

**ARKANSAS DEPARTMENT OF EDUCATION**

**Special Education Unit**

[REDACTED]

As Parents of

[REDACTED]

**PETITIONERS**

**VS.**

**NO. H-26-03**

**FAYETTEVILLE SCHOOL DISTRICT**

**RESPONDENT**

**HEARING OFFICERS FINAL DECISION AND ORDER**

**ISSUES PRESENTED:**

Whether the Fayetteville School District (hereinafter “District” or “Respondent”) denied [REDACTED] (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between August 18, 2023 and August 18, 2025, 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: (1) Failing its child find obligation under IDEA. (2) Failing to develop and maintain appropriate behavior intervention plan (BIP) to address Student’s maladaptive behaviors. (3) Failing to consider and incorporate the recommendations of the private psychological evaluation conducted by Dennis Developmental Center in March of 2024. (4) Failing to develop an appropriate IEP that included occupational

therapy and Applied Behavior Analysis (ABA) services. And (5) Unilaterally changing Student's educational placement and violating IDEA's stay put provision.

### **Procedural History**

On August 18, 2025, the Arkansas Department of Education (hereinafter referred to as the "Department" or "ADE") received a request to initiate a due process hearing from [REDACTED] ("Parents" or "Petitioners"), as the Parents of [REDACTED] (hereinafter referred to as "Student"), against the Fayetteville School District (hereinafter referred to as "District" or "Respondent"). This case was numbered H-26-03. 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 a free appropriate public education.<sup>1</sup> This case was set to be heard on October 1-3, 2025. On September 24, 2025, the parties filed a joint motion to continue because attorneys for both parties had conflicts with the ordered dates of October 1-3, 2025. That Motion to Continue was granted and the case was rescheduled for November 10-14, 2025.

The Prehearing conference was conducted via zoom on November 10, 2025.<sup>2</sup> Counsel for both the Parent and the District participated in the prehearing conference. During the prehearing conference, the parties discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.<sup>3</sup>

Thereafter testimony was heard in person in this case in this case on November 11-14, 2025, December 8-10, 2025, December 17-18, 2025, and by Zoom on January 7, 2026.

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<sup>1</sup> See hearing officer File-Petitioner Complaint.

<sup>2</sup> Transcript, prehearing conference.

<sup>3</sup> Id.

Present for the Hearing were Theresa Caldwell, attorney for the Parents, Cody Kees, attorney for the District, Claire Wilkinson (via Zoom) attorney for the District, [REDACTED] parent, [REDACTED] parent, Audra Alumbaugh, advocate, Carla Curtis, special education director, LEA, and Melissa Noble, special education designee.<sup>4</sup>

The following witnesses testified in this matter: Becky Williams, special education designee, Alex Turner, school psychology specialist, Melissa Noble, special education designee, Nancy Smith, kindergarten teacher, Randi Dodson, Student's first grade teacher, Jenni Vaughan, speech pathologist, Laura Baxter, speech language pathologist, Catherine "Katie" Peterson, Students special education teacher, Stacey Light, assistant principal, Jennifer Nicholas, special service behavior specialist, Christin Riley, second grade teacher, Jennifer Fairchild, principal, [REDACTED] parent, [REDACTED] parent, Carla Curtis, director of special services for Fayetteville Public Schools, Dr. Sheila Barnes, BCBA Doctoral level, and retired special education professor, Felecia Pasley, special education director and director of Boston Mountain Educational Cooperative.<sup>5</sup> It is important to note that not all hearing days were not full days as the attorneys for both parties requested shortened days for prior commitments.

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.

Counsel for the parent requested, and the District's attorney consented to, an extension of the deadline for submitting the post-hearing brief. Consequently, the decision date for this case

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<sup>4</sup> Hearing Transcript.

<sup>5</sup> Id.

was rescheduled to February 19, 2026. Both parties provided comprehensive post-hearing briefs.<sup>6</sup>

### **Findings of Fact**

1. Student is a seven (7) year old girl who is in the second grade in the Fayetteville School District (“District”).<sup>7</sup>
2. Student received IDEA services during pre-k setting the category of developmental delay, with services provided under an Individualized Education Program (IEP) by the Northwest Arkansas Educational Service Cooperative.<sup>8</sup>
3. On March 15, 2023, a transition conference from pre-k to kindergarten was held. The conference was attended by both parents, student’s pre-k teacher, a speech pathologist, the District’s school psychology specialist, and the District special education designee.<sup>9</sup>
4. The transition team reviewed the preschool transition input form which indicated Student exhibited aggressive maladaptive behaviors including, aggression, yelling, being mean, and wanting to hurt people. Although Student met four plus age benchmarks and appeared academically very smart, she also exhibited problems with social cues, sitting for short or long periods of time, and was not generally ready and able to function in a regular kindergarten classroom. The form also indicated that the parents were aware and seeking information and help for Student.<sup>10</sup> It was at the transitional meeting that the parents made the district aware that they had concerns

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<sup>6</sup> See Hearing Officer File-post hearing briefs.

<sup>7</sup> See Parent Due Process Complaint.

<sup>8</sup> District Exhibits, pgs. 203-212-4.

<sup>9</sup> Id., pg. 193.

<sup>10</sup> Id., pgs. 194-195.

- about Student having autism and were trying to get into the Schmieding clinic, for an evaluation.<sup>11</sup> However, even with Student's behavior concerns and the fact that the team believed Student was unable and ready to function in a regular classroom and that the parents had concerns about Student having autism, Student was removed from special education services, and the team determined that no additional school age evaluations were necessary at that time.<sup>12</sup>
5. In July of 2023 Parent informed the District that Student's pediatrician suspected she had Autism and referred her for an Autism evaluation.<sup>13</sup>
  6. The District initiated a Section 504 referral on August 11, 2023, because of concerns for Student related to transitions, sensory sensitivity, loud noises, and anger outburst towards other.<sup>14</sup>
  7. Student started kindergarten at Butterfield Trail Elementary in the Fayetteville School District on August 14, 2023.<sup>15</sup>
  8. Student's section 504 eligibility determination concluded Student did not require specially designed instruction at that time, but did qualify for Section 504 plan, which was implemented on August 25, 2023.<sup>16</sup>
  9. The Section 504 plan developed on August 25, 2023, included the following accommodations:
    - a) use of a visual schedule and visual timer.
    - b) access to a calm down corner for Student to use when she was feeling frustrated.

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<sup>11</sup> Transcript Vol. Eight, pg. 47.

<sup>12</sup> Transcript Six, pp. 32-34, 46.

<sup>13</sup> Parent Exhibit pg. 305, Transcript Vol. Ten, pp. 155-156.

<sup>14</sup> District Exhibits, pg. 69.

<sup>15</sup> Parent Exhibits, pg. 470

<sup>16</sup> Id., pgs. 68-C-68-E.

- c) access to headphones during loud noises or when she was overwhelmed.
- d) encourage student to use the restroom every 1.5-2 hours.
- e) movement breaks that allow for helping the teacher or delivering supplies.

The plan did not include a behavior intervention plan.<sup>17</sup>

10. On September 8, 2023, Student crawled forward from the back row to the second row and hit another student with her water bottle during dismissal time. Student did not want to put her water bottle in her backpack and until they distracted Student with watching a cartoon. Student only left the water bottle in the backpack for 5-10 minutes when Ms. Smith noticed she had taken it back out.<sup>18</sup>
11. On September 12, 2023, Student had a “fit” and “screamed and screamed” because she didn’t want to clean up her center before going to PE. Student appeared to calm down but was squeezing another student’s pinky finger and pulling it back. During recess, the same day Student was trying to play with another student and got upset grabbing the student to keep her from leaving.<sup>19</sup>
12. On September 20, 2023, Parent referred Student for special education services because of Student’s behavioral difficulties due to possible autism diagnosis. It was also noted that Student’s Parent provided Student’s private occupational therapy and physical therapy evaluations and medical information prior to the referral conference.<sup>20</sup>
13. On September 25, 2023, the District held a referral conference, to review the information provided by the Parents, Parent input and teacher input and consider

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<sup>17</sup> Id., pg. 68-C.

<sup>18</sup> Parent Exhibits, pg. 516.

<sup>19</sup> Id., pg. 517.

<sup>20</sup> Id., pg. 139

evaluation within the Fayetteville Public School or possible special services eligibility. The referral team decided to conduct a comprehensive evaluation (including speech therapy evaluation) and specialized evaluations in occupational therapy and physical therapy.<sup>21</sup>

14. On October 16, 2023, the district held an IEP meeting because during the evaluation time, Student had a behavioral episode which led to a two-day suspension. Parents requested the meeting to discuss a functional behavior assessment (FBA) and asked to have more details about daily behavior intervention for counseling and physician appointments.<sup>22</sup>
15. The District completed the comprehensive evaluation on October 28, 2023. The evaluation included the following: vision and hearing screenings; social history; parent interview; medical records; curriculum based assessment; Young Children's Achievement Test, 3<sup>rd</sup> Edition (YCAT-3); Differential Ability Scales (ASRS); Childhood Autism Rating Scale, 2<sup>nd</sup> Edition (CARS-2); and observations.<sup>23</sup> The evaluator found that the data suggested that Student displayed age appropriate skills in reading, writing, and math. Student's cognitive ability was within average range for her age. Student displayed good skills in verbal ability, nonverbal reasoning, and spatial ability. However, Student displayed weakness in adaptive behavior. Student displayed a high level of autism spectrum characteristics. Student had significant difficulty with self-regulation and adapting to changes and transitions. Student displayed limited skills with appropriate social interactions with adults and peers.

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<sup>21</sup> Id., pgs. 141-142.

<sup>22</sup> Parent exhibits, pgs. 147-148.

<sup>23</sup> Id., pg. 298.

Further Student displayed anxiety and fear across settings, and she often became stuck on things and did not accept explanations or help from adults to move on. She could be upset for a long duration, and it was difficult to get her to calm down.<sup>24</sup> The evaluator opined that Student qualified for special education services under the category of Autism. The evaluator noted that a speech/language evaluation was reported separately and should be referred to, and a functional behavior assessment on Student was ongoing and would be reported separately with a behavior support plan. Goals should be aligned with the IEP to best support Student. The evaluator stated that Student would benefit from as much time with general education peers as much as possible to aid in social skill acquisition, communication, and adaptive behavior skills. Further, the evaluator made the following recommendations for classroom strategies, accommodations, and modifications:

- Identify and provide reinforcement for Student for desirable behavior.
- Use visuals to help Student adjust to the routines of the school environment as well as classroom. Make sure expectations are clear and consistent. Remind Student of the rules and routines in order to help her remember and refer back to them.
- Student needs space when she is upset. Do not negotiate or argue as she is not able to reason when she is escalated.
- Provide adaptive behavior supports that are oriented toward self-regulation on task behavior and class participation, positive social interactions, and transitioning appropriately from preferred to non-preferred tasks.

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<sup>24</sup> Id., pg. 305.

- Give Student advanced warning before unexpected changes in routine.
- Keep oral directions short and simple
- Give Student time to respond to directives. She is able to follow directions but does not often do so immediately. Build routines and avoid over stimulating environments (loud noises).
- Give Student a script to follow in problem situations. Consider the use of social stories to support understanding social expectations and routines.<sup>25</sup>

16. The District completed a speech evaluation on November 7, 2023. The evaluator found that Student’s test indicated significant pragmatic/social language weaknesses, atypical dysfluencies when speaking and weak oral narrative language skills. The evaluator further found that improved communication skills might be beneficial for Student’s academic success and speech language therapy was an appropriate educational consideration.<sup>26</sup>

17. The District completed an occupational therapy evaluation on Student on November 27, 2023. The evaluator reported regarding social skills that Student will put hands on others (squeezes a peers face when standing in line-not out of anger), hugs others when it’s unwanted, conversation is limited, does not read the room (e.g. at carpet time students are all quiet and listening and Student will walk up and yell “HELLO!”).<sup>27</sup> Although direct occupational therapy was not recommended, the evaluator found Student had the following needs with direct impact on education:

- Safety associated with elopement

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<sup>25</sup> Parents’ Exhibits, pgs. 298-306.

<sup>26</sup> Id., pgs. 340-348.

<sup>27</sup> Id., pg. 384.

- Executive function deficits with difficulties in social emotional regulation
- Sensory processing in auditory and touch processing as well as maladaptive behavior responses.<sup>28</sup>

To address Student's Auditory processing issues the evaluator suggested the District consider:

- Shake things up with unpredictable auditory input like a rap or a song to help Student notice.
- Call Student's name when giving a directive.
- Auditory timer for starting and stopping work/activities-specific tune or song to indicate times up or transition. Student liked a duck timer with both auditory and visual input.
- Pair auditory and visual instruction whenever possible
- Allow Student to work in a quiet area away from peers if necessary. Student likes the library area in the classroom and might be offered that space with specific expectations for work completion while in the space.

For Student's Visual processing issues the evaluator suggested the District consider:

- Placing Student's desk near peers but not at the table with them where distractions can be kept to a minimum.
- Sit Student facing away from transition areas.
- Provide a screen (cardboard foldout) for Student's desk when she is having a tough day and is easily distracted or frustrated.

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<sup>28</sup> Id., pgs. 377-384.

- Keep the room visually organized, decrease clutter (wall and ceiling hangings)

For Student's touch process issues the evaluator suggested the District consider:

- Teach with social stories and role play regarding appropriate personal space. Can use a small hula hoop or hold a playground ball to provide a visual for appropriate distance.
- Use transition or fidget objects (Student likes small doll toys) when standing in line and transitioning.
- Resistive fidgets (links, counters, putty, or playdoh), various textured fabric at her desk during work and/or transitions.
- Be first or last when standing in line.
- Snug compression sport type shirt worn under clothing for constant touch pressure throughout the day-this is calming and organizing to the nervous system.
- Sharpen pencils with a manual pencil sharpener or electric. Heavy work and vibration are good for touch body awareness, movement and calming.
- Always tell her what you are about to do and ask permission.

For movement processing issues the evaluator suggested the District consider:

- In General Student might benefit from some heavy work first thing in the morning to feed and organize her system. A weighted walk to school, chair pushups, heavy hopping in place.
- Activities in her seat such as seat pushups, arm stretches, isometric hand, and arm exercises. The entire class can take a minute to do these.

- Turn the chair around backwards so that the front of her trunk is leaning on the back of the chair providing heaving input.
- Continue alternative seating-stool, disc.
- Allow Student to stand to work at her desk.

For behavior issues the evaluator suggested the District consider:

- Allow Student to ask for a break when needed (non-contingent)
- If Student looks distressed, ask her if she needs a break
- Work up to a work break schedule or use of a penny chart to earn a preferred item.
- Give choices whenever possible such as “do you want to do your coloring first or your cutting?”
- Visual schedule on her desk-one for morning and one for afternoon. Have Student review it with an adult and check off items as they are completed.
- Big changes in routine should be discussed the day before at school and at home the night before, when possible, to give Student time to process the change and talk through any concerns.
- Ask Student where she is most comfortable during instruction and allow her choice of placement whenever possible.<sup>29</sup>

18. On December 7, 2023, the District held an IEP team meeting to review evaluation results. Parents were in attendance. The IEP team determined Student was eligible for special education services under the category of Autism.<sup>30</sup>

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<sup>29</sup> Parents’ Exhibits, pgs. 377-384.

<sup>30</sup> Id., pg. 152.

19. The IEP developed on December 7, 2023, including the following special education services: Direct instruction in Adaptive behavior for sixty (60) minutes per week in the regular education classroom. The IEP also included the related services of speech/language therapy services for 180 minutes per month in the therapy room.<sup>31</sup> Modifications and accommodations listed on Student's IEP included: frequent breaks; do not negotiate or argue, as she is not able to reason when she is escalated; provide access to calm down corner for Student to use when she is feeling frustrated or needing a break; movement breaks that allow for helping the teacher or delivering supplies; wait time to allow Student to respond. Student understands but needs time to process her answers; access to noise cancelling headphones; flexible seating; use of visual schedule and visual timers.<sup>32</sup> Student's IEP also included three goals..one speech therapy goal and eight objectives and two adaptive behavior goals.<sup>33</sup>
20. Between October 16, 2023, and December 12, 2023, the District conducted an FBA on Student. On January 8, 2024<sup>34</sup> The FBA identified two target behaviors; refusal and physical aggression. The Hypothesized functions of both behaviors was to gain a tangible.<sup>35</sup>
21. On January 11, 2024, the IEP team met, with both parents present and reviewed the FBA and adopted a Behavior Intervention Plan (BIP).<sup>36</sup> The replacement behavior was for Student to request tangible items/preferred items and negotiate their access.

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<sup>31</sup> Id., pg. 122.

<sup>32</sup> Parents' Exhibits, pg. 116.

<sup>33</sup> Id., pgs. 117-119.

<sup>34</sup> Id., pg., 179. The Report wrongly states the report date as January 8, 2023, but the correct was January 8, 2024.

<sup>35</sup> Id., pg. 184.

<sup>36</sup> Id., pgs, 160-164/

Prevention strategies included: use of daily transition item from home, prompting and front loading each morning to encourage and remind Student to use skills she is learning and to access her incentive chart, daily check in for two minutes to let Student talk about what she wants to talk through without giving directions...use of 4:1 positive to corrective ratio, and access to school issued noise cancelling headphones, phrase redirections in the positive, offer equal choice of activities and provide 2-4 non-contingent breaks daily-these should include “helper” tasks outside the classroom.

Student was to receive at least one time weekly for 20-30 minutes explicit instruction in:

- Following directions
- Negotiating with adults
- Accepting feedback
- Asking permission
- Accepting no
- Problem solving model -SODAS (Situation, Options, Disadvantages, Advantages Solution)

For reinforcement Student will utilize a visual chart to help track her positive behaviors. Once she has earned 10 checks she will get 5-7 minutes with a preferred item.

When responding to problem behavior:

- If Student refuses, provide a non-reactive response and reminder of task or direction.

- Provide space and wait time for her to follow direction and reduce repeated directions outside of the reality statements
- If Student becomes physically aggressive, calmly block physical aggression, prompt and utilize reality statements. Adults should again allow space and wait time for her to follow direction.

Progress monitoring was performed by data collected based on the incentives chart.

The team was responsible for tracking and graphing the frequency of earned checks/stickers. The team determined a crises plan was not needed to address Students physically aggressive behavior.<sup>37</sup>

22. The behavior intervention plan is difficult to follow and understand when changes were made because the District behavior plan document is marked up with strike thoughts and handwritten additions, some dated some not. It makes it impossible for this hearing officer to be definitive on what occurred and on what dates.<sup>38</sup>
23. The behavior plan was amended in some form on August 30, 2024, February 10, 2025, and March 17, 2025. On August 29, 2024, it appears the 2-4 non-contingent breaks daily were removed and instead of a chart with stickers, Student was to utilize the school wide PBIS system (DOJO) to reward appropriate behavior and access the Dojo store each Friday. Further progress monitoring changed to Student's behavior data would be tracked via SWISS, which is the school's behavior tracking system for all students. The document shows that the use of a daily transition item from home was removed on February 10, 2025. On March 17, 2025, the behavior plan was updated again and Extinction: Based on the function of the behavior, what should be

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<sup>37</sup> Parents' Exhibits, pgs. 161-164.

<sup>38</sup> Id.

- reduced or stopped following the problem behavior? Reduced access to tangible items and make those items accessible outside the structure of the incentive chart and non-contingent breaks/sensory breaks was removed and nothing replacing it. <sup>39</sup>
24. On November 22, 2024, the IEP team met for Student's annual review. Under Students current level of functional performance it was noted that Student was being serviced under the category of Autism. Student has a medical diagnosis from Dennis Developmental of autism level 2 supports, ADHD combined type, unspecified disruptive, impulse control or conduct disorder, unspecified anxiety, unspecified sleep disorder, and a rule out disruptive mood dysregulation disorder (not diagnosable until 6 years of age). This IEP inaccurately reports that Student had zero behavior infractions. Student's IEP contained two speech goals with thirteen objectives and one behavior goal. Student was to receive ninety (90) minutes of direct instruction in adaptive behavior in the general education classroom and 180 minutes of direct instruction in speech therapy in the therapy room. <sup>40</sup>
25. Medical records from a primary care physician for the Student were provided by the Parent, which showed that as recently as February 2025, the Student was being treated for anxiety disorder, mood disorder, attention deficit hyperactivity disorder, impaired impulse control, oppositional defiant disorder, and autism spectrum disorder. There was a recommendation that further autism testing be conducted. <sup>41</sup>
26. On February 10, 2025, a review and revise IEP team meeting was held at the request of the Parents to discuss any changes within school due to Student's changes in

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<sup>39</sup> Id.

<sup>40</sup> Parents' Exhibits pgs. 1-13.

<sup>41</sup> Id., pg. 177.

behavior over the prior two weeks. Student received a half day suspension on February 7, 2025, because she pinched and attempted to bite a teacher.<sup>42</sup> Further Student had eight behavioral referrals that week.<sup>43</sup> Special Education services were changed at the February 10, 2025, IEP meeting. Adaptive behavior services were removed, and speech therapy services were reduced from 180 minutes per month to 30 minutes per month.<sup>44</sup>

27. On March 14, 2025, Student was again suspended because she was putting hands on another student while in line. She screamed and yelled and then slapped a different student in the face. Student then ran from the line to the door outside of the fence. Student was given an alternative place to eat lunch. When the teacher directed attention away from Student she began to knock over objects in the room and attempted to flee. The Teacher called for backup. Ms. Light came in the room Student was screaming she wanted to go back to her class because she didn't want to miss "between the lions." Ms. Light explained she couldn't go back to the classroom until she calmed down. Student then tried to open the door and flee multiple times. Student reached up and hit Ms. Light across the jaw and then turned and hit Mrs. Fairchild in the forehead. When asked why she hit the other student that day Student replied that he had whispered to her that he was better than her and she was a loser. However when asked if that had happened that day Student replied no. While talking with Mrs. Fairchild, Student scooting to the edge of her seat and kicked Mrs. Fairchild's face, hitting her in the neck. As noted on the out of school suspension form, a similar

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<sup>42</sup> Id., pg. 431

<sup>43</sup> District's Exhibits, pgs. 474-475.

<sup>44</sup> Parents' Exhibits, pgs. 48-57.

- incident had occurred on March 13, 2025, also when students were lining up. This incident was directed at a different child and the only explanation given was that “I have a better tiara than her and she thinks hers I better.” Student was kept in an alternate location the remainder of the afternoon after the incident on March 13, 2025.<sup>45</sup>
28. On March 19, 2025, Student asked to go to the bathroom, and was told to wait and Student got up and left the classroom.<sup>46</sup> Also on this same day Student exhibited physical aggression by pulling another student’s hair.<sup>47</sup>
29. On March 31, 2025, Student exhibited physical aggression because another student opened the door before she could. Student eloped to the office and was given time and space before returning. Also on March 31, 2025, while in the office, Student fell off a chair and hit her head causing a bruise/knot.<sup>48</sup>
30. On April 3, 2025, during a crisis incident Student threw a chair at staff, then tripped over it and fell. Student reported she was fine. However, staff was bitten, scratched, kicked, and punched during the incident.<sup>49</sup>
31. On April 7, 2025, Student slapped staff with an open hand and hit same staff on the cheek with a fidget tube.<sup>50</sup>
32. On April 7, 2025, an IEP team meeting was held. They discussed the calm down corner that was introduced to Student that day and her acceptance of it was not favorable. Use of social stories and practice will be used. The team mentioned

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<sup>45</sup> District’s Exhibits pg. 432.

<sup>46</sup> Id., pg. 433.

<sup>47</sup> Id., pg. 434.

<sup>48</sup> Id., pgs. 435-436, 438.

<sup>49</sup> Id., pg. 439.

<sup>50</sup> Id., pg. 440.

concerns about the amount of time Student had been out of the classroom since spring break and when asked said Student's last day of full participation in class were March 20 and 21. The speech pathologist explained that she was setting up a behavior chart with unicorns on it and Student was working for a trinket from the treasure box. It was decided some skills would be taught through social skills in direct speech language therapy. Student would start receiving thirty minutes of speech therapy weekly (had been 30 minutes monthly). A new FBA was discussed by parents but due to lack of days of school the committee agreed to meet again in the next two weeks to develop a new BIP based on current behaviors and data they currently had.<sup>51</sup>

33. On April 25, 2025, a facilitated IEP meeting was held. The Parents requested a facilitator for the IEP meeting. The meeting was held to develop a new BIP based upon the data from the past year. The Parents stated they believed Student's behaviors are not just to escape from a non-preferred activity but more related to PE, hallway, and aggression to peers. They also expressed concerns that Student's anxiety and refusal to go to class is not addressed within the new FBA. Committee agreed to meet in August to discuss and obtain consent for a new FBA. Parents further stated they did not want rewards to replace the teaching of the skill needed. Home to school comfort item was discussed again, but no agreement was reached. The meeting was set to reconvene May 7, at 9am.<sup>52</sup>
34. On April 28, 2025, Student was suspended for two days because she scratched and hit one adult in the face. She also hit another adult multiple times in the arms and stomach area while the adult tried to back away. Student scratched another adult

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<sup>51</sup> District's Exhibits, pg. 86.

<sup>52</sup> Id., pg.90.

- multiple times on the arm. Student also bit an adult on the back of the leg, and she threw a door stop from a close distance hitting an administrator in the head, causing injury.<sup>53</sup>
35. On May 7, 2025, an IEP meeting was held. This was a facilitated IEP meeting continued from April 25, 2025, to continue to develop a BIP. They discussed that a lot of Student's heightened state is due to sensory issues and Student will lash out, escape. The team discussed response to problem behavior that will help guide the team on how to respond to Student's emotional dysregulation. Use of a comfort item is a part of the BIP. District shared that when Student is dysregulated, she may hold her comfort item close, touch her belly button, squint and look to the side, chews on her hair and chews her fingers. Parents expressed concerns about who was going to help Student's reentry after suspension. Further it was discussed who would respond to Student when she was escalated and if they would be trained on her BIP. After two hours the team had not completed its review and agreed another meeting would be scheduled.<sup>54</sup>
36. On May 21, 2025, Student was suspended for two days because she eloped from the classroom, and when asked to accompany an adult helper, Student ran to the office on her own. When they attempted to check on her, Student became physically aggressive toward multiple staff members including biting, scratching, and kicking, along with multiple other attempted aggressive behaviors (hair pulling, slapping). In addition, there was significant property destruction throughout the office as Student threw

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<sup>53</sup> Id., pg. 443.

<sup>54</sup> Id., pg. 97.

- anything within her reach, dumped many items, tore and removed multiple wall hangings.<sup>55</sup>
37. As Student's maladaptive behaviors increased in intensity and in frequency during the spring of 2025, Student's behavior plan remained with little change to address Student's increasing maladaptive behaviors.
38. On July 29, 2025, Parents prepared a memorandum outlining their concerns and asking the IEP team to be prepared to discuss those concerns.<sup>56</sup>
39. On August 1, 2025, a facilitated IEP meeting was held, with Parents participating, and a new BIP was developed.<sup>57</sup>
40. On August 13, 2025, Student's second day of second grade, Student was involved in an incident in which she became dysregulated because she believed another student had her noise cancelling headphones. Student became aggressive toward multiple students and staff. The staff was unable to calm Student and get Student to leave the classroom. Staff was able after several minutes to remove the other Students from the classroom. Student was still dysregulated and during this incident injured multiple staff members, threw school supplies and other objects as the rest of the class was leaving the room. At one point, Student got near another student while they were lining up to leave and climbed on her back and grabbed her by the shoulders and pulled her shirt partially off of her shoulders. Ms. Baxter was able to get Student to go to the bathroom. While in the bathroom, Student screamed she didn't want the chosen stall, locked herself in and climbed under two other stalls. It was unclear if

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<sup>55</sup> District Exhibits, pg. 444.

<sup>56</sup> Parents' Exhibits, pgs. 23-32.

<sup>57</sup> Id., pgs. 14-18.

- Student ever utilized the bathroom but eventually exited with staff to the safe space room. Student was able to de-escalate and later joined her dad to eat lunch. Student finished out her day with Ms. Baxter and Ms. Nicholas by exhibiting periods of both regulated and dysregulated behavior.<sup>58</sup>
41. During the 2025 legislative session, Arkansas general assembly passed act 565 known as “the teacher and student protection act of 2025”. The purpose is to prohibit a student who is removed from a classroom due to violent or abusive behavior against a teacher or another student from being placed in a class with the teacher or student against whom violent or abusive behavior was directed; and for other purposes.<sup>59</sup>
  42. Two teachers in the Fayetteville School District who were involved in the incident involving Student on August 13, 2025, invoked Act 565.
  43. There is no documentation that Student was suspended for the incident that occurred on August 13, 2025.
  44. After the August 13, 2025, incident Parents were notified that Student was to go to the SOAR academy, the District’s Alternative Learning Environment until a manifestation determination review was held within ten days.
  45. The Parents filed their Due Process hearing on August 18, 2025.
  46. Although outside the timeline for this hearing, the District held a manifestation review determination on August 22, 2025. At the manifestation determination review it was determined that there was a direct and substantial relationship between

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<sup>58</sup> Id., pg. 80.

<sup>59</sup> <https://arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2025R%2FPublic%2FACT565.pdf>

Student's disability and the act of misconduct Student exhibited on August 13, 2025.<sup>60</sup>

## **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. 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. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8<sup>th</sup> Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4<sup>th</sup> Cir. Va. 2008). 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, discussed as necessary below. The documentation and testimony were sometimes

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<sup>60</sup> District Exhibits, pgs. 79-81.

conflicting, although this hearing officer does not necessarily find that any one witness was intentionally untruthful, these inconsistencies did play a role in this hearing officer's decisions. 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.

### **Applicable Legal Principles**

The IDEA requires the provision of a "free appropriate public education" (FAPE) to children who are eligible for special education services. 20 U.S.C. § 1412. FAPE consists of both special education and related services. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17. Decades ago, in *Hendrick Hudson Central School District Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court addressed these statutory requirements, holding the FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to benefit educationally from the instruction, provided that the procedures set forth in the Act are followed.

Districts meet the obligation of providing FAPE to eligible Students through development implementation of an IEP that is "reasonably calculated" to enable the child to receive 'meaningful educational benefits' in light of the Student's individual circumstance." The U.S. Supreme Court considered the application of the *Rowley* standard, and it observed that an IEP "is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Andrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335, 350 (2017). The IEP must aim to enable the child to make progress. The essential function of an IEP is to set out a detailed individualized program for

pursuing academic and functional advancement in all areas of unique need. *Andrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09). The *Andrew* court thus concluded that “the IDEA demands ... an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 1001, 197 L.Ed.2d at 352.

*Andrew*, *Rowley*, and the IDEA make abundantly clear, the IEP must be responsive to the child’s identified educational needs. See 20 U.S.C. § 1414(d); 34 C.F.R. § 300.324. However, a school district is not required to provide the “best” program, but rather one that is appropriate in light of a child’s unique circumstances. *Andrew F.* In addition, an IEP must be judged “as of the time it is offered to the Student, and not at some later date.” *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1040 (3d Cir. 1993).

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.' " *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, U.S. 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)). An IEP is a comprehensive program prepared by a child's "IEP Team," which includes teachers, school officials, the local education agency (LEA) representative and the child's parents. An IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. § 1414(d)(1)(B). An IEP must contain, among other things, "a statement of the child's present levels of academic achievement," "a statement of measurable annual goals," and "a statement of the special education and related services to be provided to the child." *Id.* § 1414(d)(1)(A)(i). A free appropriate public education (FAPE), as the IDEA defines it, includes individualized goals, "specially designed instruction" and "related services." *Id.* § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to

benefit from" that instruction. Id. §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services "in conformity with the [child's] individualized education program," or "IEP." 20 U.S.C. § 1401(9)(D).

When formulating an IEP, a school district "must comply both procedurally and substantively with the IDEA." *Rowley*, at 206-07 A procedural violation occurs when a district fails to abide by the IDEA's safeguard requirements. A procedural violation constitutes a denial of a FAPE where it "results in the loss of an educational opportunity, seriously infringes the parents' opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits." *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010). A substantive violation occurs when an IEP is not "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," *Andrew F.* The IDEA further provides that if a parent refuses to consent to the receipt of special education and related services, or fails to respond to a request to provide such consent, "the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency request such consent." 20 U.S.C.

§1414(a)(1)(D)(ii)(III)(aa). Although a parent always retains the right to withhold consent, after consent is withheld, the school district cannot be held liable for denying a FAPE. Additionally, when parents waive their children's rights to services, school districts may not override their wishes. *Fitzgerald ex rel. S.F. v. Camdenton R-II School District*, 439 F.3d 773 (8<sup>th</sup> Cir. 2006); *Schoenfeld v. Parkway School District*, 138 F.3d 379 (8<sup>th</sup> Cir. 1998).

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 1982, in *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, the U.S. 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, 206-07 (1982). Pursuant to *Rowley*, the first inquiry that a court or hearing officer must make is that of whether the State, i.e., local educational agency or district, has complied with the procedures set forth in the IDEA. Thereafter, it must be determined whether the IEP(s) developed pursuant to IDEA procedures was reasonably calculated to enable the Student to make appropriate progress in light of his specific circumstances. *Andrew F.*

### **PROCEDURAL VIOLATION OF IDEA**

Regarding the first inquiry, that of whether the District complied with the procedures set forth in the IDEA, this hearing officer notes that Parents allege the District violated the procedures set forth in IDEA. The issues raised are: (1) Whether the District failed its child find obligation under IDEA. (2) Whether the District failed to develop and maintain an appropriate behavior intervention plan to address Student's maladaptive behaviors. (3) Whether the District failed to consider and incorporate the recommendations from the private psychological evaluation conducted by Dennis Developmental Center. (4) Whether the District failed to develop an appropriate IEP that included occupational therapy and Applied Behavioral Analysis (ABA) services. And (5) Whether the District unilaterally changed Student's educational placement and violated IDEA's Stay Put provision.

The IDEA codifies the goal that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed

to meet their unique needs." 20 U.S.C. § 1400(d). In addition, the IDEA mandates that participating states extend various procedural protections and administrative safeguards to disabled children, Parents, teachers, school officials, and educational institutions. 20 U.S.C. § 1415. For example, under the IDEA, Parents are entitled to notice of proposed changes in their child's educational program and, where disagreements arise, to an "impartial due process hearing." Id. § 1415(b)(2) & (f). Once the available avenues of administrative review have been exhausted, aggrieved parties may file a civil action in state or federal court. Id. § 1415(i)(2).

The IDEA includes several procedural safeguards "that guarantee Parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." *Honig v. Doe*, 484 U.S. 305, 311-12, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988).

IDEA sets forth a long list of "procedural safeguards" that each participating state must establish and maintain to ensure a FAPE is provided to its Students. See generally 20 U.S.C. 1415; see also *Rowley*, 458 U.S. at 205 ("When the elaborate and highly specific procedural safeguards embodied in 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in IDEA, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid") 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 (8<sup>th</sup> Cir. 2011). Rather, a school district's educational plan for a given Student will only be set aside 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., 20 U.S.C. 1415(f)(3)(E)(ii).

**I. Whether the District procedurally violated IDEA by failing to satisfy “child find” obligation under IDEA?**

"In order that all children with disabilities may receive a FAPE, the IDEA imposes a 'child find' obligation on school districts." Indep. Sch. Dist. No. 283 v. E.M.D.H. by and through L.H., 357 F.Supp.3d 876, 888 (D. Minn. 2019) (citing 20 U.S.C. § 1412(a)(3)) (aff'd in relevant part E.M.D.H., 960 F.3d at 1083). Pursuant to this obligation, districts have a duty to ensure that:

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). This provision imposes an affirmative duty on school districts to "identify, locate, and evaluate all children with disabilities ... to ensure that they receive needed special-education services." Forest Grove Sch. Dist., 557 U.S. at 245, Fitzgerald ex rel. S.F. v. Camdenton R-III School District, 439 F.3d 773 (8th Cir. 2006).

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 school district "shall conduct a full and individual initial evaluation" to determine whether the child has a disability. 20 U.S.C. § 1414(a)(1)(A). Jacksonville N. Pulaski Sch. Dist. v. D.M., 4:20-CV-00256-BRW (E.D. Ark. May 21, 2021). "An unreasonable delay in complying with this duty ‘may constitute a procedural violation of the IDEA.'" Krawietz by Parker v. Galveston Indep. Sch. Dist., 900 F.3d 673, 676 (5th Cir. 2018) (quoting D.K. v. Abington 696 F.3d 233, 249-50 (3d Cir. 2012)).

Here, Student received IDEA services during pre-kindergarten under the category of developmental delay. On March 15, 2023, a transition conference was held. This conference was attended by both parents, Student's pre-k teacher, a speech pathologist, the District's school psychology specialist, and the District's Education designee. The evidence shows that Student was doing well academically, and when you just look at the kindergarten readiness indicator checklist, which several witnesses discussed during the hearing, one might surmise that Student was ready for kindergarten. However, upon review of the preschool transition input form completed by Student's pre-kindergarten teacher, it becomes evident that additional concerns or potential disabling conditions may be present. These factors could impact Student's capacity to participate in a classroom environment and access academic instruction effectively. Student's pre-k teacher listed the following:

- Student is aggressive and wants to try things on her own and typically will not seek or accept help.
- In group play, student is described "its her way or no way mostly." "Can be nice! Depends on who she is with."
- Student will become aggressive and wants to hurt and yell when there is a conflict with other children.
- Student becomes aggressive both verbally and physically with other children and teacher expresses that anything can trigger her.
- Student does not respond well to frustration.
- Student has short attention span
- Student's ability to understand social cues are less developed than other children her age as well as the ability to sit long or short durations.

Perhaps the most telling statement is that when asked if Student appears generally ready and able to function in a regular kindergarten classroom, the teacher's response is "no, not at this time." Further the teacher acknowledges that the parents are aware and are seeking information and help. Although testimony from several of the witnesses was that they didn't hear the word autism until after Student began kindergarten in the Fayetteville school district. This hearing officer believed the parents testimony when they stated they made the district aware they had concerns about Student having autism and were trying to get into the Schmieding clinic for an evaluation as early as the transition conference on March 15, 2023.

The District doesn't specifically argue Parents' claim of a child find obligation in March of 2023 is barred by the two-year statute of limitations of IDEA. However, the District's post hearing brief correctly asserts that there is a two-year statute of limitations under IDEA and "any claim of a breach falling outside the IDEA's two-year statute of limitations would be untimely."

Citing. *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1083 (8th Cir. 2020); *see also Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 428 (8th Cir. 2010) ("We also do not consider allegations regarding incidents beyond the two-year statute of limitations applicable to IDEA claims[.]"). While the District is correct that under 20 U.S.C. 1415(f)(3)(C), a parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the bases of the complaint, the Parents make the argument in their brief that they didn't know the District violated its child find obligation until at the earliest December 7, 2023. The 8<sup>th</sup> circuit held in *Independent School District No. 283 v. E.M.D.H.*, No. 19-1269 (8th Cir. 2020), that a district's child find obligation is ongoing. But just like in *Independent School District No. 283 v. E.M.D.H.*, even if Parents knew or should have known about the District's child find obligation in March of 2023, the District staff responsible

for identifying Student when she entered kindergarten and forward, likewise failed to fulfill their child find obligation. As the 8<sup>th</sup> circuit opined, a child find violation is not a single event like a decision to suspend or expel a student. Here, the District's failure to meet its child find obligation was repeated well into the limitations period in this case. The parents further notified the District in July of 2023 that in fact Student's pediatrician also suspected she had Autism and referred her for an Autism evaluation. From the testimony the District was aware that in order to identify a Student under the Autism category in IDEA, there does not have to be a medical diagnosis.<sup>61</sup>

The District had ample information in March of 2023, and again in July of 2023 and when Student entered kindergarten, and into Student's kindergarten year that at a minimum it should have evaluated Student to determine if she was a student with a disability under IDEA and in need of special education and related services. I find this to be a procedural violation under IDEA.

**II. Whether the District failed to develop and maintain an appropriate behavior intervention plan to address Student's maladaptive behaviors.**

When a child's learning is impeded by behavioral issues, the IDEA requires that the IEP team "consider the use of positive behavioral interventions and supports, and other strategies, including positive behavioral interventions." 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. 300.324(a)(2)(i). Where behavior is a significant component of a student's disability, the development and implementation of appropriate behavioral interventions is not discretionary; it is integral to the provision of a free appropriate public education ("FAPE"). A failure to address behavioral issues appropriately can amount to a denial of a FAPE for a student. Neosho R-V

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<sup>61</sup> Transcript Vol. IV. Pg. 171, Vol. Ten, pgs. 130-131.

School District v. Clark, 315 F.3d at 1028 (8<sup>th</sup> Cir. 2003). The Eighth Circuit has repeatedly declined to impose a categorical requirement that districts conduct a formal FBA or adopt a BIP whenever behavior is at issue. Instead, the inquiry focuses on whether the district appropriately addressed behavioral needs within the IEP framework.

However, In *Neosho R–V School District v. Clark*, 315 F.3d 1022 (8th Cir. 2003), the court held that failure to implement appropriate behavioral strategies contributed to a denial of FAPE where the district ignored escalating behavioral issues tied to the student’s disability and failed to meaningfully revise the IEP. The court emphasized that behavioral interventions were necessary because behavior directly interfered with learning and progress.

Here, the record demonstrates a persistent pattern of escalating maladaptive behaviors beginning in kindergarten and intensifying through the end of first grade until the severe incident on the second day of second grade that resulted in the filing of this due process hearing request. Student’s maladaptive behaviors included physical aggression toward peers and staff, elopement, destruction of property all culminating in repeated removals from her educational classroom and multiple suspensions, which deprived Student of access to her educational program. Although there was evidence that the Student’s behavior adversely affected both her own learning and that of her peers, the District did not develop, implement, or consistently update an effective Behavior Intervention Plan or the Student’s IEP to address these maladaptive behaviors.

There was an FBA initiated in October 2023 and a BIP developed and implemented in January 2024, the plan was subsequently altered through handwritten edits and undocumented revisions, making it impossible to be definitive on what occurred and on what dates. Critical preventative support, including non-contingent breaks and structured reinforcement systems, were removed or

replaced without clear data-based justification. During this same time Student's aggressive behaviors increased in both frequency and intensity, resulting in multiple suspensions and removals from class during spring of 2025.

The Eighth Circuit has emphasized that the IDEA requires an IEP reasonably calculated to enable a child to make progress appropriate in light of her circumstances. *Albright v. Mountain Home School District*, 926 F.3d 942 (8<sup>th</sup> Cir. 2019). Where a district becomes aware that an intervention is not working, it must respond in a timely and meaningful manner. An IEP that remains static in the face of mounting behavioral crises is not reasonably calculated to confer educational benefit.

In this case, the District continued to rely on a behavior plan that removed key preventative components, shifted progress monitoring systems, and an IEP that reduced adaptive behavior services, and decreased speech services, even as Student's suspensions and violent incidents escalated. When a student's behaviors result in repeated removal from instruction, the district's obligation to revise supports becomes more urgent. A stagnant BIP in the face of escalating aggression is not "reasonably calculated" under *Andrew F.* Although evidence indicates that the District held multiple meetings during the Spring of 2025 in response to the escalating frequency and intensity of Student's behaviors, there were no substantial or effective modifications made to Student's BIP or IEP to address these maladaptive behaviors. Student's behavioral patterns persisted, and while the nature of the behaviors remained consistent, both their frequency and intensity increased over this period. There didn't seem to be a meaningful plan to proactively rather than reactively address Student's maladaptive behaviors. Further, instruction in adaptive behavior supports were removed, and speech therapy significantly decreased from 180 minutes per month to 30 minutes per month, after which, Student's

maladaptive behaviors significantly increased. Speech therapy was then increased and instruction in adaptive behavior support was to be provided during speech therapy, this along with the changes in Student bringing an item from home to keep with her during the day seemed to be the biggest adjustments to Student's BIP and IEP. These changes did not seem to provide additional supports to either Student or the staff responding to Student when she exhibited maladaptive behaviors. Furthermore, there didn't seem to be a plan to teach Student replacement behaviors or adaptive skills to enable her to access her educational program and remain in the classroom with her non disabled peers.

Here, the behavior plan document itself is so heavily marked with strikethroughs and undated modifications that even this Hearing Officer cannot definitively determine what was in effect at given times. An incoherent or undocumented behavioral framework undermines confidence in implementation fidelity and data-based revision.

The district failed to develop, maintain, and implement appropriate BIP or modify Student's IEP to address her maladaptive behaviors and this was a procedural violation under IDEA.

### **III. Whether the District failed to consider and incorporate the recommendations from the private psychological evaluation conducted by Dennis Developmental Center**

The IDEA requires that in developing an IEP, the team must consider "the results of the initial or most recent evaluation of the child." 34 C.F.R. § 300.324(a)(1)(iii). A district must use a variety of assessment tools and strategies and ensure that educational decisions are informed by relevant medical and psychological data. 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b).

The Eighth Circuit has held that while a district is not required to adopt every recommendation of a private evaluator, it must meaningfully consider such evaluations in the IEP process. *M.M. v. Special Sch. Dist. No. 1*, 512 F.3d 455 (8th Cir. 2008); *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011). A failure to meaningfully consider an outside evaluation constitutes a procedural violation of the IDEA.

The question here is whether the District merely acknowledged the Dennis Developmental Center evaluation, or whether it meaningfully considered and discussed its diagnostic implications into Student’s educational programming.

The November 22, 2024, IEP acknowledges that Student had a medical diagnosis from Dennis Developmental Center of autism level 2 supports, ADHD combined type, and additional co-occurring conditions.<sup>62</sup> Medical records provided in February 2025 reflect continued treatment for anxiety, mood disorder, impulse control issues, and autism spectrum disorder. Testimony was that the members of the IEP team reviewed Student’s evaluation from Dennis Developmental Center individually, but it was never really discussed in an IEP meeting.<sup>63</sup> At one point during her testimony, Student’s special education teacher was asked if she had ever seen the Dennis Developmental Center evaluation and her answer was “if it was in the brown folder yes”. When further asked if it was ever discussed at an IEP meeting she responded, “I do not recall with certainty.”<sup>64</sup>

The IDEA requires more than mere acknowledgment of an outside evaluation; it requires meaningful consideration in educational planning. While the District documented the Dennis diagnoses within the IEP, the procedural record reflects several deficiencies demonstrating a

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<sup>62</sup> Parents Exhibits, pg. 2.

<sup>63</sup> Transcripts, Vol. III, pg. 84-85, Vol. IV, pgs. 179-180, Vol. Seven, pgs. 266-267.

<sup>64</sup> Transcripts, Vol. IV, pgs. 179-180.

failure to meaningfully discuss that evaluation or use it in the decision-making process. There are no documents or testimony that relay there was discussion about the evaluation or the recommendations made within it.

The Fayetteville School District committed a procedural violation of the IDEA by failing to meaningfully consider the Dennis Developmental Center psychological evaluation into the development and revision of Student's IEP.

**IV. Whether the District failed to develop an appropriate IEP that included occupational therapy and Applied Behavioral Analysis (ABA) services?**

The Eighth Circuit distinguishes procedural errors from disagreements over methodology or service level. *K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011).

**Occupational Therapy**

The record reflects that the District conducted a formal occupational therapy evaluation on November 27, 2023. The evaluator identified executive functioning and sensory processing needs affecting Student's educational functioning but did not recommend direct OT services. The IEP team met on December 7, 2023, reviewed the evaluation results, and developed an IEP with related accommodations and adaptive behavior services. Parents were present at that meeting.

The IDEA requires a district to evaluate in all areas of suspected disability and to consider evaluation results during IEP development. The District complied with those obligations. There is no evidence that the District refused to evaluate OT needs, ignored the

evaluator's findings, excluded required team members, or predetermined that OT would not be considered.

The decision not to include direct OT services followed completion of an evaluation and team discussion. Accordingly, the failure to include direct OT services does not constitute a procedural violation of the IDEA.

### **Applied Behavior Analysis (ABA)**

Student qualified under Autism, and the District conducted a Functional Behavioral Assessment (FBA) between October and December 2023. A Behavior Intervention Plan (BIP) was adopted on January 11, 2024 . The IEP included adaptive behavior services and behavioral goals. Multiple IEP meetings were held with parental participation, including facilitated meetings.

The IDEA requires the IEP team to consider positive behavioral interventions when behavior impedes learning. 20 U.S.C. § 1414(d)(3)(B)(i). It does not require the use of any specific methodology, including ABA. The Eighth Circuit has repeatedly held that parents are not entitled to demand a particular educational methodology so long as the district follows required procedures. *K.E.*, 647 F.3d at 806.

Here, the District evaluated behavioral needs, conducted an FBA, developed and revised a BIP, and provided behavioral instruction. There is no evidence that the District refused to consider ABA, failed to discuss behavioral programming, or prevented parental participation in those discussions. The absence of services labeled "ABA" reflects a methodological decision, not a procedural defect.

Accordingly, the failure to provide ABA services does not constitute a procedural violation.

**V. Whether the District unilaterally changed Student's educational placement and violated IDEA's Stay Put provision**

The Parents contend that on the second day of second grade, the Student exhibited maladaptive behaviors, prompting the District's classroom teacher and special education teacher to invoke Arkansas Act 565. This legislation, enacted by the Arkansas General Assembly in 2025 and subtitled the Teacher and Student Protection Act of 2025, empowers teachers to remove students whose behavior is deemed so unruly, disruptive, violent, or abusive that it significantly impedes instructional activities or classmates' learning. For students with disabilities, Act 565 requires a manifestation determination review to assess whether the conduct is directly related to the student's disability.

As previously noted, on August 13, 2025, the Student was involved in an incident triggered by a perceived loss of noise-cancelling headphones, resulting in aggressive behavior toward peers and staff. Staff were unable to calm the Student or facilitate her exit from the classroom. After several minutes, other students were removed from the room. The Student, still dysregulated, injured multiple staff members and threw objects as the class vacated the area. During the process, the Student climbed onto another student's back, grabbed her shoulders, and partially dislodged her shirt. Ms. Baxter subsequently escorted the Student to the bathroom, where she demonstrated further distress before eventually exiting to a safe space. The Student later de-escalated and joined her father for lunch, finishing the school day exhibiting both regulated and dysregulated periods. Following this event, classroom teacher Christin Riley and

special education teacher Catherine “Katie” Peterson invoked Act 565 protections, resulting in the Student’s removal to an alternative learning environment for 10 days pending a manifestation determination review. The Parents argue that this constituted a unilateral change in placement predetermined by the District; however, I find their argument unpersuasive.

The IDEA, 20 U.S.C. § 1400 et seq., is a federal statute enacted under Congress’s Spending Clause authority. It provides federal funding to states on the condition that they comply with extensive federal requirements designed to ensure that children with disabilities receive a Free Appropriate Public Education (FAPE). States accepting IDEA funds must comply with these federal mandates. Arkansas receives federal IDEA funding. Acceptance of those funds constitutes agreement to comply with IDEA requirements.

This hearing officer’s authority extends exclusively to determining compliance with IDEA requirements, not whether the District adhered to Arkansas Act 565.

In *Honig v. Doe*, the US Supreme Court recognized that school districts may impose short term suspensions (up to 10 school days) on students with disabilities without violating the IDEAs stay put provision, so long as the removal does not constitute a change in placement.

20 U.S.C. 1415(k)(1)(B) states:

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

Here, although the Parents assert that the Student’s transfer to an alternative education setting during the manifestation determination period was a unilateral change in placement precipitated by the invocation of Act 565, it is noted that IDEA permits disciplinary removals of fewer than ten school days, provided they adhere to established policies and the stay-put

Individualized Education Program (IEP). Such decisions are typically made by school personnel without parental involvement. While the move was indeed unilateral, since the Student continued to receive services in her IEP for a period not exceeding ten school days, no violation of IDEA occurred.

Under the IDEA's "stay-put" provision and implementing regulations, after a due process complaint is filed, a school district must maintain a student's "current educational placement" – the last placement agreed upon by both the district and parent, as implemented in the student's most recent individualized educational program (IEP) – unless the parties agree to an interim alternative educational placement (IAEP). *See* 34 CFR 300.518(a). However, the IDEA also provides that when a student with a disability has violated the student code of conduct, a school district is permitted to remove the student from his current educational placement to an appropriate IAEP or suspend the student for not more than ten consecutive school days. 34 CFR 300.530(b)(1).

The decision to suspend a student for ten or fewer consecutive school days is not a change in educational placement under the IDEA. Rather, a violation of the IDEA's stay-put provision occurs when the disciplinary removal exceeds ten consecutive school days, or the child has been subjected to a pattern of removals totaling more than 10 school days in a school year. 34 CFR 300.536. Within that ten-day period, a school district must conduct a review to determine whether the Student's violation was a manifestation of this disability. 34 CFR 300.530(e). If the IEP team determines that the violation of the code of conduct was not a manifestation of the student's disability, the discipline may be enforced as it would be for any student who is not IDEA-eligible. 20 U.S.C. 1415(k)(1)(C). When the disciplinary removal is the result of a student carrying a weapon to school or possessing a weapon on school premises, the

district may remove an IDEA-eligible student to an IAEP, whether or not the conduct was determined to be a manifestation of his disability. 34 CFR 300.530(g). A school district must continue to provide the educational services identified in the Student's IEP when it suspends an IDEA-eligible student for more than ten consecutive school days, (34 CFR 300.530(d)(1)) and may provide those services in the IAEP (34 CFR 300.530(d)(2)).

The Parents assert a requirement for return to the last agreed placement per IDEA's stay-put provision following a due process hearing request. However, the Student was placed in an alternative setting for not more than ten school days beginning August 13, 2025, specifically for the manifestation determination. The Parents filed their due process request August 18, 2025, five days into this period, and at the time, the district remained within its allowed ten days; thus, no change in placement had occurred, nor was there a violation of IDEA's stay-put provision.

Furthermore, subsequent manifestation determination and placement decisions fall outside the scope of this due process hearing. Based on the facts and timeline presented, I conclude that the District did not procedurally violate IDEA.

### **Conclusion**

Having considered Parent's allegations of procedural due process violations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that District procedurally violated the IDEA by: (1) failing its child find obligation under IDEA. (2) failing to develop and maintain an appropriate behavior intervention plan to address Student's maladaptive behaviors. And (3) failing to consider the private psychological evaluation conducted by Dennis Developmental Center.

## SUBSTANTIVE VIOLATIONS OF IDEA

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District committed procedural violations under IDEA by: (1) failing its child find obligation under IDEA. (2) failing to develop and maintain an appropriate behavior intervention plan to address Student's maladaptive behaviors. And (3) failing to consider the private psychological evaluation conducted by Dennis Developmental Center, it is now necessary to consider whether these procedural violations 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 (8<sup>th</sup> Cir. 2011). Rather, a school district's educational plan for a given Student will only be set aside 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.

There is no need to discuss each procedural violation separately here. The District's failure to meet its child find obligation under IDEA; failure to develop and maintain an appropriate behavior intervention plan to address Student's maladaptive behaviors; and failure to consider the private psychological evaluation conducted by Dennis Developmental Center have two very important things in common. They all deprived the Parents of the opportunity to participate in the formulation process and compromised the Student's right to an appropriate education. As discussed, *supra* at the transition conference in March of 2023, student had been receiving services under an IEP under the category of developmental delay. During the meeting, considerable information was presented that should have prompted the District to consider

conducting a comprehensive evaluation. Nevertheless, the District determined that the Student was no longer eligible for special education services, doing so without an evaluation—even though the documentation indicated the Pre-K teacher doubted the Student’s readiness for a regular kindergarten class due to maladaptive behaviors. The likelihood of these behaviors occurring in kindergarten was foreseeable, which ultimately did occur. Although a Section 504 plan with accommodations and modifications was provided to address the Student’s behavior, direct services to support access to the educational program and teach appropriate replacement behaviors were not offered. When Student’s maladaptive behaviors increased, it was the parents not the district who referred her for special education services. Although I believe The District was well intended, there never seemed to be a meaningful plan to address Student’s maladaptive behaviors. There were several meetings during the spring semester of 2025 when Student’s maladaptive behaviors were spiraling in frequency and intensity, there never seemed to be significant changes made to assist Student in learning the skills she lacked to develop appropriate behavior that would allow her to remain in the classroom setting. Further, the behavior plan document itself is so heavily marked up with undated modifications it was impossible for this hearing officer to determine what was in place and when. All of this deprived the Parents of the opportunity to participate in the formulation process and compromised the Student’s right to an appropriate education. Student spent more and more time outside the classroom during the spring of 2025, which told the team the behavior plan in place was not successful, yet no meaningful changes were made nor a new plan developed. Furthermore, there were no significant changes made to Student’s IEP to address her maladaptive behaviors.

The District substantively violated IDEA by: (1) failing to meet its child find obligation under IDEA; (2) failing to develop and maintain an appropriate behavior intervention plan to

address Student's maladaptive behaviors; and (3) failure to consider the private psychological evaluation conducted by Dennis Developmental Center.

### **ORDER**

The results of the testimony and evidence warrant a finding for the Parents. Specifically, Parents introduced sufficient evidence in the record to establish by preponderance of the evidence that the District denied Student a FAPE between August 18, 2023, and August 18, 2025. District is hereby ordered to take the following actions regarding Student:

1. The District shall contract with an independent Occupational therapist (not an employee of the district) to conduct and complete an occupational therapy evaluation on Student by April 1, 2026. The Occupational therapy evaluation should include but is not limited to sensory processing and executive functioning issues.
2. The District shall contract with an independent psychological evaluator (not an employee of the district) to conduct and complete a comprehensive psychological evaluation on Student on or before April 1, 2026.
3. The District shall contract with an independent Board-Certified Behavior Analysis (BCBA) (not an employee of the district) to conduct and complete a Functional Behavior Assessment on Student on or before April 1, 2026.
4. The District Speech Therapist, Laura Baxter, shall determine whether Student requires additional speech evaluation. If Ms. Baxter determines Student needs additional speech evaluations, she is to complete those evaluations on or before April 1, 2026. This hearing officer is not ordering an independent speech evaluator because

Ms. Baxter provides both private and school speech therapy services for Student, and both her credentials and her testimony convinced this hearing officer that no outside speech evaluation or therapist is necessary.

5. Within 30 calendar days of receipt of the independent evaluations, the District shall convene an IEP meeting including the independent occupational therapist, psychological evaluator and BCBA, to review and discuss each independent evaluation; develop and revise Student's IEP; develop a comprehensive, data driven behavior intervention program that includes at a minimum, clearly defined targeted behaviors, specifies preventative supports, includes reinforcement systems, identifies responsible personnel, establishes objective data collection procedures and specifies review intervals. The Behavior Intervention Plan shall be a clean, finalized document without handwritten alterations or undated revisions. Any subsequent revisions must be dated and formally documented.
6. For the remainder of the 2025-2026 academic year and the 2026-2027 academic year the District shall provide Parents with a written progress report on Student's IEP goals, and a summary of behavioral data collected under the revised behavior intervention plan every sixty (60) calendar days.
7. The district shall provide Student with compensatory education in the form of paying a private provider selected by Parents to provide ABA therapy services during the summer of 2026 and summer of 2027, a minimum of 20 hours per week or otherwise agreed.

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

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

2/18/2026  
DATE