

RESPONDENT

Jul 02 13 11:20p

2) Provide services

- a) Through send-homes, and
- b) Other things (not specified).

Claims: Student's mother, starting with pre-school, provided school with information re:

- 1) Student's severe expressive receptive language impairment,
- 2) Behavioral difficulties, and that
- 3) Student had to leave school during preschool year to get therapies, claims Student was:

- a) never ID'd as language impaired, and
- b) never given services by the District.

Seeking:

- 1) Compensatory education services,
- 2) Compensatory education for related missed services,
- 3) Evaluation and appropriate IEP in:
 - a) least restrictive environment,
 - b) with one-on-one aide.

Claims when Student went to kindergarten, the mother "again" provided all evaluations, but student still never identified as language impaired;

Claims huge amount of documents before end of 1st semester re/behavior, being placed in alternative school on 45 day placement and being restrained by security guard;

Claims no indication from school and no referral for services;

Claims even had mother not provided information re/a disability and declined services,

JH v. LRSD 2

District still had obligation under Child Find to:

- 1) locate students w/disabilities,
- 2) test them,
- 3) evaluate them, and
- 4) then provide services

PROCEDURAL HISTORY

On March 26th, 2013, a Due Process Complaint Notice was received by the Arkansas Department of Education from [REDACTED] ("Parent and Legal Guardian") of [REDACTED] ("Student"). The Parent requested the hearing because she believed that the Little Rock School District (hereinafter referred to as "District") failed to comply with the Individuals with Disabilities Education Act of 2004 (20 U.S.C. §§ 1400 - 1485, as amended) (IDEA) (also referred to as the "Act" and "Public Law 108-446") and the regulations set forth by the Department by not providing the Student with appropriate services as noted above in the issues as stated.

On April 5th, 2013 the District responded to the Notice with a copy to the Hearing Officer. On or before the District was required to convene a resolution session and resolve the complaint prior to April 25th to the satisfaction of the Parent. Because the issues were not resolved, Pre-Hearing briefs were required on April 25th from the parties with a Pre-Hearing Conference scheduled for May 8th, 2013. The Due Process Hearing was convened and held May 14th, 15th and 16th, 2013. The attorney for the Petitioner Parent was Ms. Theresa Caldwell, Esq, and the attorney for the Respondent District was Mr. Khayyam Eddings, Esq.

JH v. LRSD 3

FINDINGS OF FACT

1. Student is a six-year-old student who attended Pre-Kindergarten and is now attending Kindergarten in the Little Rock School District;
2. Student was evaluated by the Arkansas Students Hospital at age three for Speech and Language issues. Arkansas Children's Hospital referred her to be tested for speech, occupational and physical therapy (recommendation was therapy for all);
3. Therapies were provided by Complete Pediatrics and Hop, Skip and Jump in Pre-Kindergarten and Complete Pediatrics in Kindergarten. Both are private Medicaid providers and were requested by the Parent;
4. Parent contacted Pulaski County Tri-District Early Childhood Program, an extension of the Little Rock District (the Little Rock, North Little Rock and Pulaski County Special District) prior to Student enrolling in Pre-Kindergarten, but declined services;
5. In Pre-Kindergarten, 2011-2012 school year, Student would usually do her work; no tantrums, no turning over tables/chairs, no throwing shoes or screaming;
6. In Pre-Kindergarten, 2011-2012 school year, Student's speech was muffled, had some speech problems;
7. In Pre-Kindergarten, 2011-2012 school year, Student receiving outside therapy, a driver would check her out, come to the classroom and take student out 20-25 minutes before end of class some days weekly;
8. In Pre-Kindergarten, 2011-2012 school year, Student could do a lot of work, she often she could come up with answers no one else had;
9. In Kindergarten, 2012-2013 school, year Student had no issue with academics until

recently, and no issues until early October 2012 with behavior which required her being restrained and taken out of class;

10. Principal said it is District policy to remove a student from the classroom if they are out of control, screaming or throwing a fit, etc.;

11. In October 2012 Kindergarten teacher asked Principal about getting this Student help and was told by Principal they must go through SBIT team and was given recommendations to try in class;

12. Student was suspended 11/07/2012, for throwing, yelling, screaming, knocking over things and hitting teacher;

13. On 12/07/2012 Parent authorized Student to be placed in special ed and to receive District services.

14. Student was never placed in a 45-day ALE.

ABSTRACT OF WITNESS TESTIMONY

[REDACTED]
[REDACTED]
formerly known as [REDACTED]

Witness Parent testified there was no hearing impairment noticed¹ until approximately age 2 (ACH documents reflect age 3) when she noticed language problems. She took the student to Arkansas Children's Hospital who referred her to be tested for speech, occupational and physical therapy (recommendation was therapy for all)² and she was referred for speech therapy, 120 minutes per week., three to four times weekly.) This was before Pre-kindergarten which was the 2011-2012

¹ Vol. I pp 18 and 22

² Vol. I pp 18 and 24

school year.³ Witness testified she took student to Little Rock District based on recommendations of Parent/Witness's Aunt, [REDACTED]

Witness testified that she gave Dennis Development documents to school nurse and Pre-Kindergarten teacher⁵ Does not know if student received assistance in Pre-Kindergarten.⁶ Dennis Developmental Evaluation done 08/09/2010.⁷ Witness testified that the student was having behavior issues at time of evaluation. Witness testified that she provided Dennis Developmental Evaluation when student went to Kindergarten but not when she went to Preschool⁸ but that the Students's Children's Hospital Evaluation provided when in Pre-Kindergarten⁹. Speech and language evaluation not provided to Pre-Kindergarten as it was not done yet.¹⁰ Occupational therapy evaluation provided to Pre-Kindergarten and Kindergarten.¹¹

Therapies provided by Complete Pediatrics and Hop, Skip and Jump in Pre-Kindergarten and Complete Pediatrics in Kindergarten, who checked student out of school 3 times per week to provide private service as requested by the Parent/Witness.

When there were behavior issues in Pre-Kindergarten. Witness' aunt would go to school,

³ Vol. I pp 27 and 28

⁴ Vol. I pp 26 and 27

⁵ Vol. I p 27

⁶ Vol. I p 33

⁷ Ibid

⁸ Vol. I pp 34 and 35

⁹ Vol. I p 35

¹⁰ Vol. I p 37

¹¹ Vol. I p38 - 39

maybe one time per week; Parent/Witness may go to school for 30 minutes on lunch break (note, she did not say every week).¹² Witness said the teacher told her the student was on same level academically as other kids.¹³ Witness said the teacher told her at end of Pre-Kindergarten, 4th 9 week conference, the student on same level as other Pre-Kindergarten kids.¹⁴ During the summer between Pre-Kindergarten and Kindergarten student received services for speech, occupational therapy and physical therapy.

For Kindergarten, Parent/Witness testified that she went to school a couple of weeks before start, she put ADHD on form for Kindergarten and gave envelope with evaluations to school nurse.¹⁵

Behavior issues started first day of Kindergarten and were ongoing: Tantrums, throwing, crying, screaming, Parent/Witness being called in nearly every day of her four-day work week; student could take off shoes, hide in corner.¹⁶

Claims student restrained by male security guards picking her up, throwing her across arm or holding her in place, said she was in room by office, with no one else present.¹⁷ Principal said District policy remove student if throwing a fit etc., Witness says student screaming so loud she had lost voice and was hyperventilating.

Witness began going to school Fridays, her day off, for 30 minutes to 1 hour. Her aunt also

¹² Vol. I p 44

¹³ Ibid.

¹⁴ Vol. I pp 50 and 51

¹⁵ Vol. I pp 53 and 54

¹⁶ Vol. I pp 58-60

¹⁷ Vol. I pp 60 and 61

went some days. Never an aide with the Student, but another teacher would attempt to talk with student, then principal called.¹⁸ At one point Student in trouble every day almost. Principal said 45 days needed in alternate school due to the behavior issues; suspended 11/07/2012, for Student hitting teacher.¹⁹ Student suspended for throwing, yelling, screaming, 11/07/2012, knocked over things and hitting teacher.²⁰ Some of this behavior predicted earlier in a SSA report predicted that impulsive behavior could increase if no support provided²¹

Report says use tangible, immediate consequences for good and bad behavior, does not know if done. Alleges no speech therapy done nor was referral made She is talking about Kindergarten, saying no referral done, says Student had learning disability and behavior issues communicated to teacher, and says teacher said Student had ADHD, yet then says teacher said student did not have ADHD, just wants attention, and she did not have time for one-on-one.²² Student did not act out in class when Parent began coming nearly every Friday.²³

Day Parent was told Student was to be placed for 45 days in alternative school, she went to see District Superintendent and left information, was told that Barbara Barnes would contact her and student would not be moved; never heard from Ms. Barnes; Student suspended 3 days and Witness

¹⁸ Vol. I p 66

¹⁹ Vol. I pp 68 and 69

²⁰ Vol. I pp 68, 69 and 70

²¹ Vol. I p 74

²² Vol. I pp 75 - 77

²³ Vol. I p 84

got counsel and filed for due process; Student did go back to school after the 3-day suspension.²⁴

The 12/07/2012 meeting developed IEP, her signature not on it. Referral to Day Springs for counseling services; Witness confused re/dates. Says she went to Superintendent's office 2 times, then says 3 times, re/student being sent home and not talking to anyone re/504 plan. Disruptive behaviors continuing at school, different security guard, Student tells her about it; Says teachers say student on level and talk to her about Student's behavior²⁵

Every 9 weeks she gets progress report; she says Student not doing well. When asked if she thinks Student's issues are with her disabilities or being taken in and out of class, she says both, and that Student knows when she is taken out of class, there will be no homework that day because she will not be back. Claims documents presented as Student's work never provided to her and it is not Student's handwriting²⁶

In Kindergarten sees interventionist 3 times weekly. Says Student told her about group therapy and Witness had conference with speech therapist and teacher. Does not know if Student getting all speech therapy or not; misses 50 min. of school 3 times weekly for outside speech therapy.²⁷ Not sure if 3 hours speech therapy daily for those 3 days weekly.

On 12/07/2012 witness authorized student in special ed.²⁸ Pre-Kindergarten report card substantiated. Parent says keep working with student; Pre-Kindergarten skills assessment for

²⁴ Vol. I pp 106 - 107

²⁵ Vol. I pp 109 - 117

²⁶ Vol I pp 118 - 130

²⁷ Vol. I p 131 - 133

²⁸ Vol. I p 134

Kindergarten, increases; she denies receiving same and claims she has not seen Student do what school says.²⁹ When she registered student for Pre-Kindergarten, she gave Evaluations from Dennis Development, Hop Skip and Jump and Complete Pediatrics (formerly known as Hop Skip and Jump) to Ms. Love and to nurse and Ms. Love said she'd get to nurse also.³⁰ Complete Pediatrics chose the time for therapy and student could leave earlier in Pre-Kindergarten for that, and transportation was important for Kindergarten and 2:30 was earliest student could leave school after therapist talked to school.³¹ Never talked to anyone re/could student do later and not miss class.

On form prior to enrolling in Kindergarten, she checked ADHD, 12/02/12, but actually no such diagnosis.³²

She did not always get behavior documents, was just called to get student, and she did not keep all the documents she did get, did not start saving until Oct. 2012 as it was nearly daily. In Pre-Kindergarten, she never received behavior documents and Student never sent home.³³ Nov. 2013 (13th or 16th, discrepancy as to date) meeting she did not attend, as counsel said she need not do so.³⁴ Student never accused of hitting or kicking teacher, throwing chairs, turning over furniture in Pre-Kindergarten; there was an aide, Ms. Johnson, but she was not one-on-one; Ms. Love was Student's

²⁹ Vol I pp 135-136

³⁰ Vol. I p 155

³¹ Vol. I p 157

³² Vol. I p 159

³³ Vol. I p 164

³⁴ Vol. I pp 165 - 166

teacher, Student's learning progressed as set out in reports, but she disagrees.³⁵

Went to Superintendent's office. Sept., Oct. and Nov. 2012, there was a communications log between her and the teacher; claims Student not disruptive on Fridays when she was there.³⁶

The evaluation done at age 3 had a list of therapists and facilities that could be used, and she chose Hop Skip and Jump as closer to her home and they provided daycare and transport she could not; The Evaluation says copy being provided as referral to Thelma Jasper, Service Coordinator for Pulaski County, with her phone number shown, and shows copy to Ms. Jasper, Early Childhood Coordinator, Tri-District Cooperative. Witness notified them she was receiving services for therapy from Hop Skip and Jump after that office contacted her re/services they offered and were trying to place Student in North Little Rock, and Witness said no, she was not interested; denies she was told there was a main office for placement of special ed Pre-Kindergarten services³⁷

Student gets 180 min. speech therapy weekly, and she thinks 120 min. weekly OT at no cost in a private program after school.³⁸ Witness says for Pre-Kindergarten and Kindergarten there were five Parent-Teacher conferences before student started special ed (actual ones, not going in re/behavior, etc.) and she attended all.³⁹

[REDACTED]

³⁵ Vol I pp 168 - 169

³⁶ Vol. I pp 170 - 174

³⁷ Vol. I pp 175 - 179

³⁸ Vol. I pp 179 - 181

³⁹ Vol. I pp 181 - 183

She has in-home daycare center, has had some training re/Developmental stages of children.⁴⁰ For this school year 2012/2013 she has come to school to sit with Student (classroom observation), acknowledged when she went to get Student tantrum may have been over; says she acts like normal kid. She never noticed language impairment though Student's Parent told her of same. She has seen frustration/crying, but no fits etc.⁴¹ She talked to Student over phone maybe couple of times, not hyperventilating, maybe called 1time a week. Never came to the school in Pre-Kindergarten. She is with Student before and after school except when Student picked up from school by therapy⁴²

CASEY SMITH

Baseline Kindergarten teacher

She has taught Kindergarten three years and also has taught Pre-Kindergarten, no other grades. Total teaching 9 years. In last 3 years she had 5 IEP meetings; besides this Student, has made 1 special ed testing referral in Kindergarten before this Student at the parent's request; she never heard of Child Find, just watches for issues re/academics or behavior; no issue with academics for this Student until recently, and no issues until recently re/behavior 1st semester with Student being restrained/taken out of class (NOTE: counsel talks about student missing time in the school day). This is the teacher the student hit; say mother never told her Student had any disabilities; she knew Student was receiving outside services because Pre-Kindergarten aide told her Student got speech and OT when teacher went to office. Re/ time Student was to leave, said Student was leaving about 2:10-2:15 p.m., and school ends at 2:35, so student missing only pull-out: activities such as music, art, PE. At end of 1st nine weeks, approximately October, she asked Principal about getting this Student help, and

⁴⁰ Vol. I p 191

⁴¹ Vol. I pp 192 - 195

⁴² Vol. I pp 195 - 198

they must go thru SBIT team with Student present for recommendations; she was given recommendations to try in class.⁴³

She did not make referral; behavior progressed to point Ms. Ray said call office and she could handle that; 1st semester, temper tantrums 2-3 times week, security guard there 2-3 times week, but only restrained student 1 time a week; SBIT team recommended Student go to Franklin Elementary, an alternative school, to work on behavior 45 days. She says being out hurt Student academically, but that she was right in middle of the group initially. There are 3 progress reporting periods in Kindergarten, instead of grade they give (1): student does not meet standard, can't do on own; (2): can do some independent but still need teacher's assistant, or (3): independently over and over without teacher's assistance.⁴⁴ This Student was initially at zero re/word recognition, expected, but still there in December teacher surprised, started pulling Student and working on; in December she learned Student had language impairment.⁴⁵

Could not say language disorder was cause of the academic difficulties, as comparing her to other students and some still doing same.⁴⁶ Student couldn't match any words read to those printed through December, but latest record shows she could do 9 out of 25, and teacher says Student meets or exceeds grade level standards.⁴⁷ They test and then teach. Student did not do well on the K-2 math test shown, so it's not just Kindergarten (5 out of 46 in math), said Student meets or exceeds grade

⁴³ Vol. I pp 198 - 204

⁴⁴ Vol. I pp 204 - 206

⁴⁵ Vol. I pp 206 - 210

⁴⁶ Vol. I pp 210 - 211

⁴⁷ Vol. I pp 211 - 215

level.⁴⁸ Looking at Student's grades, absences were not problem, only disruption being out of class so much; she noted behavior issues and SBIT committee recommended early Parent-teacher conference; other recommendations were happy face and treasure chest; there were no aides in the building for Kindergarten. There are paraprofessional, but not for Kindergarten.⁴⁹ The aunt came sometimes, but never stayed in class. The mother came many times.⁵⁰ Teacher believes an aide rather than security guard could be more suitable. Daily behavior charts discussion: References times during day so Parent can see what goes on. One suggestion from committee was to ignore this Student; that did not work and was when Student hit her after teacher had talked to the Student.⁵¹ They found the math coach, Ms. Gonzales, who bonded with this Student, and they talked to Student each morning before day started re/what could be expected and what she could do instead of scream and cry.

Functional assessment done by Sharra Hampton, school counselor, team leader in charge of getting SBIT team together, setting dates and listing who is going to present students.⁵² A suspected disability is considered in 1st grade for a Kindergarten student; they want to give kindergarten kids one year in school before making diagnosis, a referral to see if that vs. just immaturity or not being in school before; special ed referrals are made in 1st grade.⁵³ She knew about Student getting outside services, but not that anyone was wanting it to be brought in to the school; at the 2nd meeting in

⁴⁸ Vol. I pp 216 - 220

⁴⁹ Vol. II pp 7 - 11

⁵⁰ Vol. II p 11

⁵¹ Vol. II p 13

⁵² Vol. II p 16

⁵³ Vol. II pp 16 - 17

November 2012, Student's behaviors discussed and ways to deal with those; SBIT committee met to deal with the big behaviors until student placed in ALE because it takes time to get all the documentation in place.⁵⁴

First grade teacher came in when Student screaming to give assistance; open pod area; Several teachers also helped when this student got to certain point; also a Ms. Espenda was an intervention sub, as was a Ms. Holloway.⁵⁵ This Student is pulled out during this teacher's planning time.⁵⁶ Quiet time spot not working; Student crying and picking up and throwing chairs while there. Student has learned that when she acts up her Parent or the aunt will come; when Parent leaves, Student acts up again; Student upset because she couldn't do math, screaming, kicking chairs, throwing her shoes; if Student is frustrated she acts out.⁵⁷

Principal told her Student was to be sent to ALE 11/07/2012; witness does not know if principal told parent also.⁵⁸ Individual positive behavior support plan designed by the psych examiner 05/11/12, Dr. Maria Lopez.⁵⁹ Testimony re/what occurred day Student finally kicked this teacher so was removed from class. Witness heard about parent-provided evaluation after due process filing, but never saw it. Cassandra Steele was not at the SBIT meetings, not involved prior to due process filing, she represents special ed. speech dept.⁶⁰ Witness met with Ms. Steele 1 time after due process

⁵⁴ Vol. II pp 20 - 26

⁵⁵ Vol. II pp 30 - 34

⁵⁶ Vol. II p 35

⁵⁷ Vol. II pp 35 - 41

⁵⁸ Vol. II pp 41 - 46

⁵⁹ Vol. II pp 56 - 59

⁶⁰ Vol. II pp 59 - 60

filing, 12/07/2012 when Student placed in special ed.⁶¹ First of school year, till end of September no behavior issues, wanting to show out, get attention; she wanted to watch behaviors to try to figure out what was going on before sending anything home.⁶²

Witness describes their classroom pod: 4 classes in 1 large room divided by bookshelves. School security guards unarmed, khakis and blue shirts with "Security" on back.⁶³ She does not believe Student could not understand teacher's instructions, and only times teacher could occasionally not understand student was when upset/distraught (student like any other kindergartener).⁶⁴

The SBIT meetings for student began in October, teacher tried treasure chest rewards for month or so, did not help this Student, actually caused more problems . (SBIT = School Based Intervention Team); purpose to try to solve classroom issues before turning to outside help; consisted of literacy coach, math coach, principal, psych examiner, speech pathologist, special ed, then behavior therapist from Day Springs). In the SBIT meetings. they suggested redirection when Student had behavior issues.⁶⁵

This teacher referred a student last year, and was told then by last year's special ed teacher and then last year's psych examiner it could not be done till 1st grade; a student could qualify for OT and speech, but not for special ed with special ed teacher for math/reading/academics.⁶⁶ Response

⁶¹ Vol. II pp 61 - 62

⁶² Vol. II pp 62 - 65

⁶³ Vol. II pp 65 - 68

⁶⁴ Vol. II pp 68

⁶⁵ Vol. II pp 69 - 75

⁶⁶ Vol. II pp 76 - 77

to intervention discussed: 3 tiers of levels to go through before being recommended for special ed services. Special ed teacher last year explained that to this witness. This Student very capable of doing work, but would act up before Parent came and after she left. SBIT team collects data for forms needed to get student into ALE at a PIES mtg. 11/06/2012 she had to have Security remove Student after student hit her in back.⁶⁷ Student acts out before/after mother comes or calls; sometimes phone helps, sometimes not. Behavior escalates, happens daily, sometimes several times, lasts up to one half hour or until put out of class and gets one-on-one attention; discussion re/book going back and forth between teacher and Parent.⁶⁸ Often kindergarten kids have non-honeymoon period, about a month, separation anxiety, etc., so not seeing this Student's behavior as different for first month of school not unusual.⁶⁹

Student actually hit teacher two times, two separate incidents, not contemporaneously documented. One was slapping on leg, other hitting on back. The hit on back made noise. A third hitting episode occurred after the due process meeting witness thinks. Student's behavior slowly escalated to point any interaction with other kids set her off. Teacher believes 60% of this Student's behavior was manipulative to get her way.⁷⁰ When Student came back from suspension she was frustrated because she couldn't do work, but was in group with others who could not either.⁷¹

KATINA RAY

Baseline Elementary principal

⁶⁷ Vol. II pp 77 - 80

⁶⁸ Vol. II pp 81 - 89

⁶⁹ Vol. II pp 90 - 93

⁷⁰ Vol. II pp 96 - 104

⁷¹ Vol. II pp 105 - 114

Educational background: She taught 10 years, an assistant principal 2 years and as principal 7 years, this is first year at Baseline Elementary, taught Kindergarten, 1st, 4th and 5th, was also literacy coach and educational consultant. Opened an Early Childhood Center also, Pre-Kindergarten program.⁷² This school's nurse is also nurse at another elementary school. Nurse, Martha Friend, may not have been there re/forms for registration, but there are others present to take the forms as in this case.⁷³

Usually anything with "health services" on it filters directly to nurse, and form discussed would have been gathered registration day, it is North Little Rock District form, and witness says within past couple of months she thinks she's received from the mother the form, a Home/School Compact, it is a Little Rock District form, but since Baseline Elementary is a priority and Title I school, that is why they do the Title I from the School Compact (Baseline's scores from past 3 yrs lowest in entire state and lowest 5%, monitoring by State and providers come in and out of the school to assist in raising test scores--the Benchmark scores, and they start at 3rd grade; high poverty is Title I and school gets federal funds to assist with students. Principal's signature would already be on forms handed out and then parents fill out and hand in at registration.⁷⁴

Principal said teacher's e-mail re/Student's behavior was at end of October (says she knows date because she looked at her documentation; she did not provide school counsel with that e-mail, (asked to do so); she disagrees with teacher's testimony re/student being discussed early Oct. at SBIT mtg. and teacher being told to have parent conference early, also says Oct. 4th no call came to

⁷² Vol. II pp 116 - 118

⁷³ Vol. II p 121 - 126

⁷⁴ Vol. II pp 127 - 131

her re/taking student out of class for behavior, says sometimes calls to office are to security guards; says any type documents to her must be on Little Rock District behavior document or form; she knew the Parent was coming to the school, but not until late Oct.⁷⁵

E-mail of 10/24/12 produced from student's teacher, on Student's behavior, tried to send Student to office but Principal not in building. Formal behavior document dated 10/11/2012 would not have gone to Principal; would have gone to Student's parent and teacher kept copy, that would explain why in school records.

Document presented, behavior report, but Principal's signature not on it (would be under "action taken"), re/10/11/2012 thing, and Principal has no knowledge of this document; said if she had gotten it and signed it, it would have on it anything teacher needed to know, and if student suspended would have gotten something signed by the Parent; 2nd behavior document presented, witness does not recall any behavior issues with this Student prior to the late October e-mail from teacher, but says she might say she would send a student home, and has no reason to doubt what teacher says she was told by Principal, then witness says she really can't recall dates; when she said behavior document needed, there should be documents somewhere; she met with parent 01/2012, and what she tells parents is what she has from talking with interventionists re/academics of the students (the interventionists are in classroom daily, but Principal can't speak for them).⁷⁶

She met with teacher after the 10/24/2012 email and teacher told her Student seeking attention and of the behaviors; Principal did interact with the Student in classroom and says Student did not want to wait her turn, she wanted someone with her, but Principal says she had seen Student

⁷⁵ Vol. II pp 132 - 138

⁷⁶ Vol. II pp 138 - 149

capable of doing the work; Student's inappropriate behavior, Principal talked with Parent about referral to school counselor and to Day Springs, mental health care provider on school campus, they work with students in the classroom teaching self-control and organizational skills, and Parent agreed; School started that process, but Parent notified school she did not want Day Springs' assistance; witness not sure if after due process filing, but referral is process, parent would have to fill out paperwork, teacher has paperwork, student would have to go to Dr., Principal not sure of how long process takes; However, counseling could be immediate, meeting one-on-one if meltdown or other problems, and that did start immediately; counselor would have that paperwork; counseling did not work.⁷⁷

Principal does not recall asking Student's Parent about any disability, said if there is disability parents usually tell them; she did not think at the time it was appropriate in this case to ask about disability. She did notice Student being checked out early, thinks it was a daycare provider, and does not recall talking with anyone from Complete Pediatrics.

Testimony re/student being checked out early. Thinks in place from previous years for early checks-outs, but says not common practice as she feels students should be in class for instruction and services, speech and occupational therapy can take place at the District. First learned Student had language impairment from the Parent, who said there was some paperwork, and witness thinks Parent had someone bring documents to her, and Principal gave it to speech therapist; very same day Principal suspended student for behavior; her log reflects prior incidents also (log begins 10/25-2012).⁷⁸ Was aware Student having to be restrained, her log also lists people interacting with Student

⁷⁷ Vol. II 150 - 156

⁷⁸ Vol. II 157 - 165

and taking her out of class. Ms. Hampton is PIES interventionist; Principal assisted her with individual Behavior Positive Support Plan. Discussion re/reinstatement conferences are after suspension and parent can give input and student can talk about what will be done differently, teacher shares information.⁷⁹

She told the Parent it would probably be recommendation for Student to be placed in 45-day ALE; did not tell Parent it would be certainty, as that is team decision; Does not recall Parent voicing her disagreement to her; She knows Parent went to Superintendent's office, and information was sent to Barbara Barnes, but principal did not understand, as Student not in special ed and had no special ed issues.⁸⁰ Barbara Barnes is special ed director for the District; Meeting was to be held day before Student returned from suspension; She does not know who would have told Student's teacher. Teachers cannot make referrals until 1st grade; meeting not held because Parent refused to be present on advice of counsel.⁸¹

Julie Plunkett is speech therapist at Baseline Elementary; Witness said she did not know of any referral being made when central office called. She knows the Parent shared some info wither, but does not know how district got any documents re/speech and language. Baseline registration procedure gone over again. She not aware of any disability when teacher shared info late October 2012 re/behavior; when Parent brought in documents, this witness gave to speech teacher and made copy for psych examiner; Parent first receptive to Day Springs idea; this witness had meeting with Parent/mom and dad, but witness thinks Parent declined Day Springs before the 12/07/2012

⁷⁹ Vol II pp 165 - 173

⁸⁰ Vol. II pp 165 - 180

⁸¹ Vol. II pp 180 - 186

placement in special ed. She did not read paperwork Parent gave her, just gave to speech therapist.⁸²

JULIE PLUNKETT

Speech pathologist for the District

Became aware of Student's language issue 11/02/2012 when she met Parent and saw evaluation paperwork she provided, was made aware Student receiving outside services; then found out time frame in which she needed to schedule referral conference; she sent out emails so principal should have known on 7th of referral conference set for 16th. Says school principal not familiar with special ed paperwork; after witness got special ed paperwork out. Principal said she had recommended ALES; District counsel tells witness not to answer question when asked about knowing about expulsion. Witness explains receptive language testing and results and impact of severe receptive language delay, Student does not express self nicely, does not want to take turns, wants her way.⁸³

She explains how she works with her, said Student's receptive language is one level above profound; thinks Student's speech and language evaluation. brought in by Parent 12/02/2012. On 11/07/2012 she had conversation with Parent, who said she would attend 11/16/2012 referral conference; Parent could not attend, so rescheduled to 11/28/2012; different students respond differently if they don't understand concepts; this Student is actually one of the higher performing students and is doing very well; in therapy room they practice being kind whether they know how to do the work or not; these small groups socially important also. She has seen an improvement with what she is doing.⁸⁴

SHARRA HAMPTON

⁸² Vol. II pp 187 - 208

⁸³ Vol. II pp 208 - 228

⁸⁴ Vol. II pp 229 - 243

School Guidance Counselor

First became aware of this Student late October or in Nov., had some contact wither prior; believes this Student knew her behavior was inappropriate; thinks receptive expressive language issues came up in meeting with Parent, not sure, but at some point she became aware Student had outside services before; functional assessment of behavior checklist developed with Ms. Smith, the form given by Ms. Norman, PIES coordinator, who adapted the special ed form and made them a part of her packet; this is the first piece of documents to go to SBIT team prior to ALE being referred; she has seen the Student several times, not so much lately.⁸⁵

From her log, she had 10-15 min. sessions with student; one time Parent was there also; SBIT suggestions are based on both student's needs and District resources; she said school has to have certain number of students in order for aides to be available for Kindergarten students; individual behavior support plan is also part of ALE package; she did know there were certain targeted behaviors for this student; she has not seen all the documents counsel is showing her.⁸⁶

MARIA LOPEZ BOYSEN School psychologist specialist

School psychologist specialist 15 years, at Baseline Elementary since maybe mid-Sept. of current school year (testimony is given 05/16/13, so this would be for 2012-2013 school yr); Her primary job for the various schools she goes to (she is not just assigned to Baseline Elementary) is to do psycho-educational evaluations, looking to see if students qualify for special ed services.⁸⁷ She is also is part of SBIT team, participates in meetings to discuss student who are struggling and to help

⁸⁵ Vol. II pp 243 - 256

⁸⁶ Vol. II pp 257 - 265

⁸⁷ Vol. III pp 8 - 10

provide recommendations at times; she was on SBIT team re/this Student, and recalls teacher telling team about behavior difficulties in classroom, and trying to find ways to help with those; This witness offered to meet with teacher at separate time to discuss in more detail concerns, and they did that and came up with a behavior plan, dated 11/05/2012. She believes SBIT meetings re/this Student end of October/first part of Nov. The document developed was for Student to be successful in current classroom setting.⁸⁸

Probably around that same time, she knew Student had a language disability; this witness has no knowledge that a referral was not made—she understood a report had been provided indicating a language impairment and their speech therapist was given that report and scheduled meetings to get process going for Student to get services at school.

She met with the Parent maybe couple of months after behavior plan developed, when they got report from Dennis Developmental and scheduled conference to request functional behavioral assessment and for her to do some assessments, but not sure when they got signed consent to start. She was not involved in PIES and never saw the functional assessment/behavior intervention checklist Ms. Hampton talked about doing as part of PIES paperwork; the behavior plan this witness put together was part of SBIT team meeting, and it could have been used later for PIES, witness not sure; They had not received consent for her to evaluate Student or do anything further.⁸⁹ Her meeting was after the 12/07/2012 meeting where the attorneys were present and she was not there then; prior to that she had no other contact with teacher, Parent or anyone else re/services for the Student; nor did she recommend at SBIT meeting a referral needed to be made.

⁸⁸ Vol. III pp 10 - 12

⁸⁹ Vol. III pp 12 - 15

After she got Dennis Developmental reports indicating possible ADHD, they decided appropriate to take next step (Student had already been ID'd as having language impairment); she is not usually involved with students who are just language impaired, her involvement comes when there are other issues—behavior, learning issues; she remembers hearing about behaviors of this Student, but did not suggest referral, suggested the behavior plan and working at that level. She was not made aware at SBIT meetings Student's Parent had health diagnosis of ADHD when she enrolled Student 08/02; Had she known, it might have triggered a referral—she would have wanted to see how Student was progressing in classroom, and there has to be an adverse effect, so she would have wanted more info; they would also want to try some interventions in the classrooms, as often that takes care of issues. Purposes of SBIT team to provide behavior support before going to formal special ed referral, try to provide different interventions if students are struggling, it is for behavioral and academic issues both—any issues preventing student from being successful in classroom; they help teachers with intervention plan.⁹⁰

THELMA JASPER

Early childhood Special Ed
Coordinator fo Pulaski County
Tri-District Early Childhood Program

In August 2010 she was Early Childhood Special Ed Coordinator for Pulaski County Tri-District Early Childhood Program, an extension of the Little Rock District (the Little Rock, North Little Rock and Pulaski County Special District); her role was to manage special ed program for Pre-kindergarten students, ages 3 to 5, which included full spectrum of Child Find ID and provision of

⁹⁰ Vol. III pp 16 - 22

warranted services.⁹¹ Now Early Childhood Special Ed Coordinator for the Little Rock District, managing special ed program. If a pre-school student is referred to special ed services, by an entity such as Children's Hospital, copy would come to their office., especially if copied to their office; then they would contact parent (if enough contact info) to advise receipt of report indicating student might possibly need speech therapy or some special service, and schedule a referral conference if parent wants that, following Federal law timelines; witness ID'd a referral form, and testified they would have contacted the parent, initially by phone to get additional information re/student and set meeting convenient for parent, and let them know written notice would be in mail. Procedure then is they have to make sure student eligible, and if all necessary testing not done then they would do that, as testing in each deficit area needed; if student eligible, they do an IEP and plan for student's needs and implement goals and objectives in student's pre-school setting; Student would come to their offices for testing (in North Little Rock) and eligibility, then services would be provided at no charge at eligible student's pre-school or daycare setting. If this Student had been placed with special ed services in 2010, they are required by law to review progress annually, and can do so more often if requested by parent or teacher; if special ed services still needed and a student is still eligible when they go to Kindergarten, the program transitions into Kindergarten setting.⁹²

This Student was not serviced, since Parent called in and said she did not want, as services were being received through another agency; parental consent is necessary, and this Parent did not give it. The Tri-County District program dissolved summer 2012, now each District provides/implements own services; this witness not familiar with this Student, just going off records

⁹¹ Vol. III pp 16 - 26

⁹² Vol. III pp 27 - 31

(they are saved 5 years) Reason why no transition services for students who are not receiving District-provided services from Pre-Kindergarten to Kindergarten is because other providers, Medicaid providers are not required by their standards to transition.⁹³

There are different rules/regulations for each program, and students can enroll in Pre-Kindergarten program at public school and not get special ed services unless parent consents; again, if student in Medicaid program, they are not under same obligation as public district under IDEA. In this case, records say "mother called, closed file."⁹⁴

Their files show that Medicaid is verified, but that does not give information concerning the disability of a student. District not required by ADE regulations to transition Pre-Kindergarten student into special ed if not receiving school services.⁹⁵ It is a parent's responsibility to call her office, as just because a student is in a Pre-Kindergarten program does not mean her office. is aware of a student's delays/potential concerns; if a student's teacher suspects delays, they contact her office for a referral. If they got referral, under part D of IDEA, educational cooperatives responsible for providing FAPE for students who were ID'd, and when those students are school aged, and cooperative no longer involved, it becomes school's obligation for FAPE; if they are leaving Pre-Kindergarten program and are eligible for Kindergarten, the private provider no longer services the student and the District will pick up with that service.

When this Student was enrolled in Pre-Kindergarten or Kindergarten, District had no follow-up duty to see if special ed services needed because of Tri-District prior knowledge of outside agency

⁹³ Vol. III pp32 - 37

⁹⁴ Vol. III pp 38 - 45

⁹⁵ Vol. III pp 45 - 59

services. District still has Child Find duty for 3 to 21; because of the Tri-District program, they did meet the Child Find obligation. The Parent refused the service here, so then the District would not necessarily have prior knowledge (witness is basing Parent's refusal on the documents).⁹⁶

LINDA LOUDERMILL

Day Springs Behavioral Health Services

Employed by Day Springs Behavioral Health Services which provides family and individual counseling, medication management, psychological evaluations; they have day treatment program for school age students; they operate at 6 elementary schools, including Baseline Elementary; students are enrolled for their services, mostly from parent or school referral. Day Springs is private, non-profit corporation with a Board of Directors contracted with the District.⁹⁷ She provides individual interventions, one-on-one sessions to ID behaviors and give ideas on coping decisions; sometimes she goes into classroom to observe interactions in class, sometimes she goes in because teacher requests when student having melt down and she intervenes and assists in removing student. She has mental health paraprofessional license to do interventions, not provide therapy; interventionists' interventions follow treatment plans (provided by therapists), assist students with ID of behaviors listed on goals and objectives, how to process behaviors, give redirection for better choices.⁹⁸

October 29, 2012 she received referral from the school re/this Student, and talked with Parent Nov. 4th, explaining what she did and services she could provide; the Parent was very interested, and witness told Parent what would be needed, a primary care physician referral, and that she (the witness) could request that, and would contact Parent if her assistance needed; witness could not get that PCP

⁹⁶ Vol. III pp 60 - 66

⁹⁷ Vol. III pp 67 - 69

⁹⁸ Vol. III pp 69 -70

so called Parent again, who said she would take form to get it signed. They never got the PCP referral back; due to this Student's meltdowns they could do services 30 days without PCP referral, but need Parent's consent still; they do day treatment when schools not in session, the Parent said Fridays best for her for intake, but when she called the Parent there was no answer so witness left voice mail message to let her know if she was interested in continuing services and if so would need to call back, as the witness could not call her again; There was no return call from the Parent. When this witness did see the Parent, it was after 11th because a Sunday, the Parent said no longer interested because her attorney told her not to have any more dealings with Day Springs.⁹⁹ Reason she left message she could not contact mother again was because once they inform parent who they are and what they do, that student has been recommended to them for school-based services, if they pursue without parental interest, it looks like they are recruiting and they can't do that. They provide 30% non-Medicaid slots, and PCP referral needed for Medicaid.¹⁰⁰ Periodically the principal would ask for information on pending referrals she had received but that not been officially opened. If all goes well, process from referral to services, could be a week because of all the people involved, but she tells parents plan on about 10 days.¹⁰¹

BEVERLY LOVE

Pre-Kindergarten teacher at Baseline

Pre-Kindergarten teacher at Baseline for 11 yrs., has also taught Kindergarten; she was this Student's Pre-Kindergarten teacher for 2011-2012 school year; there were 19 or 20 students (20 is

⁹⁹ Vol III pp 70 - 72

¹⁰⁰ Vol. III pp 73 - 77

¹⁰¹ Vol. III pp 77 - 81

the max); This Student would usually do her work; no tantrums, no turning over tables/chairs, no throwing shoes or screaming. The year before when there were two Pre-Kindergarten classes (there is only one now), there was an aide for each Pre-Kindergarten class.¹⁰² Never had to call this Student's Parent re/behavior except she may have called re/Student would not do her work, sometimes parent would drop in, thinks near end of year, otherwise talk with on phone. Parent-produced papers would go to nurse, not this witness. Nurse or secretary takes what papers they need and give rest to teacher; either teacher or aide would redirect students as needed.¹⁰³

This Student's speech was muffled, had some speech problems; She understood student receiving outside therapy, a driver would check her out, came to the classroom, take student out 20-25 min. before end of class some days weekly. Pre-Kindergarten has 3 recording periods, other classes have 4; teacher wrote on the grade card for Parent to keep working with her in areas they discussed. They never retain Pre-Kindergarten students. This Student could do a lot of work, she just wouldn't or didn't want to (often she could come up with answers no one else had).¹⁰⁴

MARTHA SUE FRIEND

Nurse for the District

Nurse for the District; full time at Otter Creek Elementary since January, Prior to now, from August 2009 to Dec. 2012 she split her time between Baseline and Dodd Elementary schools; it is recommended but not required to be present at registration; She was at Dodd 12/02/12 and would have been at Baseline on the other day. She was only nurse assigned to Baseline so if she was not

¹⁰² Vol. III pp 82 - 89

¹⁰³ Vol. III pp 90 - 96

¹⁰⁴ Vol. III pp 97 - 102

there then there was no nurse there. She met Parent of this Student one time this Fall when Student sick; first talked with this Parent approximately August 2011 when doing nurse assessment and needed to ask her questions.¹⁰⁵ Witness shown several documents and had not been given any of them by the Parent at any time during 2011-2012 or 2012-2013 school years. Nursing assessment does not generally take place during registration, it is on phone in two parts: there is a list of about five questions to ask parent and she would also do intervention screening on student (this is usually requested by school specialist because they are getting ready for services for the student); she was wrong on date; the Nurse assessment was 11/15/2012.¹⁰⁶ IHP sent home to Parent, Student had appointment with Dennis Developmental Center set 12/20/2012, which is what Parent would have told her when they talked on phone when witness called Parent; also, Parent is who told her Student would do better sitting in front of class (note, here, that earlier witness testified students sit in circle). If some other nurse had been assigned to Baseline the day this witness was at the other school, this witness would have known, as her supervisor would have called and told her, and that was not the case here. Little Rock District Health Information form is to try to get health history and if there are any problems the parent can tell them and they can send home forms that may need to be filled out by Dr.; with this information she would have probably called Parent and sent home a form called ADHD report form or Individual Healthcare Plan for Dr. to do.¹⁰⁷ The form shown witness had ADHD checked, with 07/21/2010; Witness wrote diagnosis on form, diagnosis/behavior/ discipline issues. On nursing assessment, she would have talked to Parent who voiced concerns over behavior so that is why

¹⁰⁵ Vol. III pp 103 - 108

¹⁰⁶ Vol. III pp 109 - 112

¹⁰⁷ Vol. III pp 109 - 116

she would have sent it home to get something from Dr., to see what they could do for the Student. Nurse denies she received any documents from Parent Aug. 2011; Says she thinks she would remember if she got it, as she would have gotten it to appropriate people if it did not pertain to her; she got a packet in November, clipped together, thinks it was from one of the specialists.¹⁰⁸ Did not know this Student recommended for ALE; No one talked to her about this Student having tantrums in class this past fall; she does not know anything about special ed or due process hearing requested or why here now. The form shown this witness for this year shows ADHD checked, but she never got new form from Dr.; she tries to get new form each year; the teacher gets a copy, the nurse gets copy, and original is kept in main office.¹⁰⁹

LAURA JENNINGS

Owner of and physical therapist
at Complete Pediatrics

Owner of and physical therapist at Complete Pediatrics since August 2011; this Student receives speech/language and OT there, but this witness is not the therapist; Student gets therapy there Mon., Tues. and Wed., approx. 3-5:30 or 2:30 to 5:30, depending on transport. Transport is provided by Medicaid third party provider. Student gets 180 minutes, 3 hrs., speech therapy weekly, 1 hour per day, as well as OT for 120 min., 2 hrs. weekly (note: this means student is at this facility for 7.5-9 hours weekly, while total of both therapies is 180 plus 120, 300 minutes, or 5 hrs. weekly). At first this Student had focusing issues, but now she does well with one hour sessions.¹¹⁰ The evaluating therapist there makes recommendation for how much therapy to be provided, using the medical model,

¹⁰⁸ Vol. III pp 117 - 124

¹⁰⁹ Vol. III pp 124 - 126

¹¹⁰ Vol. III pp 127 - 136

which is Arkansas Medicaid Guidelines; this witness not familiar with the educational model, but believes guidelines are different. She is appearing under subpoena, but was not asked to bring documents; this witness is not aware that Student gets out of school early to come there; they clear it with school time for student to be picked up and then tell the transport company.¹¹¹ Witness has brought has brought copies of speech language and occupational evaluations; she does not know distinction between educational and medical models re/PT; can say that per medical model for PT is student's function within everyday life and education is geared more toward school day. Does not know whether schools are required to meet medical model also since they bill Medicaid for speech and OT. This school year the school requested evaluations on this Student, and they gave to Parent (not sure when as it was done by her office manager); Student would receive same therapy and hours in summers also, depending on Parent's schedule.¹¹²

CASSANDRA STEELE

Coordinator of speech and hearing services
Little Rock District

Coordinator of speech and hearing services for Little Rock District; 27 years with little Rock District, 13 as speech pathologist and remainder in current position. First became aware of this Student around end of October, Parent called downtown and was trying to get information or help for Student; this witness was in the building a lot first three weeks of school because speech pathologist, Julie, was new; this witness received memo from Ms. Barnes; toward end of October she was involved in SBIT meeting in early November as Julie not comfortable with her not being there; Julie said there were

¹¹¹ Vol. III pp 137 - 139

¹¹² Vol. III pp 139 - 142

some behavior issues.¹¹³

SBIT designed to problem-solve for intervention with students having difficulties with academics, and if it is behavior, any type of learning problem, they come up with things to help student in classroom before special ed referral made (SBIT was designed when RTI [Response To Intervention] was initiated). RTI is requirement for schools if a student is suspected of having learning disability; This District expanded that in that any student who has any kind of learning disability, or is suspected of having a learning disability, or needs interventions before being referred to special ed, they have an SBIT meeting Then confirms first aware of this Student October 2012 during SBIT meeting, but only behavior was discussed (She was told by supervisor what created the emergency per se, because the Parent said student being referred to ALE and she did not want that done. The PIES coordinator was at the SBIT meeting, explained what would need to be in place if referral made; she did not hear principal say student was being referred go ALE. To be placed in ALE, they follow student handbook if regular ed student, which says if so many discipline infractions under certain categories happen, principal can then recommend an ALE placement if they've resolved all intervention and strategies to help the student in school—an ALE recommendation is one of the possible resolutions.

However, they must show that under the PIES progress (Positive Intervention Educational Supports) behavior plan is put in place and it is documented process that was followed so students aren't referred at the drop of a hat. For student with IEP, they have to make sure all the components of the IEP meets student's needs and have been followed before ALE.¹¹⁴ There are two ALE

¹¹³ Vol. III pp 143 - 147

¹¹⁴ Vol. III pp 148 - 150

environments in the District, and there may be another, she's not sure. They have curriculum set up to teach social skills as part of regular day school, but in self-contained classroom; 45 days is maximum in ALE per law. Parent brought evaluation reports to school showing Student getting speech and language for disorder; this witness told speech pathologist to set up referral conference to review the information right away, but Parent had gotten lawyer. She helped speech pathologist fill out form; on or before Nov. 7, 2012 Julie made her aware Parent had provided a report from outside agency re/speech language (that is why referral conference scheduled, to review information with Parent) The speech and language evaluation from Complete Pediatrics recommended 180 minutes per week speech therapy; this witness has done hundreds of speech and language evaluations, using the educational eligibility criteria set by State and Federal law; she has also done clinical contract work and worked evenings as speech pathologist, worked for Tri-District Early Childhood Program as speech pathologist, has done evaluations from ages 3 to adults in grad school.¹¹⁵ Medical model different than educational model: Speech language test is same, but the eligibility criteria is different—two things must be established: You must establish a disability exists, which is giving the test, and the results must show student has disability; in the educational model there is a third thing—you have to establish the student's disability have adverse effect in classroom causing student not to be able to access general ed curriculum; then you program for how to best help that student access their education using the educational model.

Under the medical model, they give the test, and if student has two – 1.5 standard deviations, or two standard deviations below the mean according to Medicaid, they qualify them just based on that; So, just getting an assessment does not automatically qualify student for services, you have to

¹¹⁵ Vol. III pp 151 -155

look at educational guidelines for criteria in all areas of educational setting to confirm eligible for services in schools. Medicaid will pay up to 480 in clinical setting for student with severe disability; schools are required to access Medicaid, but Medicaid does not drive school services or how much; School could say everyone gets 180 also, but they need that to access general curriculum. When they make a recommendation for how much time a student gets, they look at all student's needs. She says this Student has lots of social needs and needs to interact with other students in groups as well as getting therapy in all different settings; the School would not pull her out of class three times per week for therapy and for five hours for therapy, as under the educational model that would not benefit student.¹¹⁶ She helped speech pathologist fill out referral form, but did not participate in deciding who to invite to the meeting; she had not seen the 2010 evaluations; when she saw referral for Tri-District Cooperative, that made her wonder if Student had gotten services through Early Childhood; she and a Thelma who works for her, asked if there was a file on this student, answer was no, so they started looking. She is District person who does transition conferences for students who recommend services, 3-5, thru Tri District at the time, from Early Childhood Program into Kindergarten. If a student had been receiving services thru Tri-District, she gets those recommendations, they are referred to her; Tri-District had disbanded, so she went to SEAS (web-based Special Ed Automated Services). One of the ladies faxed her documents; the process is that they get doctor referral and set up referral conference and call parent to schedule a date, usually 14 days out because they always give parent two seven-day notices to schedule the conference. In this case, document says Parent called, close file, Student getting services thru another agency. So from time Dennis Developmental gave parent their evaluation and faxed it to them at Tri-District, Parent had already decided to use Hop, Skip and Jump.

¹¹⁶ Vol. III pp 155 - 157

Since file closed, there was no conference to determine eligibility under Pre-school educational guidelines or provide services¹¹⁷

She knew Student getting services per Julie, and this witness called Complete Pediatrics for report. She knew the could not be using 2-year-old report and there had to be current testing; they typically do not use old reports on Pre-Kindergarten and Kindergarten students since they change so quickly, developing and learning; Parent could not come to first scheduled conference, then her counsel said not to go.¹¹⁸ She became involved because of Parent filing for due process; She said not to invite Cassandra Norman because Parent had said she did not want Day Springs involved; ALE was off table; at SBIT meeting she had not seen latest evaluations, and they had no documentation of ADHD diagnosis.¹¹⁹ At referral conference they discussed appropriate settings for this Student to gain social skills, training so Parent would not have to be called so often, professionals to deal with displayed behaviors as well as obtain therapy services; placing her in self-contained class was rejected. She asked speech pathologist to add social skills goals, pragmatics goals. This was really only alternative since Parent did not want Day Springs services (they would also have provided mental health strategies). Counsel said no to testing, to updated OT testing and to pragmatics assessment, as Student was to be tested for autism and counsel said wait. So, all they could provide was adding goals through speech pathologist, on not just recommendation and receptive and expressive language but social pragmatics language; on 12/07/2012 witness recommended updated OT evaluation and pragmatics assessment, Parent and attorney requested no further testing due to Dennis appointment.

¹¹⁷ Vol. III pp 158 - 165

¹¹⁸ Vol. III pp 166 - 168

¹¹⁹ Vol III pp 169 - 173

She did not see evaluations in the book besides speech and language evaluation and Student's evaluation until the conference; she does not attend many SBIT meetings, it is school-based team, so she does not go unless invited; besides behavior plan, no other supports in place; SBIT can recommend anything, but not typically an aide to sit there all day; it is obvious based on this student's testing that she wants attention, but aides do not have teachers' expertise; they would recommend best setting for student, self-contained behavior classroom, with 8-10 students and social skills is part of curriculum; She has never known SBIT to recommend an aide, as that is not an intervention strategy for a student. They are involved in special ed because Ms. Barnes got the call, and the call would not have gone to her unless there was something in the conversation or something to indicate special ed needed to be involved.¹²⁰

[REDACTED]

[REDACTED]

Denies receiving notice of conference scheduling around August of 2010; denies receiving referral form; does recall getting phone call re/special ed services—got the call at work, does not remember who it was, but the lady said she was affiliated with the program in North Little Rock, had some information from Children's Hospital, wanted to know if she wanted to talk with them or get services for student; thinks it was like a daycare center for special needs kids, says she told caller no since Student already getting services at Hop, Skip and Jump. Denies getting referral conference notice of decision.¹²¹ Lady to whom she says she gave paperwork this year not here today; the person to whom she gave paperwork was black lady, voluptuous; parent filled out paperwork at table, had brown envelope from her job with all Student's evaluations in it, and when she handed it in she said

¹²⁰ Vol. III pp 174 - 183

¹²¹ Vol. III pp 184 - 186

she had speech, evaluations for Student, was told go back into the cafeteria and that is where gave it to the lady she thought was nurse. Says she provided documents two times in Pre-Kindergarten, at registration and then again on first day of school, tried to give to Ms. Love, who said parent had to give it to nurse.¹²²

Went downtown three times, didn't take evaluations with her, told them she had provided to the school, both this and last year. The same day Student got suspended the school called her to bring evaluations, it was after-hours, she was told Student suspended and was recommended for 45-day treatment, Ms. Ray advised they did not have paperwork and asked if parent would provide it (witness says for 2nd time). She does not remember receiving the documents in the mail. Only thing she recalls re/the phone call as to offering services as to location was it was "over there by west campus and by the District." Recalls the lady said they provide speech and OT, said nothing was said about testing. The black lady she thought was the nurse, she has seen her recently at Baseline, but no name.¹²³

In August of 2010 parent lived in apartment 314, a complex with about 200 apartments; she wouldn't have gotten mail without apartment number on the mailing; on some things in the past mailers have called her if something went back; the form in this case did not contain apartment number.¹²⁴

END OF TESTIMONY

Conclusions of Law

¹²² Vol. III pp 186 - 189

¹²³ Vol. III pp 189 - 193

¹²⁴ Vol. III pp 193 - 196

After due consideration to matters of recommendations, matters of official notice and the foregoing Findings of Fact, in my capacity as a Due Process Hearing Officer , I make the following conclusions of law:

1. [Student] qualified in December 2012 for special education services from Little Rock School District as a student with receptive and expressive language problems and developmental delays.¹²⁵
2. [Student]'s interventions for the 2012/2013 school year, as developed at the local level in SBIT Committee meetings, were reasonably calculated to provide [Student] with an educational benefit.¹²⁶
3. [Student]'s educational placement during the 2011/2012 school year in the regular Pre-Kindergarten and until November 2012 Kindergarten environment was appropriate and in compliance with the least restrictive environment provision of the IDEA and its implementing Federal regulations.¹²⁷
4. [Student] was provided with a free appropriate public education by Little Rock

¹²⁵ 34 CFR Sec. 300.7(a)(8)(9) and (11)

¹²⁶ Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 206-207 (1982). See also *Evans v. District No. 17 of Douglas County*, 841 F.2d 824 (8th Cir.1988). (See also *Independent School District No. 283 v. S.D. by J.D.*, 88 F.3d 556 (8th Cir. 1996). More recommendation see: *Hiller v. Board of Education*, (16 IDELR 1246) (N.D. N.Y. 1990); *Bangor School Department* (36 IDELR 192) (SEA ME 2002); *Jefferson Country Board of Education*, IDELR 951) (SEA AL 1998); *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003); *School Board of Collier County v. K.C.*, 285 F. 3d 977 (11th Cir. 2002), 36 IDELR 122, *aff'd* 34 IDELR 89 (M.D. Fla. 2001); and *Costello v. Mitchell Public School District 79*, 35 IDELR 159 (8th Cir. 2001)

¹²⁷ 20 U.S.C. I 1412(5)(B); 34 CFR Reg. 300.550-552

School District during the 1993-94 school year.¹²⁸

5. "Because a second-grader with ADHD made academic progress and his parent repeatedly declined a Minnesota district's offer to evaluate the student's need for special education, an ALJ concluded that the district did not violate its child find obligation."¹²⁹

FINAL DECISION

Because a second-grader with ADHD made academic progress and his parent repeatedly declined a Minnesota district's offer to evaluate the student's need for special education, an ALJ concluded that the district did not violate its Child Find obligation.¹³⁰

While not directly on point, the refusal by the Parent for services to be provide by the Pulaski County Tri-District Early Childhood Program, an extension of the Little Rock District (the Little Rock, North Little Rock and Pulaski County Special District) met the District's Child Find obligation to provide services until and unless the Parent discontinued the private services the Student was receiving and consented to evaluations and services to be provided by the district.

When this Student was enrolled in Pre-Kindergarten or Kindergarten, the District had no follow-up duty to see if special ed services were needed because of Tri-District prior knowledge of outside agency services. However, the District still has Child Find duty for 3 to 21 but because of the Tri-District program, they did meet the Child Find obligation. The Parent refused the service at that time, so then the District would not necessarily have prior knowledge of any services provided by a

¹²⁸ *Board of Education of the Hendrick Hudson District v. Rowley*, 458 U.S. 176 (1982)

¹²⁹ 49 IDELR 115; 107 LRP 60673; Category Special Education, SEA; Duluth Independent District #709; Minnesota State Educational Agency; 60-1300-17896-9; 07-023H

¹³⁰ 49 IDELR 115; 107 LRP 60673; Category Special Education, SEA; Duluth Independent District #709; Minnesota State Educational Agency; 60-1300-17896-9; 07-023H

private agency. When a student is leaving a Pre-Kindergarten program and is eligible for Kindergarten, and a private provider no longer services the student, the District, with parental consent, has the responsibility to provide services deemed necessary by current evaluations.

Districts must consider the use of positive behavioral interventions and supports when a student's behavior impedes his own learning or the learning of other students.¹³¹ The District in this case fulfilled its IDEA obligations by reviewing evaluative data and concluding that the Student's behavioral needs could be met through weekly counseling, an adjusted workload, and supervised interventions prior to instituting an agreed IEP and District provided special ed services for the Student.

ORDER

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that all relief sought by Petitioner is DENIED.

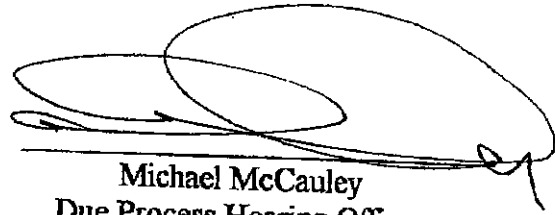
FINALITY OF ORDER AND RIGHT TO APPEAL

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall 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.

¹³¹ 34 CFR 300.324(a)(2)

It is so Ordered.



**Michael McCauley
Due Process Hearing Officer**

July 1, 2013

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Michael McCauley

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