

ARKANSAS DEPARTMENT OF EDUCATION

Special Education Unit

[REDACTED]
As Parents of

PETITIONERS

VS.

NO. H-25-24

LITTLE ROCK SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the Little Rock School District (hereinafter “District” or “Respondent”) denied [REDACTED] (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”), between January 17, 2023 and January 17, 2025, in violation of certain procedural and substantive requirements of the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400-1485, as amended (hereinafter referred to as “IDEA”), by: (1) failing to adequately evaluate Student; (2) failing to provide an Independent Educational Evaluation; (3) failing to develop IEPs that were reasonable calculated to enable Student to make progress; (4) failing to address Student’s communicative effectiveness and implement American Sign Language with fidelity.

Procedural History

On January 17, 2025, the Arkansas Department of Education (hereinafter referred to as the “Department” or “ADE”) received a request to initiate a due process hearing from [REDACTED] (“Parents” or “Petitioners”), as the Parents of [REDACTED] [REDACTED] (hereinafter referred to as “Student”), against the Little Rock School District (hereinafter referred to as “District” or “Respondent”). This case was numbered H-25-24. 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.¹ This case was then set to be heard February 25-26, 2025. On February 18, 2025, parties filed a joint Motion for Continuance stating both attorneys had conflicts with the scheduled hearing dates. The joint motion for a continuance was granted and the case was reset for April 8-10, 2025. On April 4, 2025, attorney for Petitioners filed a Motion for Continuance stating she had a medical issue that restricted her ability to communicate adequately verbally. On April 7, 2025, a conference call was held, and several issues were discussed including the Motion for Continuance. The dates of May 5-8, 2025, were agreed to by the parties and hearing rescheduled for May 5-8, 2025.

The Prehearing conference was conducted via zoom on May 5, 2025.² Counsel for both the Parents and the District participated in the prehearing conference. During the pre-hearing 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.³

¹ See hearing officer File-Petitioner Complaint.

² Transcript, 2nd prehearing conference.

³ Id.

Thereafter testimony was heard in this case on May 6, 7, 21, 22, 28, and 29, 2025.

Present for the Hearing were Bridgette Work, attorney for the parents, Khayyam Eddings, attorney for the District, [REDACTED], [REDACTED], Cassandra Steele, special education director Little Rock School District, Melinda Smith, assistant special education director Little Rock School District.

The following witnesses testified in this matter: Cassandra Steele, Debrorah Papineau, Sophia Williams, Morgan Ealy, Christie Smith, Sharronda Threet, Rachel Dunn, LeeAnn Brosh, Barbara Foulk, Cynthia Vocque, [REDACTED] [REDACTED] and Staci Miller.⁴

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended and Arkansas Code Annotated §6-41-202 through §6-41-223, Dana McClain, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing.

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements. The original day for the parties' briefs set by this hearing officer was June 20, 2025. On June 20, 2025, counsel for Petitioners filed a Motion to Extend Time for filing the post hearing brief and that motion was granted. Both parties submitted post hearing briefs in accordance with the deadline set by this Hearing Officer.⁵

⁴ Hearing Transcripts Vol. I-VI.

⁵ See Hearing Officer File-post hearing briefs.

Findings of Fact

1. Student is a twelve (12) year old boy enrolled in the third grade at Stephens Elementary School within the Little Rock School District (“District”).
2. Student has been diagnosed with Down Syndrome, language disorder, childhood apraxia of speech, and fine motor delay.⁶
3. Student is identified as a student with a disability in need of special education services under the category of Speech Impairment.⁷
4. In May 2020, the District received a special education referral concerning Student, who was then seven years old and enrolled at Access Academy, a private institution where he participated in the Early Intervention Day Treatment (EIDT) program and received special education services. At the time, Student was nonverbal and utilized a LAMP augmentative communication device. On May 28, 2020, District convened a referral conference; however, an Individualized Education Program (IEP) was not developed because the Parents did not consent to placement, and Student was not yet enrolled in the District, as the Parents were still considering district school options.⁸
5. On September 23, 2020, the District held an IEP meeting and developed Student’s kindergarten IEP. This conference was held via zoom because of social distancing requirements. Duration of services for this IEP was September 23, 2020- September 22, 2021. This IEP included present levels of academic and functional performance. Student carried diagnoses of Down Syndrome, Global Language Disorder, and Feeding Disorder. Student was nonverbal at this time and used PriO augmentative

⁶ District’s Exhibits, pgs. 368-373.

⁷ Id., at 58, 256.

⁸ District Exhibits

alternative communication (AAC) device with LAMP (Language Acquisition Motor Planning) words for life software with 84 location key guard for expressive language need. Further the data from ACCESS academy where Student had been attending previously, Student had achieved 4 of 11 speech language goals since 2018. Student continued to improve significantly with attempts at verbalizations. Student was able to use his speech device to communicate thoughts to communicative partners.⁹ Student had an speech language evaluation completed by ACCESS on October 15, 2019, which indicated Student had a severe delay of gross oral motor skills and that he demonstrated signs of apraxia of speech with oral scanning/groping to complete tasks including producing voice, alternating tongue lateralization, and elevating tongue to ridge; Student was unable to execute the alternating spread/pucker of lips, and was unable to isolate movements in the lateralization of tongue to the left. He demonstrated multiple vowel distortion and difficulty executing consonants/t,p,b,d, and n/. The team had a cognitive assessment completed by ACCESS on February 9, 2017, indicating Student had extremely low score in verbal comprehension and visual spatial index. Student's full-scale IQ was 50, also extremely low, and his communication scale, daily living skills, socialization, and motor skills were all low.¹⁰ The IEP further contained a statement of measurable annual goals. Student's IEP contained five speech therapy goals, one literacy goal with eight objectives, and one math goal with seven objectives. Also, the IEP contained a statement of the special education and related services Student would receive. Student was to receive special education services such as direct instruction in literacy and math, 15 minutes

⁹ District Exhibits, pg. 244.

¹⁰ Id., pg. 229.

- 5x per week in the special education classroom/virtual, and speech language services in speech language therapy, 240 minutes per month therapy room/virtual. Further Student was to receive related services of speech language therapy 240 minutes per month, occupational therapy services 30 minutes 1x per week, and physical therapy services 30 minutes 1x per week, all occurring in the therapy room/virtual.¹¹
6. On March 4, 2021, an IEP meeting was held via Zoom. Parents participated. It was determined that Student would get a “human scribe” for the reading fluency portion of the state/district assessments. Further, Student would respond via his augmentative communication device or sign language and human scribe will repeat for the fluency recording. A certified ASL translator for test accommodations was considered and rejected because Student’s Parents stated that Student does not necessarily use ASL but at times uses his own personal version of sign language so it would be best if the translator could be someone familiar with Student and his sign language.¹²
7. On May 4, 2021, an IEP annual review meeting was held. Student would be returning to in person learning for his 2021-2022 first grade school year. This IEP included present level of academic achievement which included Student’s academic progress. Student’s progress in resource class included 50% towards 100% mastery criteria in naming and identifying letters of the alphabet; 38% towards 80% mastery criteria in demonstrating letter/sound correspondence for all consonants, short vowels, long vowels, and digraphs; 75 % towards 100% mastery criteria in writing all upper case and lowercase letters; 45% towards 80% mastery criteria in reading and writing kindergarten level decodable words; 30% towards 80% mastery criteria in

¹¹ Id., pgs. 243-252.

¹² Id., pg. 204.

making predictions and discussing shared stories; 10% towards 80% mastery criteria in reading and writing kindergarten level sight words; 50 % towards 100% accuracy in rote counting to twenty; 25% towards 80% mastery criteria in demonstrating one to one correspondence up to twenty; 25% towards 80% in composing/decomposing numbers within twenty; 50% towards 80% mastery criteria in writing numerals 1-20; and 25% towards 80% mastery criteria in matching numeral to quantity. Student was also making progress in all related service areas. However, Student's profound language delay continued to adversely affect his ability to effectively express wants and needs, participate in class discussions and make connections with new content to build academic skills. Even with these deficits it was recommended that Student continue to receive speech therapy services at 60 minutes per week or 240 minutes per month to minimize general education instruction missed and because Student was still receiving direct speech therapy services through ACCESS.¹³

The IEP contained one resource goal in literacy phonemic awareness, one resource goal in social emotional behavioral, seven speech therapy goals, one Resource Literacy goal in decoding/encoding skills with five objectives, one Resource Literacy goal in fluency with three objectives, one Resource Literacy goal in reading comprehension with one objective, one Resource Literacy goal in written expression with two objectives, one Resource math goal in calculation and word problems with one objective, and one resource math goal in number sense with five objectives.¹⁴ Additionally the IEP contained a schedule of services that included, speech/language services in speech/language therapy 240 minutes per month, direct instruction in

¹³ Id., pgs. 191-192.

¹⁴ Id., pgs. 195-199.

physical therapy 30 minutes one time per week, direct instruction in literacy 75 minutes over 2 sessions, and direct instruction in math for 75 minutes over 2 sessions. Further the IEP listed related services as speech/language therapy 240 minutes per month, occupational therapy 30 minutes one time per week (while still virtual) and then when school started back in person, occupational therapy 240 minutes per month.¹⁵ At the time Student used both a personal PRiO augmentative alternative communication device with LAMP software for expressive language needs and sign language and verbal language for communication needs. Student also had paraprofessional support, and other supplementary aids and services and accommodations and modifications included in the IEP.¹⁶

8. On September 10, 2021, the IEP team met to review existing data. The team determined that Student needed speech therapy, occupational therapy, and physical therapy evaluations because his current evaluations were conducted by an outside agency. These evaluations were needed to aid in program planning for Student. Parents agreed to immediate implementation of the actions proposed.¹⁷
9. On October 17, 2021, the IEP team met to review independent occupational therapy, physical therapy and speech therapy evaluations conducted by Access schools. Although the district had recommended District evaluations in these areas at the September 10, 2021, IEP meeting, at this meeting the team determined that the evaluations conducted by Access schools met the criteria and were accepted by the District, and therefore it was no longer necessary to conduct school-based therapy

¹⁵ Id., pg. 200.

¹⁶ Id., pg. 193.

¹⁷ Id., pg. 185.

evaluations. At this time Student was still attending school virtually and receiving special education services virtually.¹⁸

10. On February 2, 2022, the IEP team met via email correspondence to review Student's schedule of services, specifically, physical therapy services. It was determined by the IEP team with parent input that school based virtual physical therapy was not ideal for Student at this time. It was determined that Student would continue to receive virtual physical therapy via private physical therapist and physical activities provided by his family.¹⁹

11. On April 29, 2022, the District held an annual review. This meeting was held via zoom and both parents participated. The team discussed Student's progress on his IEP resource goals. Student's progress was as follows:

- 50% towards reading and writing all consonant and short vowel sounds In closed syllable, 3 sound words.
- 25% towards reading and writing digraphs in isolation and in closed syllable 3 sound words.
- 50% towards reading and writing/spelling grade level high frequency words.
- 35% towards reading sentences with decodable words and high frequency words. 50% towards writing one sentence with correct capitalization, spelling and punctuation.
- 75% towards solving addition and subtraction problems within 10.
- 50% counting objects with one-to-one correspondence up to twenty.
- 50% towards writing the correct numeral to match quantity.
- 75% towards rote counting to twenty.
- Mastery of read and write short vowel sounds in isolation; read and write consonant sounds in isolation.

Student received instruction in the virtual resource setting during the 2021-2022 school year.²⁰

¹⁸ Id., pg. 182.

¹⁹ Id., pg. 143.

²⁰ District's Exhibits, pg. 127.

Student's NWEA (Northwest Evaluation Association) MAP (Measures of Academic Progress) Growth scores were as follows:

Fall-2021-Math 138 (mean 160.05); Reading: 156 (mean 155.93)

Winter 2021- Math: 127 (mean 170.18); Reading 130, (mean 165.85)

Spring 2022-Math: 121 (mean 176.4); Reading 133, (mean 171.40)

Student showed a decrease in his Math and Reading scores from fall to winter 2021 and showed an increase in his reading score from winter to spring and a decrease in his math score from winter to spring.

Student showed progress in Speech language therapy during the 2021-2022 school year. Student was working virtually with a contract speech pathologist, Lee Ann Brosh throughout the year until sometime in April of 2022 when Ms. Brosh switched to working with Student at his home. Student made quite an improvement in the quality of his participation. Student made the following progress on his goals:

- Following 2 step verbal directions: 50% accuracy
- Answering general wh-questions; 50% accuracy
- Increase MLU by using 2-word phrases in some form to make/describe: 60% accuracy
- Increase MLU by using 2-word phrases to make requests; Not yet initiated
- Identifying an item that does not belong among a group of choices: Not initiated
- Imitatively or spontaneously producing core vocabulary words; Not initiated
- Demonstrating knowledge of spatial concepts: Not yet initiated.

Student also demonstrated progress in Occupational Therapy. Student had good attendance in teletherapy sessions. Student still has difficulty with fine motor, visual

motor, visual perception and handwriting skills. Further he had difficulty with sustained attention and sensory processing.²¹

12. On April 29, 2022, during Student's annual review the IEP team, including the parents, developed Student's IEP for the 2022-2023 school year. This IEP contained Student's present level of academic Achievement and Functional Performance, five social/emotional goals, one reading goal with three objectives, one written expression goal with two objectives, one math goal with eight objectives, one receptive expressive language goal with four objectives and one articulation goal with four objectives. All of student's goals had appropriate means of measuring progress. Further Student's IEP contain a statement of special education and related services to be provided to Student. Because Student finished his first-grade year virtually, there are multiple dates under the schedule of services to show the end of the 2021-2022 school year and the 2022-2023 school year when Student began attending school in person. The Schedule of services for Student included:

Paraprofessional support five times per week in the regular classroom, direct instruction in reading twenty minutes one time per week in the regular classroom, direct instruction in written expression twenty minutes one time per week in the regular classroom, direct instruction in Math twenty minutes one time per week in the regular classroom and thirty minutes one time per week in the special education classroom, speech/language services in speech language/therapy three hundred sixty minutes per month in the therapy room, classroom or virtually and direct instruction in social emotional ten minutes one time per week in the regular classroom. Student was to receive related services of speech therapy

²¹ District Exhibits, pg. 128.

three hundred sixty minutes per month in the therapy room, classroom or virtually, occupational therapy two hundred forty minutes per month in a contextual environment, and physical therapy thirty minutes one time per week in the regular classroom or therapy room.²² Student would repeat the first grade (in person) during the 2022-2023 school year.

13. On January 12, 2023, the IEP team met to review and revise Student's IEP. The Parents participated in person. The team reviewed classroom work samples, behavior observations, parent input, therapist input, classroom teacher input, special educator input and paraprofessional input. The team created a plan to increase the use of integration of sign language into the classroom and in support of peer communication. The plan was to include Student's speech therapist Mrs. Brosh, pairing and including a peer with Student during Student's speech therapy sessions. Student's teacher would post more sign language supports in the classroom, individuals working with Student would continue to utilize the ASL app to support sign language communication. Parents discussed Student's paraprofessional receiving training in sign language and the District agreed to inquire about training for her. Further the team discussed some concerning behaviors Student was exhibiting such as hitting, kicking toward his paraprofessional and other students. The team agreed to implement an informal behavior plan and keep data to monitor its effectiveness. The IEP was amended to reflect these changes.²³
14. On April 25, 2023, the IEP team met for Student's annual review and to conduct an existing data review as part of a re-evaluation of Student. They conducted an existing data review and discussed recommendations for updated testing with Student's parents.

²² District's exhibits, pgs. 126-138.

²³ Id., pg. 124.

Parents communicated they wanted to discuss the idea of updated testing of Student and get back with the team regarding their decision. Parents communicated that they would like the team to consider a modified attendance schedule for Student of the upcoming school year. The District explained the medical documentation necessary to facilitate a modified attendance schedule and asked the parents to notify them when they had the needed documentation so the team could reconvene to discuss a modified attendance schedule for Student. Student's progress was discussed. Student made the following progress towards completion of this math and literacy goals and objectives in his IEP: 65% towards reading (by demonstrating verbal word approximation or sign language) closed syllable, 3 sound words with digraphs (th,wh,ch,ck,sh); 40% towards reading closed syllable, 3 sound words with digraphs (th,wh,ch,ck,sh); 25% towards reading closed syllable, 3 sound words with welded sounds (ing,an,am,ank,etc); 40% towards reading 3 sound words with bonus letters (f,s,z,l) (bass,cuff,fuzz,hill, etc.) 50% towards reading decodable sentences demonstrating accuracy with word approximation and/or demonstrating comprehension by answering simple questions or telling about the sentence using sign language or words; 25% towards spelling closed syllable, 3 sound words with bonus letters "f,s,l,z"; 50% towards spelling closed syllable 4 sound words with welded sounds; 50% towards adding and subtracting within twenty using manipulatives with assistance; 10% towards comparing numbers within twenty; 10 % towards demonstrating understanding of place value to tens place; 50% towards counting to thirty (with visual and verbal cues); 50% towards initiating communication with adults and peers; 80% towards actively participating in classroom activities; 25% towards reusing a break; 50% towards completing requested task/activity (with no physical

protest); 50% towards using sign language and words to communicate with peers.

Student also mastered numerous reading objectives. According to Student's NWEA scores he showed growth in reading from fall to winter. Student did not have a fall math score on the NWEA to compare with his winter score. Student was given a phonics screener, and student could name 24 letters, and produced 7 consonants and 1 short vowel sound. Further Student was given a universal math screener which showed Student was well below the basic range for students his age. Student made progress in speech progress but continued to have a profound impairment in articulation and receptive expressive language skills. Also, Student will use ASL signs, but also used his own signs for certain things, places or people. Student is also able to vocalize with communicative intent including making requests for needs or wants with a preferred method of communication. Student prefers to use a mixture of sign language, vocal approximation of words, and gestures to indicate wants or needs. When Student uses his preferred signs rather than those learned by others, it can make it more difficult for Student to indicate wants and needs.²⁴

15. Student's IEP developed on April 25, 2023, for Student's 2023-2024 school year included a statement of Student's present levels of academic achievement, a statement of measurable annual goals and a statement of special education and related services to be provided to Student during his 2023-2024 academic year. Student's IEP contained four goals in literacy, two goals in math, four goals in receptive/expressive language, three goals in articulation, two goals in social emotional development. Further Student's IEP included the following schedule of services: Direct instruction in literacy thirty minutes

²⁴ District Exhibitis, pgs. 84-85.

one time per week in the special education classroom, direct instruction in math thirty minutes two times per week in special education classroom, speech language therapy three hundred sixty minutes per month in therapy room or inclusion, and paraprofessional support five times per week in regular classroom. Further student was to receive related services in speech therapy three hundred sixty minutes per month in the therapy room, occupational therapy four hundred minutes per quarter in contextual environment, and physical therapy two hundred minutes per quarter in therapy room.²⁵

16. After discussing the option of updated intellectual, achievement, adaptive testing and therapy evaluations, parents decided to consent for updated therapy testing and to deny consent for updated intellectual, achievement and adaptive testing.²⁶
17. On October 12, 2023, the team met and conducted a facilitated IEP meeting. Parents participated. Parents stated that Student's primary mode of communication is American Sign Language and would like that noted in Student's IEP. Further, dad would like Student to be taught ASL at the Arkansas School for the Deaf-hybrid approach (Arkansas school for the deaf and school-based services), parents stated they had already applied. The school for the deaf would need an audiogram, psychoeducational testing and speech language evaluation. Parents requested an independent evaluation. The District proposed having someone from Arkansas Children's Hospital(ACH) Educational Audiology and Speech Pathology Resources for Schools (EARS) do an ASL evaluation, including readiness for ASL. The District opined that it needed some baseline data . Parents refused to consent to this evaluation, because they know Student knows sign

²⁵ District Exhibits,pgs. 82-94.

²⁶ Parents' Exhibits, pg. 232, Transcript Vol. I, pg. 43-44.

language. The District further proposed having an ASL instructor come in for a few weeks to collect data on Student, to assess what he knows in ASL. Parents again refused to consent to this because it would take Student at least two weeks to trust the ASL interpreter. Further the District proposed that Student receive a psychological evaluation, and the parents rejected this proposal because the parents believe a psychological evaluation to be “racist”. Student is also receiving DTTC therapy outside of school for his Apraxia. Parents were adamant they wanted Student’s primary mode of communication as ASL in his IEP. There were no decisions made because of time constraints and the need for further research/information so the team agreed to meet again on October 30, 2023.²⁷

18. On October 30, 2023, the IEP team met to continue the facilitated IEP that began on October 12, 2023. Parents opposed getting any baseline data on Student’s ability to use sign language. Parents wanted Student to have an ASL instructor but didn’t want any baseline data collected prior to six months of ASL instruction. The District continued to opine that it needed the base line data for programming and for justifying the expense of an ASL instructor. Parents still refused. District agreed to pay for a signing assistant for six months. The District further agreed to put the signing assistant in the IEP under special factors, and the assistant would start on November 6, 2023. Student does not qualify for services at the Arkansas School for the Deaf as a Student must be deaf or hard of hearing and Student is neither.²⁸
19. On May 15, 2024, the IEP team met for Student’s annual review. Both parents participated. Dad reported that Student signs frequently at home and that he is

²⁷ District’s Exhibits, pgs. 77-78.

²⁸ Id., pg. 60.

verbalizing more at home also. Out of eight goals, one was mastered, two were continued and five were discontinued and new goals developed because Student would be entering the second grade. Student's NWEA scores in Math were fall-130, winter-110 and spring-136, these scores indicate overall progress from fall to spring semesters in math. Student's NWEA scores in reading were fall-127, winter-130 and spring -117. This shows a lack of progress in reading or lack of consistent testing. Further, Parents continued to deny consent for a cognitive psychological evaluation.

20. On May 15, 2024, the IEP team developed Student's IEP for the 2024-2025 school year. The IEP contained a statement of Student's present levels of academic achievement, a statement of measurable annual goals, and a statement of special education and related services to be provided to Student. Student's IEP contained three speech language goals, two math goals, one reading goal, one social emotional goal, one occupational therapy goal with six objectives and one physical therapy goal with four objectives. Further Student's IEP contained the following schedule of services: direct instruction in literacy two hundred forty minutes per month in the regular classroom, direct instruction in math two hundred forty minutes per month in the regular classroom, speech language therapy services, two hundred forty minutes per month in the therapy room, occupational therapy, two hundred minutes per quarter in the therapy room, physical therapy, two hundred minutes per quarter in the therapy room, and paraprofessional support five times per week. Parents signed and said they were present but that no agreement was reached during the IEP meeting.²⁹

²⁹ District Exhibits, pgs. 28-42.

21. On August 13, 2024, the IEP team met to discuss an incident that occurred in the classroom between Student and his paraprofessional. A functional behavior assessment was discussed to be conducted by the school psychology specialist for Student. The team also determined that Student would get a new one on one paraprofessional. Parents provided consent for the functional behavior assessment on August 13, 2024.³⁰
22. On November 4, 2024, the IEP met to develop a behavior intervention plan for Student. The District again attempted to get consent from the parents to conduct a comprehensive psycho education evaluation for Student, and again parents refused to consent. The District discussed consulting with Arkansas School for the Deaf to determine the best protocol for assessing Student on sign language instruction. The District explained that ASL interpreters are available for evaluation done by the district to assist with interpretation. Parents did agree to further discussion regarding psycho educational evaluation after consultation with outside sources. Parents stated they preferred an independent outside evaluation.³¹
23. On November 11, 2024, the District reiterated its request for consent to evaluate, and again the Parents refused.³²
24. The District hired Ginger McCorkle, licensed psychological examiner who worked for the Arkansas School for the Deaf for fourteen years, and researched with Arkansas Children's Hospital, and she is fluent in sign language. The District proposed using Ms. McCorkle to conduct Student's comprehensive psycho educational evaluation but the Parents again refused consent.³³

³⁰ Id., pgs. 24-25.

³¹ Id., pgs. 1-2.

³² Id., pg. 462.

³³ Transcripts, Vol. I, pg. 60.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally, the burden of proof includes two components: the burden of production and the burden of persuasion. Prior to reviewing the Parents' claims, it is noted that the burden of persuasion belongs to the party requesting relief, according to *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Therefore, in this case, the burden of persuasion rests with the Parents.

In their role as factfinders, special education hearing officers are tasked with making credibility assessments of witnesses who testify. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8th Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008). In this case, the hearing officer determined that all witnesses testified to the facts as they recalled them; minor inconsistencies in the testimony were not considered material to the issues at hand and were not regarded as intentionally misleading.

While the weight assigned to testimony differs from its credibility, certain evidence—including testimony—proved more persuasive and dependable regarding key issues, as detailed below. Although some documentation and witness statements conflicted, there is no determination that any individual acted with intentional dishonesty; nevertheless, these discrepancies influenced the hearing officer's conclusions. In rendering this decision, careful consideration was given to the entire record, encompassing witness testimony, admitted exhibits, and 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 that FAPE mandates are met by providing personalized instruction and support services that are reasonably calculated to enable the student 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 the development and 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.

Endrew, *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," *Endrew 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 (8th Cir. 2006); *Schoenfeld v. Parkway School District*, 138 F.3d 379 (8th Cir. 1998).

Arkansas Department of Education Rule 7.01.1 states:

7.01 GENERAL 7.01.1 Each public agency must ensure that the IEP of a child with a disability is reviewed in accordance with 34 CFR 300.320 through 300.324 and §8.00 of these regulations; and that a reevaluation of each child, in accordance with 34 CFR 300.304 through 300.311 and §§ 6.00 and 7.00 of these regulations, is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. In accordance with 34 CFR 300.303(b) the reevaluation must occur at least once every three years unless the parent and the public agency agree that a reevaluation is unnecessary. A reevaluation may occur not more than once a year unless the parent and the public agency agree otherwise.

7.01.2 Subject to 34 CFR 300.300(c)(2) and § 9.06 of these regulations, informed parent consent must be obtained in accordance with 34 CFR 300.300(a)(1) before conducting any reevaluation of a child with a disability.

7.01.3 Parental consent is not required before - 7.01.3.1 Reviewing existing data as part of an evaluation or a reevaluation.

Further, Arkansas Department of Education Rule 7.02 states:

7.02 REFUSAL 7.02.1 If the parent of a child with a disability refuses to consent to the reevaluation, the public agency may, but is not required to, pursue that evaluation by using the consent override procedures under §10.00 of these regulations and 34 CFR 300.507 - 300.516, if appropriate, except to the extent inconsistent with other State laws relating to parental consent.

7.02.2 The public agency does not violate its obligation under 34 CFR 300.311 and 300.301 through 300.111 if it declines to pursue the evaluation or reevaluation.

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. *Endrew F.*

DENIAL OF FAPE

This case is unusual because all four issues raised—insufficient student evaluation, denial of an Independent Educational Evaluation, inadequately developed IEPs, and failure to address communication needs with consistent ASL implementation—involve inadequate evaluations or its absence. The District claims it is not liable for any FAPE denial because the Parents withheld consent for evaluations needed by the IEP team. The record is replete with Parents’ multiple refusals to consent to psychoeducational, ASL, and adaptive behavior evaluations despite the District’s repeated efforts. Paradoxically, Parents claim that a FAPE was denied because District failed to adequately evaluate Student, failed to provide an Independent Educational Evaluation, failed to develop IEPs that were reasonably calculated to enable Student to make progress and failed to address Student’s communicative effectiveness and implement American Sign Language with fidelity. As all the FAPE issues raised by Parents pertain to evaluations, it is unnecessary to consider them individually; accordingly, they will be discussed collectively in this section.

The IDEA requires school districts to re-evaluate students with disabilities at least once every three years to ensure that educational programs are well-suited to the student's evolving needs. See *Schaffer v. Weast*, 546 U.S. 49, 53, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); 34 C.F.R. § 300.534. The IDEA also requires that a parent “must be informed about and consent to evaluations of their child under the Act.” *Id.* (citing 20 U.S.C. § 1414(d)(1)(B)). The IDEA further provides that, if a parent does not provide consent for an evaluation, the district may pursue an override of the parent's decision by utilizing the due process procedures contained in 20 U.S.C. § 1415. See 20 U.S.C. § 1414(a)(1)(D)(ii). The language of the statute is permissive; and, therefore, a school district is not obligated to obtain an updated evaluation after a parent has

refused consent. See *Fitzgerald v. Camdenton R–III Sch. Dist.*, 439 F.3d 773, 776 (8th Cir.2006) (citations omitted).

The IDEA 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 requests such consent.” 20 U.S.C. § 1414(a)(1)(D)(ii)(III)(aa). Although a parent always retains the right to withhold consent for further evaluations, after consent is withheld, the school district cannot be held liable for denying FAPE. See *M.L. v. El Paso Ind. Sch. Dist.*, 610 F.Supp.2d 582, 599 (W.D.Tex.2009) (citing 20 U.S.C. § 1414(a)(1)(D)(ii)(III)(aa)) (other citations omitted). A parent seeking special education services for their child under the IDEA must allow the school to evaluate the student and cannot force the school to rely solely on an independent evaluation. See *Gregory K. v. Longview School Dist.*, 811 F.2d 1307, 1315 (9th Cir.1987); see also *Dubois v. Conn. State Bd. of Ed.*, 727 F.2d 44, 48 (2d Cir.1984) (interpreting the IDEA's predecessor and holding that the school system may insist on evaluations by qualified professionals).

Here, Parents’ repeated failure to provide District with consent to perform updated evaluations precludes them from asserting that Student was denied a FAPE between January 17, 2023, and January 17, 2025. The District attempted multiple times to gain consent from Parents to conduct a comprehensive psycho educational evaluation, an adaptive behavior evaluation, an American Sign Language (ASL) evaluation and a behavior evaluation. The Parents steadfast said no to any effort the District made to obtain consent. When asked about the need for formal evaluations and programing, Cassandra Steele, the District special education director, testified:

“More formal data tells us perhaps things that we can’t see from an observation, such as a child learns better this way, if you add these accommodations and modification. You know, if you have a formal assessment, there are specific things that the evaluation looks for. And based on the results of those particular sections, it gives you suggestions on how a child might better learn. And, so having those things, we don’t have to guess because it is normed.”³⁴

And when asked if a formal assessment is more reliable than an informal assessment Ms.

Steele testified:

“I would say so, because you have research and data to support why you ask what you ask, how the assessment is done. And, you know, there are control groups, there are things that you have proof of why you come to certain interpretations if you have a formal assessment, because it is based on research and data and control groups and as such oppose being subjectively evaluated by my opinion. My opinion is based on my experience, it is not based on anything found in research or teachers’ experiences. Together, I think you get a better picture, a full picture, a more rounded picture of what a child’s present levels are than if you just had one thing.”³⁵

In this case, Parents never consented for a comprehensive evaluation of Student; at one point the district proposed using the sign language assistant to collect data demonstrating how the student benefited from the services, but the Parents withheld consent for this as well. With each request made by the district, the parents have introduced obstacles that have hindered the IEP team's ability to develop an Individualized Education Program that effectively addresses the student's needs. Reliable data—both formal and informal—are essential to guiding services under IDEA. If parents decline consent for the collection of necessary data and evaluations required for the district to develop an appropriate plan for a student, IDEA recognizes the District cannot be held liable for a denial of FAPE.

³⁴ Transcripts. Vol. I. pgs. 195-196.

³⁵ Id., pg. 197.

ORDER

The results of the testimony and evidence warrant a finding for the District. Specifically, Parents failed to introduce sufficient evidence in the record to establish by preponderance of the evidence that the District denied Student a FAPE between January 17, 2023, and January 17, 2025.

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 Hearing Officer's decision is final. Any party aggrieved by this decision may file a civil action in Federal District Court or a State Court of competent jurisdiction, as allowed under the Individuals with Disabilities Education Act, within ninety (90) days of the date the Hearing Officer's Decision is submitted to the Arkansas Department of Education.

In accordance with Section 10.01.36.5, Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education 2008, the Hearing Officer does not retain further jurisdiction over the parties involved in this hearing.

IT IS SO ORDERED.

Dana McClain

HEARING OFFICER

8/13/2025

DATE