and -1.6 for upper limb coordination subtests. XXXXXXXX mother completed the Sensory Profile 2, which reported that he has difficulties processing various types of sensory input "much more than others". His scores on the BRIEF-2 which

³³ District Exhibits pgs. 69-73.

were retrieved from his recent speech language therapy evaluation, reported that he exhibits difficulties tolerating and completing executive function tasks in all areas assessed on the BRIEF-2. XXXXXX would benefit from direct 120 minutes of individualized therapy services to address these delays which are affecting his occupation performance in fine motor, visual motor, executive function, handwriting and sensory processing needed for the classroom and daily home environment."³⁴

14. On October 1, 11, 12, 2021, a psychoeducational evaluation was completed. Student was administered the Revised Attention Deficit Hyperactivity Disorder(ADHD) Behavior Coding System, revised (ADHD-BCS, R) Informal observation, the Kaufman Assessment Battery for Children, Second Edition Normative Update, the Kaufman Test educational Achievement, Third Edition (KTEA-3), the Comprehensive Test of Phonological Processing, Second Edition (CTOPP-2), and the Behavior Assessment system for Children, Third Edition (BASC-III) teacher Rating Scale-Child (TRS-C). The evaluator concluded:

"The results of this evaluation indicated that XXXXXX is of Average intellectual ability according to the KABC-II NU Fluid Crystallized Index of 102. On achievement measure as well as the CTOPP-2, all areas of achievement are average to above average except word recognition, letter naming facility, and math computation, which are slightly below average when compared to same age peers. Because XXXXXX is seven (7) years old and in kindergarten and did not attend a structured preschool last year, grade-based norms were utilized. When compared to other students in kindergarten, his performance is Average to High in all areas. These results are consistent with teacher reports, classroom performance, and performance on MAP testing."³⁵

³⁴ Parents' Exhibits Pg. 235.

³⁵ District Exhibits, pgs. 94-109.

15. On October 8, 2021, an occupational evaluation was conducted by the District. The Sensory Processing Measure was given to the classroom teacher to complete. This test is used to rate how Student is doing within the school environment. Student scored Typical in all areas. There were no tests completed by the District's occupational therapist Liza Smith. Ms. Smith completes an assessment area in which she states that "XXXXXX is functioning well within his learning environment. He is able to complete all tasks assigned to him, follow classroom behavior guidelines, interact with his peers in social settings, and transition through the building and into new classroom settings seamlessly. XXXXXX is able to communicate his needs and the teacher states he is independent with needing a break and in accessing the 'brain break' box."³⁶ Ms. Smith stated that because she worked with XXXXXX she did not see any areas of deficit that needed to be evaluated.³⁷
16. On October 11, 2021, a speech and language evaluation was conducted by the District. Test conducted included: CUBED narrative language measure-listening (CUBED NLM), Executive Functions Tests-elementary (EFT-E), Pragmatic Language Skills Inventory (PLSI), and Clinical Evaluation of Language Fundamentals-5 (CELF-5) pragmatics profile. The evaluator found:
- "At this time, scores achieved on standardized assessments fall within the range of his expected level of ability across all areas tested, with performance on several measures yielding above average performance. XXXXXX demonstrates above average narrative language abilities, as determined by his performance on the CUBED Narrative Language Measure, as well as the Test of Narrative Language

³⁶ Parent Exhibits, pg. 229.

³⁷ Hearing Transcript Vol. II, pg. 157.

completed by KIDSource. His executive functioning skills fall within the average range, as indicated by performance on the Executive Functions Test-elementary. He also exhibits above average social skills, as indicated by ratings scales completed by his classroom teacher on the Pragmatic Language Skills Inventory and the CELF-5 Pragmatics profile.”³⁸

17. On October 18, 2021, a notice of conference form was sent to Parent, stating that a meeting would be held on October 29, 2021, and the purpose of the meeting was to review results of recent re-evaluations.³⁹
18. On November 4, 2021, a Notice of Conference was sent to Parents, stating that a meeting would be held November 12, 2021, and the purpose of the meeting was to review results of recent re-evaluations.⁴⁰
19. On November 11, 2021, an IEP meeting was held. Participants at this meeting included: Kathleen Hartnedy, general education teacher, L. Griffith, LEA representative, Liza Smith, Occupational therapist, XXXXXXXXXX, Parent, Jamie Ristaino, Person to interpret instructional implication of evaluation results, Seven Helmick, school principal, L. Griffith, special education teacher, LeeAnn Griffith, speech pathologist, Audie Alumbaugh, Advocate, Wendy Lyon, Outside Agency speech pathologist, Lauren Jones, Outside Agency Occupational therapist.⁴¹ The team discussed the Comprehensive evaluations (psychoeducational, speech-language, occupational therapy), outside evaluation reports and private therapist input, parent input, teacher input, input from parent's advocate, classroom based assessments,

³⁸ District Exhibits, pgs. 75-79.

³⁹ Parents' Exhibits, pg. 47.

⁴⁰ Id. pg. 48.

⁴¹ Id. at 49.

medical documentation, and current medications provided by mom. After discussing all of the evaluations, the team determined that Student no longer meets the eligibility criteria for special education services under IDEA guidelines and therefore, he was being dismissed from special education services. Mom and the Advocate requested an IEE at this time because they disagreed with his dismissal from special education services. Further, the Parent requested Stay Put until the IEE is completed. The District attempted to bring in additional special education supervisors and the advocate and Parent each requested they not be allowed to participate in the meeting and they were subsequently asked to leave. At this point, the meeting was adjourned with the knowledge that the team would consult with supervisors to address Parent's request for an independent evaluation.⁴²

20. Parents first Due Process Hearing request (H-22-19) was filed on November 18, 2021. Parents second Due process Hearing request (H-22-24), was filed on December 29, 2021.⁴³

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. Before consideration of the Parents' claims, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v.*

⁴² Parents' Exhibits, pgs. 50-51. Audio recording of November 11, 2021, IEP meeting.

⁴³ See Hearing Officer File-Due Process Hearing Requests H-22-19 and H-22-24.

Weast, 546 U.S. 49, 62 (2005). Accordingly, the burden of persuasion, in this case, must rest with the Parents.

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Independent Sch. Dist. No. 283 v. S.D. ex rel. J.D.*, 88 F.3d 556, 561 (8th Cir. 1996); *Parrish v. Bentonville Sch. Dist.*, No. 5:15-CV-05083, at *8 (W.D. Ark. March 22, 2017). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor discrepancies in the testimony were not material to the issues to be determined and, in any event, were not deemed to be intentionally deceptive.

The weight accorded the testimony, however, is not the same as its credibility. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided.

The findings of fact were made as necessary to resolve the issues; therefore, not all of the testimony and exhibits were explicitly cited.⁴⁴ In reviewing the record, the testimony of all witnesses, and each admitted exhibit's content were thoroughly considered in issuing this decision, as were the parties' post hearing briefs.

Conclusion of Law and Discussion

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

⁴⁴ It should be noted in this case that an IEE was completed and was included in the exhibits. However, as the IEE was completed outside the timeline for this Hearing, this hearing officer was unable to consider it in her decision.

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 having 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.

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

The IDEA defines "children with disabilities" as children having one of the enumerated conditions "who, by reason thereof, need special education and related services." 20 U.S.C. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a)(1). Thus, in determining IDEA eligibility, the Court must examine: (1) whether Student's disability falls within at least one of the delineated classifications; (2) whether the disability has an adverse effect on educational performance; and (3) whether, as a result, Student needs special education and related services.

Under IDEA, an evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent, that may assist in determining whether the Student is a child with a disability. The evaluator must use technically sound instruments that may assess the relative contributions of cognitive and behavioral factors, in addition to physical or developmental factors. Assessments must be valid and reliable and they must be administered by trained and knowledgeable personnel. All assessments must be administered in accordance with the instructions provided by the producer of the assessments. The evaluation must ensure that a student is assessed in all areas of suspected disability. 34 C.F.R. § 300.304.

To be eligible for special education and to be entitled to a free appropriate public education, a student must be a "child with a disability." To be a child with a disability, a student must have one of the enumerated conditions and by reason thereof need special education and related services. 34 C.F.R. § 300.8(a);

A parent has a right to an independent educational evaluation if the parent disagrees with an evaluation obtained by the public agency. If the parent requests an independent educational evaluation at public expense, the public agency must without unnecessary delay either (i) file a due process complaint to request a hearing without unnecessary delay to show that its evaluation

is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense. 34 C.F.R. § 300.502(b)(1) and (2). If a parent obtains an independent educational evaluation at public expense or shares with a public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency if it meets agency criteria in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. § 300.502(c).

Whether the Little Rock School District denied Student FAPE during 2021-2022 school year by dismissing him from Special Education on November 11, 2021

The gravamen of the Complaint in the instant case involves the parents' contention that Student is eligible for special education and related services but that the IEP team found Student not eligible and dismissed him from special education services on November 11, 2021.

Student previously received early childhood services from the District when he was enrolled at Fair park Early childhood during the 2019-2020 school year. Kindergarten was waived by the parents for the 2020-2021 school year, as was the remainder of early childhood services by the District. Student did receive speech therapy and occupational therapy through KIDSource, a private provider, during the 2020-2021 school year.⁴⁵ Student carries diagnoses of Apraxia, Sensory Processing Disorder (SPD), Asthma, and ADHD.⁴⁶

On October 1, 11, 12, 2021, a psychoeducational evaluation was completed on Student by Ms. Ristaino from the District. The evaluation conducted by Ms. Ristaino was comprehensive and thorough. As mentioned, above in the finding of facts, the evaluator used a variety of assessment tools and strategies to gather relevant information about the Student. The instruments used were technically sound, reliable and valid. The evaluation was consistent with

⁴⁵ Parents' Exhibits pg. 2.

⁴⁶ Id. at 156.

all of the requirements specified by IDEA. See 34 C.F.R. 300.304. The evaluator considered Student's school performance in conducting the evaluation, including progress monitoring results, as well as grades and information provided by the Student's teachers. Ms. Ristaino testified that, "the reason that I reported the grade-based is because XXXXXX is seven years old in kindergarten, and he was at home for a year, and so he had not had that explicit instruction. And just asking him to do things like subtract that he hasn't been exposed to yet or taught in the curriculum was unfair and not a good -- not painting a good picture of XXXXXX."⁴⁷ Further in the summary of her findings, Ristaino stated:

"The results of this evaluation indicate that XXXXXX is of Average intellectual ability According to the CABC-II NU fluid Crystallized Index of 102. On the achievement measure as well as the CTOPP-2 all areas of achievement are average to above average except work recognition, letter naming facility, and math computation, which are slightly below average when compared to same age peers. Because XXXXXX is 7 years old in kindergarten and did not attend a structured preschool last school year, grade-based norms were utilized. When compared to other students in kindergarten, his performance is Average to High in all areas. These results are consistent with teacher reports, classroom performance, and performance on MAP testing.⁴⁸ Additionally, the evaluator looked at the Autism Probability Index that consists of items from the Atypicality, Functional Communication, Leadership, Social Skills and Withdrawal scales. Children who present with elevated scores on this index likely exhibit a variety of behaviors that are unusual and experience problems with developing and maintaining social relationships. No concerns were indicated with regard to XXXXXXXX behavior in this

⁴⁷ Hearing Transcript Vol. II, pgs. 131-132.

⁴⁸ District's Exhibits, pg. 109.

area.⁴⁹ Also, the ADHD Probability Index consists of items primarily from the Hyperactivity and Attention Problems scales, as well as a variety of other scales. Children who present with elevated scores on this index likely experience problems that will adversely affect their academic performance, such as difficulty focusing or maintaining attention, inability to organize tasks effectively, difficulty making decisions, or difficulty moderating their own activity level. XXXXXX teacher rated this Average.⁵⁰

As discussed above on October 11, 2021, a speech and language evaluation was conducted by Leeann Griffith. She testified that she has been a pediatric speech/language pathologist for 25 years. Further stated that she has worked with students with apraxia since 1985. She has worked with students with autism since graduate school. She was one of the first speech pathologists in the area trained in the ADOS, which is the Autism Diagnostic Observation Survey.⁵¹ Ms. Griffith testified that based on her evaluation she doesn't believe that Student currently has a speech or language disorder.⁵² She further testified that she saw no evidence of apraxia, and explained that although she had seen the evaluation reports from KIDSource, they did not test for apraxia during the 2020 or 2021 evaluations, and in those evaluations, Student's articulation assessments were within the normal range.⁵³

Further on October 8, 2021, an occupational therapy evaluation was conducted by Liza Smith, an occupational therapist for the District, who works at xxxxxxxxxx

⁴⁹ Id., at 108

⁵⁰ Id.

⁵¹ Hearing Transcript Vol. I, pg. 15.

⁵² Id., at pg. 19.

⁵³ Id., at pg. 21.

elementary school. Ms. Smith has a master's degree in occupational therapy and is licensed nationally and statewide. She has worked for the District for 13 years.⁵⁴

Ms. Smith testified that she reviewed previous test administered to Student, and gathered information from the teacher on the Sensory Processing Measure, but in working with him she did not see any areas of deficit that needed to be evaluated.⁵⁵ Ms. Smith iterated throughout her testimony that she looks through a much different lens than a clinical therapist looks through. She testified:

"Because the needs in the school are different than what are -- what a clinical therapist provides. Where I look through a more narrow lens of how does he function in the school, how can he get access to his education, not at the broader lens that the therapists that are in a clinic look through."⁵⁶

There was no testimony from any witness, or evidence presented that Student exhibits behavioral issues at school. When Student's teacher, Mrs. Hartnedy was asked to tell about Student, she stated: He came in at the beginning of the year as just a happy kid and he has continued to be that same happy self. She stated that Student used his fidgets and/or weighted blanket in the beginning of the year but within a week, he didn't need them anymore. She stated that she looks at Student as a leader in the classroom and so do the other kids in his class.⁵⁷ She further testified that Student is a doer and loves to learn.⁵⁸ Further, when she was asked about Student's academics, strengths and weaknesses, Mrs. Hartnedy stated:

⁵⁴ Hearing Transcript Vol. II, pg. 137.

⁵⁵ Id., at pg. 157.

⁵⁶ Id., pg. 154.

⁵⁷ Hearing Transcript, Vol. 1, pg. 209

⁵⁸ Id., at pg. 210.

"He is very academically sound. We just did our NWEA testing, and he was in the higher achieving, you know, in the blue, which is -- that's kind of where the end goal is, and he is already there. So, I'm maybe having to, you know, seek out some help from other resources to try to challenge him a little bit more in some of those things. But those are really his strengths. The only weakness I could say is that you have to watch his pace. Because sometimes he knows the information so well, you know, that he will rush."⁵⁹

At the November 11, 2021, IEP meeting the IEP team discussed the above evaluations, observations, teacher input, standardized testing, parent input and Speech Therapy and Occupational Therapy evaluations performed by KIDSource, and input from the therapist who conducted those evaluations and were providing private therapy services to Student. Accordingly, based on all this information, the IEP team concluded that Student was no longer eligible for special education because to the extent that Student had a disability, Student was not by reason thereof in need of special education and related services.

To the extent that the testimony and conclusions of the outside therapists, was inconsistent with the testimony and conclusions of the District's school psychologist and other District evaluators and staff, the testimony of the District staff is found to be more persuasive, primarily because they work with Student in the school environment on a daily basis. The outside therapist have never observed Student in the school environment. Unfortunately, because of COVID-19 protocols, Parents have also been unable to observe Student in his school environment. The difference in their conclusions concerning Student's eligibility for special education may revolve around their different viewpoints; the outside therapists adopted a medical lens, whereas the District evaluators adopted an educational lens. The educational focus

⁵⁹ Id., at pg. 212.

of the District evaluators is more appropriate in this case for the purposes of special education eligibility determination, and therefore given more weight.

Accordingly, it is concluded that the Parents have not proven that the District's determination that Student was no longer eligible for special education services was erroneous or legally noncompliant.

Other Issues Raised

Parents raised two additional issues in their two Due Process Hearing requests. Parents stated that the District failed to implement Stay Put from November 11, 2021-December 29, 2021, and that the District failed to pay for an Independent Education Evaluation (IEE). Both of these issues were disposed of during the prehearing conference. Parent counsel stated that she had been made aware that the District did pay for the IEE after filing for Due Process. Additionally, Parent counsel stated that the District was currently implementing the Stay Put IEP and were making up therapy that was missed between November 11, 2021, and December 29, 2021.⁶⁰ Therefore, these issues no longer require this hearing officer's consideration, nor are they raised or addressed in Parent's post-hearing brief.

Conclusion

The results of the testimony and evidence warrant a finding for the District. Specifically, Parents failed to introduce sufficient evidence in the record to establish by a preponderance of the evidence that the District erroneously dismissed Student from special education services on November 11, 2021.

Parents also allege that the District's conduct constitutes disability discrimination in

⁶⁰ Pre-Hearing Conference Transcript, pgs. 6-7.

Violation of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a), and Title II of the Americans with Disabilities Act, 42 U.S.C. §12131-12165. This Hearing Officer has no jurisdiction over disability discrimination claims. See ADE Spec. Ed. Rules §10.01.22.1. Accordingly, to the extent Parents' due process complaints raise disability discrimination claims, those claims are dismissed.

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.

Dana McClain

HEARING OFFICER

3/17/2022

DATE