

**ARKANSAS DEPARTMENT OF EDUCATION**

**Special Education Unit**

[REDACTED]

**PETITIONERS**

**VS.**

**NOS. H-23-35 and H-24-09**

**VILONIA SCHOOL DISTRICT**

**RESPONDENT**

**HEARING OFFICERS FINAL DECISION AND ORDER**

**ISSUES PRESENTED:**

Whether the Vilonia School District (hereinafter “District” or “Respondent”) denied [REDACTED] (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between March 24, 2021 and March 24, 2023 (H-23-35) and March 24, 2023 and August 11, 2023 (H-24-09), 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 to assess Student in all areas of suspected disability; (2) failing to meet to review the May 5, 2023 evaluation within the thirty days allotted under IDEA; (4) failing to meet its responsibilities under Child Find; (5) failing to develop an appropriate IEP that would allow student to make progress in light of his individual circumstances for the 2021-2022, 2022-2023 and 2023-2024 school years.

### **Procedural History:**

On March 24, 2023, the Arkansas Department of Education (hereinafter referred to as the “Department” or “ADE”) received a request to initiate a due process hearing from [REDACTED] [REDACTED] (“Parents” or “Petitioners”), as the Parents of [REDACTED] (hereinafter referred to as “Student”), against the Vilonia School District (hereinafter referred to as “District” or “Respondent”). This case was numbered H-23-35. 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> H-23-35 was set to be heard on May 3-5, 2023. On April 23, 2023, the attorney for the parents sent an email stating that she was ill and unable to proceed with the scheduled due process hearing. H-23-35 was reset to be heard August 9-11, 2023. At the prehearing conference for H-23-35 held on August 7, 2023, attorney for the parents, asked for a continuance in H-23-35, because she would be filing an additional due process hearing request and would be requesting the two due process hearing requests be consolidated. The District had no objection and that continuance was granted. On August 11, 2023, Parents filed their second due process hearing request which was assigned the number H-24-09. On August 21, 2023, attorney for the parents filed a motion for a continuance and to consolidate H-23-35 and H-24-09. On August 22, 2023, Parents’ Motion for a continuance and to consolidate H-23-35 and H-24-09 was granted. Consolidated cases H-23-35 and H-24-09 were set to be heard October 16-20, 2023. On October 12, 2023, attorney for Parents filed a motion for a continuance due to a family emergency. On October 12, 2023, Parents’ Motion for Continuance was granted and cases set

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

for January 10-12, 2024. On January 9, 2024, attorney for Parents without objection from the District asked that the due process hearing start on January 11, 2024. On January 10, 2024, again attorney for the Parents without objection from the District asked that the due process hearing be pushed back a day to January 12, 2024. During these continuances the parties continued to work toward settlement. Before the start of the due process hearing on January 12, 2024, the parties announced they had reached settlement but needed school board approval. On March 12, 2024, attorney for the Parents sent the following email:

“Ms. McClain:

In this ever-changing landscape we seem to be in -

Please be advised that although the Settlement that was reached in the above referenced case on January 10, 2024 - just prior to beginning the DPH --

I was notified late today that the school board last month tabled the approval of our Settlement Agreement and last night rejected the approval of it altogether.

Therefore, I would ask that this case for a Hearing at your earliest convenience.”

On April 3, 2024, A scheduling order was issued and the due process hearings scheduled for May 8-10, 2024. On April 19, 2024, the District filed a motion for a continuance, stating that its LEA was out of state the week of May 8-10, 2024, and would be unable to attend the due process hearing. On April 30, 2024, the District’s motion for a continuance was granted and the due process hearing was rescheduled for July 17-19, 2024.

At the time that Parents filed their first request for a due process hearing, Student was a 12-year-old boy and a student in the Vilonia School District.<sup>2</sup> Student was a student with a

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<sup>2</sup> See Hearing Officer File-Petitioner Complaint, pg. 2.

disability under 20 U.S.C. §1401(3). Student was diagnosed with Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, and Unspecified Anxiety Disorder.<sup>3</sup>

In response to the Parents' request for a Due Process hearing, the Department assigned the case to an impartial hearing officer.

The Prehearing conference was conducted via zoom on July 15, 2024.<sup>4</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>5</sup>

Thereafter testimony was heard in this case on July 17, 18, and 19, 2024. At the end of the hearing on July 19, 2024, the parties had not completed their presentation of testimony, and the case was continued until September 11, 2024, and testimony was completed on September 11, 2024.<sup>6</sup>

Present for the Hearing were Theresa Caldwell, attorney for the parents, Jay Bequette, attorney for the District, [REDACTED] Audra Alumbaugh, advocate, Mary Kate Cain, Laura Sullivan, special education director, Lisa Adams, assistant special education director.

The following witnesses testified in this matter: Audie Alumbaugh, Tammy Moore, Jennifer Shock, Chad Roberts, Tambrey Kinley, Andy Pennington, Sharon Wharton, Rebecca Jackson, Lisa Adams, [REDACTED] James Gibson, and [REDACTED].<sup>7</sup>

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<sup>3</sup> Parents' Exhibits, pg. 2.

<sup>4</sup> Transcript, prehearing conference.

<sup>5</sup> Id.

<sup>6</sup> Transcripts, Vol. I-V.

<sup>7</sup> Id.

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 an open 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.<sup>8</sup>

### **Findings of Fact**

1. Student is a thirteen-year-old boy who is in the 8<sup>th</sup> grade in the Vilonia School District (“District”).<sup>9</sup>
2. Student is currently identified by the District as a student eligible for special education and related services under the individuals with Disabilities Education Act (IDEA).<sup>10</sup> Student is identified under the category of “Autism”.<sup>11</sup>
3. Student is diagnosed with Autism, ADHD, and Anxiety.<sup>12</sup>
4. Student enrolled in the District in the beginning of fourth grade for the 2020-2021 school year.<sup>13</sup> Student arrived with an Individualized Education Program (“IEP”) developed by his previous school district.<sup>14</sup> On October 5, 2020, the District held an IEP transfer conference and the IEP team “transferred the services from the Warren School District IEP and obtained consent to conduct an evaluation.”<sup>15</sup>

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<sup>8</sup> See Hearing Officer File-post hearing briefs.

<sup>9</sup> H-24-09 pg. 2.

<sup>10</sup> Id., 2-4.

<sup>11</sup> Parents’ Exhibits, pg. 2.

<sup>12</sup> Id.

<sup>13</sup> H-23-35 Complaint pg.

<sup>14</sup> Id. Pg. 4.

<sup>15</sup> District Exhibits, pg. 2-3.

5. A psychoeducational evaluation was completed on Student on November 17, 2020.<sup>16</sup> The evaluator completed the following assessments: Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V); Wechsler Individual Achievement Test, Fourth Edition (WIAT-IV); and Behavior Assessment System for Children, Third Edition (BASC-3)—Teacher Rating Scale.<sup>17</sup>
6. On January 7, 2021, an evaluation conference was held to determine if additional Special education services were necessary and if any changes were needed to Student’s current IEP. After reviewing the evaluation report and consulting with Student’s classroom teacher, the IEP team determined that Student no longer required special education services. The IEP team stated that, “although, Student continued to display characteristics on Autism, he is able to make satisfactory progress in the regular general education classroom with accommodations.” Student was dismissed from special education and moved to a 504 plan.<sup>18</sup>
7. On November 5, 2021, the 504 team met. Parent was not present but gave permission for the team to meet in her absence. Teachers stated that Student required frequent redirection. Student was progressing in math but was not on grade level. Student met bench mark on STAR reading. Student never used extra time in any class. He had trouble following assignment directions in literacy classes. Team was overall happy with his progress.<sup>19</sup> Student was to continue on a 504 plan which included extra time to

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<sup>16</sup> Id., pgs. 20-28.

<sup>17</sup> Id.

<sup>18</sup> Id., 37.

<sup>19</sup> District Exhibits, pg. 44.

complete assigned work, monitor and redirection as needed, preferential seating, encourage Student to participate in class and check for comprehensive instructions.<sup>20</sup>

In Student's 2021-2022 5<sup>th</sup> grade school year he was given the ACT aspire. Student scored Ready in English and Reading, Scoreable in Writing, and Close in Math and Science with an overall composite score of 419 that put Student at the 49<sup>th</sup> percentile rank nationally.<sup>21</sup> Student scored below ready in English Language Arts (ELA) and Science and Mathematics (STEM). In ELA Student scored 423 which was 3 points below the score needed to reach ready and in STEM Student scored 417 which also put him 3 points below the score he needed to reach ready.<sup>22</sup>

8. The 504-team met on December 6, 2022. Mom and teachers were happy with Student's 504 plan and Student was using all the accommodations. The 504 plan was to remain the same.<sup>23</sup>
9. In the 6<sup>th</sup> grade, Student was given the Star Math computer adaptive math test. This test was administered on December 15, 2022. Student scored a scaled score of 864, which placed him in the 1 percentile nationally, and at a 2.1 grade equivalent.<sup>24</sup> Student previously took the Star Math computer adaptive math test on September 6, 2022, and had a scaled score of 924 which placed him in the 3 percentile nationally. In three months, Student's scaled score dropped 60 points and his overall percentile ranking went down 2 percentile points.<sup>25</sup>

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<sup>20</sup> Id., pg. 45.

<sup>21</sup> District Exhibits, pg. 211.

<sup>22</sup> Id., pg. 211.

<sup>23</sup> Id., 46.

<sup>24</sup> Id., pg. 204.

<sup>25</sup> Id., pg. 206.

10. Between September 2, 2020-May 8, 2023, Student was administered 12 Star Math tests.

The results were as follows:

5/8/2023	869 scaled score	1 percentile rank	2.2 grade equivalent
12/15/202	854 scaled score	1 percentile rank	2.1 grade equivalent
9/6/2022	924 scaled score	3 percentile rank	3.1 grade equivalent
5/5/2022	1032 scaled score	43 percentile rank	5.4 grade equivalent
11/16/2021	996 scaled score	34 percentile rank	4.5 grade equivalent
8/27/2021	906 scaled score	5 percentile rank	2.8 grade equivalent
5/11/2021	913 scaled score	6 percentile rank	2.9 grade equivalent
4/13/2021	877 scaled score	3 percentile rank	2.4 grade equivalent
2/2/2021	920 scaled score	10 percentile rank	3.0 grade equivalent
12/10/2020	884 scaled score	5 percentile rank	2.5 grade equivalent
10/13/2020	901 scaled score	10 percentile rank	2.7 grade equivalent
9/2/2020	907 scaled score	13 percentile rank	2.8 grade equivalent

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11. On January 6, 2023, Student was given the Star reading test. Student scored a scaled score of 1019 which put Student at the 18-percentile rank. Student had a 4.6 grade equivalent and a 4.3 instructional reading level. During 6<sup>th</sup> grade Student took Star Reading tests and scored as follows:

5/8/2023	839 scaled score	1 percentile rank	1.6 grade equivalent
5/4/2023	615 scaled score	1 percentile rank	less than kindergarten
1/6/2023	1019 scaled score	18 percentile rank	4.6 grade equivalent

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<sup>26</sup> District Exhibits, pgs. 85-86, 200.



11/17/2022	1019 scaled score	20 percentile rank	4.6 grade equivalent
9/7/2022	1080 scaled score	56 percentile rank	6.7 grade equivalent

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12. From 9-6-2020 to 1-6-2023, Student was given 18 Star Reading tests. He scored as follows:

1/6/2023	1019 scaled score	18 percentile rank	4.6 grade equivalent
11/17/2022	1019 scaled score	20 percentile rank	4.6 grade equivalent
9/7/2022	1080 scaled score	56 percentile rank	6.7 grade equivalent
5/10/2022	1083 scaled score	67 percentile rank	6.5 grade equivalent
2/10/2022	1086 scaled score	73 percentile rank	6.7 grade equivalent
1/14/2022	1085 scaled score	74 percentile rank	6.6 grade equivalent
11/18/2021	1095 scaled score	82 percentile rank	7.0 grade equivalent
10/14/2021	1103 scaled score	86 percentile rank	7.4 grade equivalent
8/26/2021	1052 scaled score	61 percentile rank	5.5 grade equivalent
5/6/2021	1071 scaled score	79 percentile rank	6.1 grade equivalent
4/1/2021	996 scaled score	36 percentile rank	4.1 grade equivalent
3/2/2021	977 scaled score	29 percentile rank	
2/2/2021	953 scaled score	18 and 29 percentile rank	3.3 and 3.7 equivalent
12/08/2020	978 scaled score	32 percentile rank	3.7 grade equivalent
11/16/2020	962 scaled score	26 percentile rank	3.4 grade equivalent
10/16/2020	983 scaled score	39 percentile rank	3.8 grade equivalent

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<sup>27</sup> District Exhibits, pg. 81.

10/13/2020    962 scaled score    27 percentile rank    3.4 grade equivalent  
9/26/2020    1017 scaled score    62 percentile rank

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13. On January 10, 2023, Student was on the playground and another student called him a name he took offense to, and so Student punched him and bloodied his nose. Student was arrested, taken to the police station and issued a citation for third degree battery.<sup>29</sup> Student was suspended for one day.
14. On January 17, 2023, Student was tired and became frustrated with a substitute teacher who Student stated was “completely idiotic, unprofessional and not qualified, clearly”. Student became frustrated because there was chaos in the classroom. After class Student said into his locker, “I wanna kill someone”.<sup>30</sup> Student was arrested and taken to the police station and issued a criminal citation for terroristic threatening.<sup>31</sup> Student was suspended from school for one day.
15. On February 3, 2023, the 504 team met. Comments being made to Student by other students had reduced but were still occurring. Student was doing well in reading but math was getting progressively worse. The team decided that a special education referral conference was needed but no one referred Student.<sup>32</sup>
16. On February 21, 2023, Parent made a special education referral.<sup>33</sup>
17. On February 21, 2023, Student came home crying because some students in his class were picking on him while he was on the school bus.

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<sup>28</sup> District exhibits, pgs. 85-85 and 202.

<sup>29</sup> District exhibits, pgs. 51-52, 66.

<sup>30</sup> Id., pgs. 53-56.

<sup>31</sup> Id., pg. 52.

<sup>32</sup> Id., pg. 62.

<sup>33</sup> Id., pg. 66.

18. On March 7, 2023, the District held a referral conference and the IEP team decided a comprehensive evaluation was needed.<sup>34</sup> Parent consented to the comprehensive evaluation.<sup>35</sup>
19. On March 13, 2023, the District held an IEP meeting to consider a temporary IEP but decided it was unnecessary because Student still had a 504 plan.<sup>36</sup>
20. On May 5, 2023, the District completed its last evaluation component of its comprehensive evaluation on Student.<sup>37</sup>
21. The evaluator administered three assessments: Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V); Wechsler Individual Achievement Test, Fourth Edition (WIAT-IV); Behavior Assessment System for Children, Third Edition (BASC-3), Teacher Rating Scale and Parent Rating Scale.<sup>38</sup>
22. On June 9, 2023 an evaluation/programming conference was held and based on the evaluation Student was identified as a student with a disability in need of special education services and an IEP was developed.<sup>39</sup> Student's IEP contained a statement of Student's present levels of academic achievement, two annual goals one in math and one in behavior, and a statement of special education and related services. Student was to receive co-taught services in math 125 minutes per week, co-taught services in language arts 125 minutes per week, and direct instruction in social skills 30 minutes per week.<sup>40</sup>

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<sup>34</sup> District Exhibits, pg. 67.

<sup>35</sup> Id.

<sup>36</sup> District Exhibits, pg. 70.

<sup>37</sup> Id., pgs. 73-90.

<sup>38</sup> Id., at 74.

<sup>39</sup> Id., pgs. 93-103

<sup>40</sup> Id.

## **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 (4th 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 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.” *Endrew 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. *Endrew F.*, 137 S. Ct. 988, 999 (citing *Rowley* at 206-09). The *Endrew* 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 two year statute of limitations applies in this case; (2) Whether the District failed to meet its child find obligation pursuant to IDEA; (3) Whether the District failed to assess Student in all areas of suspected disability; (4) Whether the District failed to meet to review Students May 5, 2023 evaluation within the timeline required under IDEA;

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 a number of 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.

**I. Whether the IDEA two-year statute of limitations applies in this case**

Eighth Circuit Court of Appeals confirmed that IDEA has a two-year statute of limitations and also that a District's failure to fulfill its child find obligation was not a single event like a decision to expel a student but was a violation that was "repeated well into the [two

year] limitations period. See *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073 (8<sup>th</sup> Cir.

2020) In this case the Eighth Circuit explained:

“Assuming the parents knew or should have known they had a child find claim when the student was an eighth grader, the District staff responsible for identifying the Student in the ninth and tenth grades likewise failed to fulfill their child find obligation. In other words, the violation wasn’t a single event like a decision to suspend or expel student; instead, the violation was repeated well into the limitations period. CF. *In re: Mirapex Prods. Liab. Litig.*, 912 F.3d 1129, 1132(8<sup>th</sup> Cir. 2019) [noting that “breaches in continuing or recurring obligations give rise to new claims with their own limitation periods]. Any claim of a breach falling outside the IDEA’s two-year statute of limitations would be untimely. But, because the District’s continued violation of its child find duty, at least some of the Student’s claims of breach of that duty accrued within the applicable period of limitation.”

Id. At 1083-84. See also *Fitzgerald v. Camdenton R-III Sch. Dist.*, 439 F.3d 773, 776 (8<sup>th</sup> Cir.

2006)

Petitioners argue that the statute of limitations should extend back to January 7, 2021 when Student was dismissed from special education and placed on a 504 plan. They argue that Parents neither knew nor should have known that Student could not make meaningful educational progress without an IEP, and thus was being denied FAPE until on or around May 11, 2021. Petitioners cite *Avila v. Spokane Sch. Dist.* 81, 852 F.3d 936, 944 (9<sup>th</sup> Cir. 2017) to support their argument. This hearing officer disagrees that *Avila* is controlling here.

But even if *Avila* was controlling and the discovery rule applied, Petitioners argument would still fail. Here, parents consented to the evaluation conducted by the District on November 17, 2020.<sup>41</sup> There is no claim that Parents did not receive a copy of their rights as required under 20 U.S.C. 1415(d)(1)(A), so it must be presumed those rights were received. Further, on January 7, 2021, when the evaluation conference was held, Parents participated fully,

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<sup>41</sup> District Exhibits, pgs. 2-3.

and the team (parents included) determined that Student should be dismissed from special education and placed on a 504 plan.<sup>42</sup> Petitioners argue that:

“Given that the Warren IEP provided no special education to address [Student’s] Autism or ADHD and that Shock failed to summarize her findings, to discuss the possible adverse effect on educational performance, and to recommend any special education, Parents had no reason to know that [Student] needed special education, and thus, would be denied a FAPE without an IEP.”<sup>43</sup>

This hearing officer disagrees. Parents had a copy of their rights, and by all accounts the decision made on January 7, 2021, to remove Student from special education and place him on a 504 plan was appropriate.

Parent further argues that this case should fall under the exceptions to timelines under IDEA. This hearing officer disagrees.

20 U.S.C. 1415(f)(3)(C) states:

(C)Timeline for requesting hearing

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 basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

20 U.S.C. 1415(f)(3)(D) states:

(D)Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

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<sup>42</sup> Id., pg. 37.

<sup>43</sup> Parents’ post hearing brief, pg. 17.

- (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- (ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

Here Parent does not provide proof that the district misrepresented that it had resolved the problem or that the district withheld information from the parent that was required to be provided to the parent. Therefore, the exceptions to the timeline do not apply in this case.

Based on the review of statutes, regulations and case law, this Hearing Officer finds that no reason to extend the timeline further than two years, and that the period from March 24, 2021, to March 4, 2023, is within the statute of limitations in this matter and thus will not address Petitioner's arguments that fall outside that window, with the exception of child find.

## **II. Whether the District Failed to meet its 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 (internal quotation marks and brackets omitted). *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)).

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

The District argues throughout that Student's needs could be and were met through a 504 plan.<sup>44</sup> It should be noted that there is nothing in the IDEA that indicates that a student whose needs are being met by a 504 plan is ineligible for special education programming and related services. On the contrary, it is quite possible that a student's disabilities could qualify him or her for either, depending on the circumstances. Therefore, the prevailing question for school districts

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<sup>44</sup> District Exhibits, pgs. 42-45.

in determining IDEA eligibility is not that of whether a student's needs can be met by a 504 plan, but, instead, notwithstanding 504 eligibility, whether a student qualifies for special education programming and related services pursuant to the IDEA. If a student meets the eligibility criteria set forth in the IDEA, he or she is entitled to special education programming and related services thereunder. In that instance, whether a 504 plan is or would be effective is wholly irrelevant.

Courts around the country have recognized that the IDEA's child find requirement imposes an "affirmative duty" on school districts. See, e.g. *Strock v. Indep. Sch. Dist. No. 281, No. 06-cv-3314* (JMR/FLN), (D. Minn. Mar. 21, 2008). This duty is the sole responsibility of the school districts—it may not be discharged simply by passing the burden on to private school educators or parents. See, e.g., *N.B. and C.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202,1209 (9th Cir. 2008) ("A school district cannot abdicate its affirmative duties under the IDEA."); *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 28 ("[E]ven though a parent may help a school district satisfy the IDEA's requirement that it identify children in need of services, the school district is not relieved of its requirement to further locate and evaluate those children.").

("[A] child's entitlement to special education should not depend upon the vigilance of the parents (who may not be sufficiently sophisticated to comprehend the problem) . . ."). "Once a child is identified as potentially having a disability, the child's District '*shall conduct a full and individual evaluation*' to determine whether the child has a disability." *Independent School District No. 413, Marshall v. H.M.J. ex rel. A.J., M.N.*, 123 F. Supp.3d 1100, 1108 (D. Minn. 2015) (quoting 20 U.S.C. § 1414(a)(1)(A)) (emphasis added), *Lawrence County. Sch. Dist. v. McDaniel*, No. 3:17-CV-00004 BSM (E.D. Ark. Mar. 30, 2018).

Here, the District knew of Student’s diagnosis when he arrived in the District in the fall of 2020 with an IEP from his previous school district.<sup>45</sup> The District knew Student had a diagnosis of Autism.<sup>46</sup> The District completed its evaluation on Student on November 17, 2020.<sup>47</sup> On January 7, 2021, the IEP team met and determined that Student should be discharged from special education services and placed on a 504 plan. Parent participated in this meeting and was in agreement with discharging Student from special education and placing him on a 504 plan.<sup>48</sup> Student’s Star Math tests showed he made significant progress in math from 9/2/2020 until 9/6/2022. However, starting with the test on 9/6/2022 and continuing until 5/8/2023, Student’s math scores dropped substantially, from a 43 percentile rank and 5.4 grade equivalent on 5/5/2022 down to a 1 percentile rank and 2.2 grade equivalent on 5/8/2023. Similarly, Student’s Star reading scores show steady progress between 2/2/2021 to 9/7/2022. However, starting on 11/17/2022 until 5/8/2023 Student’s scores dropped from an 18 percentile rank and 4.6 grad equivalent on 11/17/2022 to a one percentile rank and 1.6 grade equivalent on 5/8/2023. This should have alerted the District that Student was having difficulties and that an evaluation may be needed to determine if Student qualified for special education services. Further, District knew Student had Autism, ADHD and anxiety. Therefore, the District procedurally violated its child find obligation under IDEA when it failed to properly refer and evaluate Student for special education services in the fall of the 2022 school year when Student began showing drastically declining tests scores in both reading and math. Additionally, Student was involved in two serious behavior incidences. One on January 11, 2023, in which he hit another Student and bloodied his nose because he called him “bisexual”, and another incident on January 17,

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<sup>45</sup> Parents’ exhibits pgs. 29-40

<sup>46</sup> Id., pg. 30.

<sup>47</sup> District Exhibits, pgs. 20-26.

<sup>48</sup> Id., pg. 33.

2023, in which Student became frustrated with the chaotic classroom when a substitute teacher was present and yelled into his locker he wanted to kill someone.<sup>49</sup> Both of these incidents resulted in Student being arrested and charged with third degree battery and terroristic threatening. It wasn't until the parent made a referral on February 21, 2023, that the District took action.

Wherefore, the District procedurally violated IDEA by failing to meet its child find obligation.

### **III. Whether the District failed to assess Student in all areas of suspected disability**

34 C.F.R. 300.304(c) Evaluation Procedures states:

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

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<sup>49</sup> District Exhibits, pgs. 51-56.



(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Additionally, the Arkansas Department of Education Eligibility Criteria and Program Guidelines for Autism IV. Required Evaluation Data at F says:

1. Observation (Required)

Observation should cover personal-social behaviors, toy play, conversational speech, emotional expression, amount of time spent in idiosyncratic repetitive behaviors and eating behavior. Information can be obtained in a variety of settings including observing the child in the home environment, classroom and play situations. The observed behaviors should be viewed in terms of developmental age so that formal assessment data and observational data can be compared. Observational data must be considered part of the educational evaluation due to the impact of behavior upon skill acquisition.

Parent argues that the District failed to assess Student in all areas of disability in its evaluation completed on May 5, 2023. In as early as November 17, 2022, the District had information that gave notice that Student may qualify for special education services for Autism, other health impairment (ADHD), Specific learning disability in reading or math or both (based on the discrepancy between Student's average or above average intelligence and his lack of achievement), and Emotional Disturbance (ED). However, the District's evaluation failed to include the following:

- observations
- assessment of visual and auditory perception

- an assessment in basic reading skills, reading fluency, reading comprehension, math calculation and math problem solving
- clinical diagnosis of emotional disturbance

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Based on these facts I find that the District's evaluation failed to assess Student in all areas of suspected disability and as such the District procedurally violated IDEA.

**IV. Whether the District failed to meet to review Students May 5, 2023, within the timeline required under IDEA**

Student was referred for special education by Parent on February 21, 2023. On March 7, 2023, the District held a referral conference, and the IEP team decided a comprehensive evaluation was needed.<sup>51</sup> On March 13, 2023, Parent signed informed consent for the District to complete a comprehensive evaluation on Student.<sup>52</sup> The District completed its comprehensive evaluation on Student on May 5, 2023, and it wasn't until June 13, 2023, that an evaluation/programming conference was held to discuss the May 5, 2023 evaluation. ADE rule 6.06 Determination of eligibility states:

6.06.1 Upon completion of the administration of tests and other evaluation measures-

6.06.1.1 Within thirty (30) calendar days, an evaluation programming conference must be conducted.

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<sup>50</sup> Parents' Exhibits, pgs. 88-105.

<sup>51</sup> District Exhibits, pg. 67.

<sup>52</sup> Id., pg. 71.

Here the District failed to hold an evaluation/programming conference for thirty five (35) days. I find this is a procedural violation under IDEA.

### **Conclusion**

Having considered Parents' 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 did procedurally violated the IDEA by (1) failing to meet its child find obligation under IDEA; (2) failing to assess Student in all areas of disability; and (3) failing to meet to review Student's May 5, 2023 evaluation within the timeline required under IDEA.

### **SUBSTANTIVE VIOLATIONS OF IDEA**

Having analyzed the first prong of the FAPE analysis, specifically that of procedural violations, and determined that the District failed to assess student in all areas of disability, failed under its child find obligation and failed to conduct an evaluation/programming conference within thirty days of the completion of the evaluation of Student, 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.

## CHILD FIND

As discussed above, Student's STAR Math and Reading scores consistently declined beginning in September of 2022 until May of 2023. Further, Student's behavior also declined during this time period resulting in two arrests in January one for third degree battery and one for terroristic threatening. The District should have been on notice and had an obligation to realize Student was having difficulties and may have needed to be evaluated for special education services by November, 2022. However, certainly no later than when the 504-team met on December 7, 2022, and stated that they were happy with the 504 plan, they should have reviewed Student's STAR testing and notice his significant decline in both reading and math.<sup>53</sup> This should have triggered a referral for special education services and a referral conference should have taken place, which would have led to a comprehensive evaluation being conducted earlier than May 5, 2023. Further, on February 3, 2023, the 504 team met again, and discussed Student's behavior and opined that Student's math was getting progressively worse, but the District failed to refer him at that time for special education services. Although Parent referred Student for special education services on February 21, 2023, and the number of days between December 7, 2022, and February 21, 2023 is only 76 days, it is during this time that Student was arrested twice and charged with third degree battery and terroristic threatening. We can only surmise that had the District recognized Student's decline in December and referred him for special education services those incidents might have been avoided. The District's failure to meet its child find obligation compromised Student's right to an appropriate education and substantively violated IDEA.

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<sup>53</sup> District Exhibits, pg. 47.

### **EVALUATION IN ALL AREAS OF SUSPECTED DISABILITY**

34 CFR 300.304(c)(4) provides that when evaluating a child under IDEA the child must be “assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities”. Without a complete assessment in all suspected areas of disability it is impossible to determine if Student qualifies for special education services or develop and implement an appropriate IEP for Student. As such when the District failed to assess Student in specific learning disability in reading, and failed to include all the assessments required by ADE’s eligibility criteria and program guidelines for Autism, OHI, SLD and ED as discussed above the District compromised Student’s right to an appropriate education and seriously hampered the parents’ opportunity to participate in the formulation process. Parents cannot fully participate in the formulation process without being fully informed of Student’s disabilities and needs. Because this evaluation is what was used to determine Student’s eligibility for special education services and to develop a program, I find that the failure of the District to comprehensively evaluate Student in all areas of suspected disability rises to the level of a substantive violation of IDEA and a denial of FAPE. Further, it is impossible to determine if the IEP developed on June 9, 2023, was appropriate because of the District’s failure to comprehensively evaluate Student in all areas of suspected disability.

### **EVALUATION TIMELINES**

The ADE rules require an initial evaluation “must be conducted within sixty (60) calendar days of receiving parental consent for the evaluation. See ADE Rule 6.03.1.1. "Upon completing the administration of tests and other evaluation measures, an evaluation/programming conference must be conducted within thirty (30) calendar days.” ADE Rule

6.06.1.1. Here consent for the initial evaluation was provided by Parents on March 12, 2023.<sup>54</sup> The evaluation was completed on May 5, 2023 some 53 days later.<sup>55</sup> An evaluation/programming conference was held on June 9, 2023.<sup>56</sup> This was 35 days after the completion of the May 5, 2023 evaluation, but a mere five days outside of the thirty days allowed to hold the evaluation/programming conference. The District argues that Parents cannot show any prejudice or harm given school was not in session and Student was not to begin to receive services under the IEP until August of 2023. I agree. This procedural violation did not compromise Student's right to an appropriate education, seriously hamper the parent's opportunity to participate in the formulation process or cause a deprivation in educational benefit. Thus, the District's failure to hold the evaluation programming conference within 30 calendar days from the completion of the May 5, 2023, evaluation is not a substantive violation under IDEA.

### **BULLYING**

The Parents failed to present sufficient evidence that Student was bullied. By their own testimony the parents never filed a complaint alleging Student was bullied.<sup>57</sup> Furthermore, Parent testified that any time she contacted the District administrators about Student having issues at school with other students, "action was taken to her satisfaction to stop the bullying."<sup>58</sup> Mr. Roberts, the school counselor, testified that he never heard anything about Student being bullied at school.<sup>59</sup> Further, Ms. Kinley, Student's homeroom teacher, Mr. Pennington, principal, and Ms. Wharton, Student's math teacher also testified that Parents never complained to them

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<sup>54</sup> Parents' exhibits pg. 48.

<sup>55</sup> Id., at 88.

<sup>56</sup> Id., at 1.

<sup>57</sup> Transcript, III, pgs. 142.

<sup>58</sup> Id., at 145-147.

<sup>59</sup> Transcript, II, pgs. 34, 54.

about bullying.<sup>60</sup> There were a couple of text messages entered into evidence in which the Parent stated that Student was having trouble with a couple of students, and Parent testimony that they spoke to the District about Student having issues with a couple of other students. But by Parent's own testimony, this was addressed by the District when it was brought to their attention. The evidence presented did not show this was an ongoing issue. To the contrary it appeared there were a few incidences of issues with other students that were addressed by the District, but nothing this hearing officer finds constitutes bullying.

### **CONCLUSION**

Having considered Parents' allegations of substantive due process violations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that District did Substantially violate the IDEA by (1) failing to meet its child find obligation under IDEA; and (2) failing to assess Student in all areas of disability.

### **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 November 17, 2022, and August 11, 2023, District is hereby ordered to take the following actions regarding Student:

1. IEP team shall meet within 15 school days to determine Student's need for additional evaluations. The areas to be discussed should include but not be limited to social

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<sup>60</sup> Id., pgs. 65, 112, 185, 190.



language, social skills, pragmatic language skills, basic reading skills, reading fluency, reading comprehension, math calculation and math problem solving. The IEP team shall also discuss and determine if there is a need for a functional behavior assessment.

2. Within 60 days from the date of the IEP meeting, all evaluations determined by the IEP team to be needed to address Student's deficits shall be completed.
3. Within 30 days from the completion of all evaluation components, the IEP team shall meet to discuss the results and amend Student's IEP if deemed necessary.

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**

11/3/2024

**DATE**