ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION SECTION

_____, PETITIONERS
AS PARENTS OF
_____

VS. NO. _____

TEXARKANA SCHOOL DISTRICT RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

Issues and Statement of the Case

Issues:

The Parents identified the issues as:

(a) changing the Student's placement without due process through exclusions, disciplinary referrals, and disciplinary actions;

(b) failing to educate the Student in the least restrictive environment;

(c) failing to properly evaluate and program for the Student's primary health impairment;

(d) failing to consider and provide evaluations, supports, and programming recommendations set forth by the Arkansas Department of Education ("ADE") in placing the Student under the Emotionally Disturbed disability category;

(e) failing to provide an appropriate Individualized Education Progran ("IEP") for the Student, specifically including failure to develop a behavior support plan for the Student, provide a paraprofessional for the Student, and provide direct special education and related services, and special skills training;

(f) discharging the Student from special education services in 2014;

(g) failing to conduct a comprehensive evaluation of the Student prior to and after discharging the Student from special education and then seeking to place the Student under the Emotionally Disturbed category;

(h) failure to evaluate and provide needed related services to address the Student's deficits;

(i) failure to consider the need for extended year services despite having no documentation

to show progress;

(j) failure to failure to provide meaningful instruction when the Student was placed on homebound services;

(k) unilaterally placing the Student on homebound instruction following a Manifestation Determination Review;

(l) punishing the Student for exhibiting disability-related behaviors and failing to provide research-based interventions to address his developmentally-delayed social and emotional skills through an appropriate IEP during the 2012-13, 2013-14 and 2014-15 school years;

(m) failing to implement the services and supports on the Student's IEP, however grossly deficient; and

(n) denying the Student appropriate instruction in "day treatment" settings, indirect special education instruction, and homebound instruction.

Procedural History:

On March 14, 2015, a request to initiate due process hearing procedures was received by the Arkansas Department of Education (hereinafter referred to as the "Department" from _____ and _____ _____ (hereinafter referred to as "Parent" or "Parents", the Parents and legal guardians of _____ (hereinafter referred to as "Student"). The Parents requested the hearing because they believe that the Texarkana School District (hereinafter referred to as "District") failed to comply with the Individuals with Disabilities Act (20 United Stated Code Sections 1400-1485, as amended) (IDEA) (also referred to act the "Act" and Public Law 108-446) and the regulations set forth by the Department in providing the Student with appropriate special education services as noted above in the issues as stated.

The Department responded to the Parents' request by designating April 16, 2015, as the date on which the hearing would be held and by assigning the case to an impartial hearing officer. The

hearing officer issued an order setting preliminary timelines on March 18, 2015, which included the District convening a resolution session with the Parents on or before March 28, 2015.

The Parents also alleged violations by the District of Section 504 of the Rehabilitation Act of 1973. The hearing officer determined that these issues were not within his jurisdiction while conducting a hearing under the IDEA.

The burden of proof was assigned to the Parents. The Parents filed a motion to continue on April 14, 2015. The District did not object to a continuance. The hearing officer advised the parties that he was going to grant a *nunc pro tunc* order to continue once the parties furnished him with available dates. Available dates were subsequently provided and the hearing was continued until May 27, 2015.

On or about May 18, 2015, the Parents filed another Due Process Complaint. This complaint requested that the District be held in contempt for violating the "stay put" provisions of the federal and state regulations. At the outset of the hearing the hearing officer ruled that he did not have jurisdiction to hold a school district in contempt and that one of the requirements for civil contempt was the existence of a valid court order. There was no mention in the new Due Process Complaint alleging the existence of a court order. Additionally, the Parents decided not to pursue a return to stay put at the time, because the 2014-2015 school year was almost over.

On August 11, 2015, the Parents filed a Motion to Stay Put Order. That motion was denied as the hearing officer held that the Student's placement was changed to homebound after an IEP

Team meeting on January 27, 2015, and the Parent's filed for a Due Process hearing on March 14, 2015, well after the placement had been changed. Therefore, the Student's stay put placement was based on the January 27, 2015, IEP.

The hearing began on May 27, 2015. Additional dates were May 28, May 29, June 16, June 17, and June 19, after which time the record was closed and closing statements were waived in lieu of submitting Post Hearing Briefs

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 6-41-223m Garry J. Corrothers, Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. The Parents were represented by Theresa L. Caldwell, Attorney at Law of Little Rock, Arkansas, and the District was represented by Jay Bequette, Attorney at Law of Little Rock, Arkansas, and Richard N. Dodson, Attorney at Law of Texarkana, Texas.

FINDINGS OF FACT

1. Reginald and Timothy Randles (hereinafter known as the Parent or Parents) are the Parents of Timothy Randles (hereinafter referred to as "the Student", aged 11, who reside in the Texarkana School District.

2. The Student is one of seven children who was abandoned and placed in foster care at the age of fourteen months. [TR Vol 5, pg 39] Because of his issues with transitions, severe behavior, and difficulty bonding with previous foster families, the Arkansas Department of Human Services allowed the Student to get to know the Parents over a period of three years, rather than a six month trial. [TR Vol 5, pg 41] Prior to being adopted by the Parents, the Student was placed in therapeutic care in Jonesboro, Arkansas, for approximately a year. [TR Vol. 5 pg 43] The Student was finally adopted by the Parents at the age of five [TR Vol 5, pg 43-44] and has attended the Texarkana School District since 2009. The Student has been in therapy since he was adopted by the Parents in 2010. [TR Vol 5, pg 64, TR Vol 5, pg 98]

3. The Student has been diagnosed with Reactive Attachment Disorder (RAD), Mood Disorder, and Attention Deficit Hyperactivity Disorder (ADHD), and is a child with a disability as such is defined in 20 U.S.C. Section 1401(3). RAD is a diagnosis given to children who are not able to bond with their primary caregiver due to neglect, abandonment, and instability. [TR Vol 5, pg 48, TR Vol 5, pg 99-100] The disorder impacts the child's ability to trust and form lasting relationships with friends or family. [TR Vol 5, pg 49, TR Vol 5, pg 99-100, 101] The disorder causes the child to go to extreme measures in an effort to control their environment to prevent instability, thus lying, manipulation, impulse control are often problematic. [TR Vol 5, pg 50] RAD "stunts kids growth psychologically, emotionally, and socially" and occurs if a "child, during the first three years of their life, miss[es] out on securing a

healthy attachment with their primary caregiver, then it actually prevents the brain from growing developmentally the way it is supposed to." [TR Vol 5, pg 99] When a child has not had a primary caregiver that responds to their needs "due to neglect, abuse, . . . when a child is basically ignored . . . their needs are not consistently met during those first three years, instead of trust forming, mistrust forms of adults." [TR Vol 5, pg 100] RAD "stunts . . . the right side of brain, which is where your emotions, your ability to regulate, your internal self-control issues." [TR Vol 5, pg 101] A child with RAD "can grow up without the ability to empathize, without a conscience." [TR Vol 5, pg 101] "The primary treatments for RAD is family therapy with the primary caregiver - to rebuild the attachment and rebuild the trust that was missed during the early years to help the brain stabilize." [TR Vol 5, pg 103]

4. This case involves the Student's denial of FAPE (Free Appropriate Public Education) during the 2013-14 and 2014-15 school years when he was a fourth and fifth grade Student.

5. The Texarkana School District is responsible and accountable under the IDEA to provide the Student a Free Appropriate Public Education. During the 2014-15 school year the Student was enrolled in the College Hill Middle School within the Texarkana School District. At all times pertinent hereto, the Student has attended Fairview Elementary or College Hill Middle School within the District.

6. On May 23, 2012, the IEP (Individualized Education Program) Team met to develop the Student's third grade IEP, which provided fro 1800 general education minutes in math, language arts, science, art, physical education minutes with no related services. [Parent's Ex, pg 45]

7. The Student began attending Vista Health's Therapeutic Day Treatment on

January 28, 2013. [Parent's Ex, pg 46, 170] The team listed his placement as School Based Day Treatment, with little or no instruction in regular class, and noted that the team considered and rejected same or no instruction in regular class. [Parent's Ex, pg 46] The Parents began providing after school tutoring. [TR Vol 5, pg 61-62, Parent's Ex, pg 32]

8. On April 17, 2013, the Student began going back to school for half days, then would go to Vista Health TDT at noon. [Parent's Ex, pg 173-174, TR Vol. 5, pg 63] His IEP was revised the same date to reflect general education minutes of 1260, and 570 special education minutes in math [Parent's Ex, pg 47] There were no new goals or objectives in this IEP, nor was there any data to indicate the Student's progress. The team listed his placement as School Based Day Treatment, with little or no instruction in regular class. [Parent's Ex, pg 55] The team noted that the Student was attending "counseling" in the afternoon at Vista Health. [Parent's Ex, pg 58) The Parents grew concerned because the Student's behaviors were not getting better during the time he spent at Vista. [TR Vol 5, pg 63-64)

9. The Student began transitioning from Vista Health's Therapeutic Day Treatment on April 22, 2013. [Parent's Ex, pg 32]

10. The IEP team met on May 13, 2013, to develop the Student's 4th grade IEP which provided 1700 general education minutes, and 100 special education minutes in math, with no related services provided. [Parent's Ex, pg 30] The IEP meeting noted indicated that the Student was transitioning from Vista Health, and only attended a half day programming at Fairview Elementary. [Parent's Ex, pg 31] The IEP team noted that a "paraprofessional is assigned to his classroom at Fairview," "math is still his greatness weakness," and that the "committee decided to wait and review his BIP until August before school starts so the new teacher and someone from VISTA could be present . . . any changes will be made at that time." [Parent's Ex, pg 31]

The IEP team also noted that "the committee discussed the possibility of the Student remaining on campus for the rest of the year . . . after much discussion, the committee agreed that he would attend Field Day only and continue with the half day Vista placement." [Parent's Ex, pg 31]

11. Under Consideration of Special Factors, the May 13, 2013, IEP team noted that "[the Student] has a behavior plan to address explosive behaviors and a Vista treatment plan." [Parent's Ex, pg 34] The plan included two math goals. Under Instructional Modifications, Supplemental Aids, and Supports, the team listed "BIP" as the only support to manage the Student's behavior. [Parent's Ex. pg 40] Under Justifications for Educational Placement Selection, the team noted yes to Question # 8, "Based upon individual needs and goals and objectives in the student's IEP, is an intensive behavior management program required? [Parent's Ex, pg 42] The team did not list any behavioral goals or objectives despite documenting behavior concerns. Under Least Restrictive Environment, the team checked #2, "More than 80% of the time in General Education," but under less restrictive options that were considered and rejected, the team noted "general classroom without accommodations" and noted that he "requires accommodations to be successful in the curriculum, therefore he will need a more restrictive learning environment." [Parent's Ex, pg 43]

12. The Student's 4th grade IEP was revised on January 17, 2014, during a facilitated IEP meeting. [TR Vol 5, pg 74] His IEP provided that he received 1700 general education minutes, and 100 special education minutes in math, with no related services provided. [Parent's Ex, pg 16] The IEP included two math goals and objectives. [Parent's Ex, pg 20-23] The team listed accommodations to manage behavior as "BIP" and "a cooling off place (safe haven)" [Parent's Ex, pg 25] At that time, the team noted that he received indirect special education services for math and has a "working behavioral support plan." [Parent's Ex, pg 17] Under

Consideration of Special Factors, the team noted that "Timothy has a behavior plan to address explosive behaviors and a Vista treatment plan." [Parent Ex, pg 19] Supports for school personnel is listed: "let mother know about behaviors with daily emails and/or notes home, coordinate assignments with tutor, and escorted to unstructured settings." [Parent Ex, pg 25] On the Least Restrictive Environment, the team listed a less restrictive option that was rejected as "general classroom without accommodation" and noted that "he requires accommodations to be successful in the curriculum, therefore he will need a more restrictive learning environment." [Parent's Ex, pg 27] "Continuation of eligibility was considered but rejected due to lack of education deficit impacting academic performance."

13. The District conducted an evaluation of the Student on January 29, 2014. Parent's Ex, pg 221-227, 145-146] The examiner indicated the evaluation was a "Re-evaluation" rater than an initial evaluation. [Parent's Ex, pg 221] This was the only evaluation that the District ever conducted. The report indicated that "he receives direct services for math in an inclusion setting. A behavior plan was developed and is reviewed on a regular basis." [Parent's Ex, pg 222] Under Response to Intervention, the report indicates that "Independent evaluations were administered in February of 2011. Neuropsychological was conducted." [Parent's Ex, pg 222] The physician's statement indicated that the Student had "difficulty following directions, temper tantrums, aggressive behavior, regression to child-like behavior." [Parent's Ex, pg 142] The Parents were told that the Student did not qualify for special education because he was "too smart" and had good grades. [TR Vol 5, pg 81] On the same page, it is noted that "[the Student] had a behavior incident today was sent to ISS per [unreadable]'s recommendation." [Parent's Ex, pg 143]

14. The District issued a notice of conference on January 28, 2014, for a February 10

2014, IEP meeting, indicating that "initial or continued eligibility" and "classroom based assessments" would be discussed. [Parent's Ex, pg 144]

15. The Student was dismissed from special education on February 20, 2014. [Parent's Ex, pg 146, TR Vol 5, pg 77-78] Under Description of Adverse Affect on Educational/Developmental Performance, the team noted, "Cognitive ability falls in the average range achievement scores are commensurate or higher, No adverse affect on educational performance is noted" [Parent's Ex, pg 147] The team noted that "Special education services not appropriate." [Parent's Ex, pg 147] The District noted that "evaluation data do not substantiate the existence of a disability consistent with state and federal regulations implementing IDEA," but documented the following: "[The Student] attended VISTA, a behavioral center, spring of 2013 for several months" and under social/emotional assessments - "Significant areas of concern noted : emotional problems, social withdrawal, ability deficits, physical deficits and weak self-confidence." [Parent's Ex, pg 146]

16. On March 5, 2014, referral was made for a 504 plan.

17. On April 30, 2014, the Student was suspended for ten days with a recommendation that he be expelled for the rest of the year for writing a note in ISS with bad language and threatening to kill the principal and school security officer after he was confronted by District staff about the note. [Parent's Ex, pg 377, TR Vol 5, pg 81-82] He was admitted to Methodist Behavioral Hospital the same day. [Parent's Ex, pg 280, TR Vol 5, pg 83-84] He was discharged on May 12, 2014; the documentation stated that [the Student] was "able to return to regular school." [Parent's Ex, pg 280, TR Vol 5, pg 83-84] The District sent the Parents a letter recommending expulsion [TR Vol 5, pg 84] The Parent reminded the District that according to the Student Handbook, the Student could not be expelled without due process. [TR Vol 5, pg 85-

86] The Parent testified that she received a text message from Ms. White indicating that after consulting with the Superintendent that the Student was "no longer being recommended for expulsion." [TR Vol 5, pg 86]

18. On May 13, 2014, the District referred the Student to Vista Health for therapeutic day treatment based on his behaviors while he was on a 504 plan. [Parent's Ex, pg 148, TR 5, pg 84] The Parent testified that the only choices she was given for the Student's programming were TDT or homebound. [TR Vol 5, pg 86]

19. During the 2013-2014 school year the Student missed a significant amount of instructional time (over thirty days) due to his behaviors and was placed in In School Suspension ("ISS") or out of school suspension ("OSS"). [TR Vol 5, pg 79-80]

20. On June 11, 2014, the Parent made another referral for special education after a mediated agreement with the District; the District listed the reason for the referral as "severe behavioral emotional issues." [Parent's Ex, pg 149] In addition, a behavior intervention plan was developed on June 11, 2014, at a mediation, and was later accepted by the IEP team on August 27, 2014. [Parent's Ex, pg 150, 326] The problem behaviors listed were "RAD, anger, explosion, anger" and replacement behavior was listed as "positive behavior will replace explosive behavior." The method of teaching replacement behaviors was listed as direct instruction, decision-making lesson, social skills training, providing cues, and stress management. [Parent's Ex, pg 326] Accommodations and interventions are listed as clear, concise directions, frequent reminders, review rules and expectation, provide cooling off period, communicate regularly with parents, supervise free time, preferential seating, avoid power struggles, and avoid strong criticism. [Parent's Ex, pg 326] The consequences for inappropriate behavior were loss of privileges, time out, send to the office, phone call home, in school suspension, out of school

suspension, and "follow District discipline plan." [Parent's Ex, pg 326] The rewards or consequences for appropriate behavior were listed as verbal praise, earned privileged, immediate feedback, positive call or note home, and email to parents. [Parent's Ex, pg 326] The Parent requested a paraprofessional at this meeting to help redirect the Student. [TR Vol. 5, pg 88]

21. The District issued a Notice of Conference on June 16, 2014, for a referral meeting on June 24, 2014. [Parent's Ex, pg 153-154] The Referral Conference Decision noted an "Evaluation performed in accordance with provisions set out in ADE regulatory documents governing Special Education and Related Services. [Parent's Ex, pg 154] The Notice of Decision dated the same day recorded the Parent's request for an independent evaluation by Dr. Elizabeth Speck-Kern. [Parent's Ex, pg 154-155] The minutes to the meeting record the Parent's request for additional supports to help with the Student's behaviors - a paraprofessional and full day programming like the Student's non-disabled peers. [Parent's Ex, pg 157, TR Vol 5, pg 89] At the time, the Student was receiving 4 hours per week homebound instruction. [Parent's Ex, pg 157, 159, TR Vol 5, pg 89] The minutes noted the Student's self-injurious behaviors (hitting himself in the head) and that he had pulled a knife on his cousins. [Parent's Ex, pg 158] District again determined that the Student did not need an IEP. [Parent's Ex, pg 157]

22. On July 9, 2014, the Parent took the Student to Arkansas Neuropsychology Associates for an evaluation to assist with his educational planning. [Parent's Ex, pg 210-214] In the report, the examiner, Dr. Elizabeth Speck-Kern, noted that: "His behavior has been extremely challenging, with in school suspensions for refusing to work, throwing tantrums, hitting, stealing, internet surfing for sexual information, and using profanity. He has had some success with paraprofessionals assisting him, but these are not sufficient. He has had tutoring twice a week in all subjects for the last two years, according to the Parent." [Parent Ex, pg 210] In the report, the

examiner noted that "the Student's behavior, emotional lability and aggression are main issues. He is unpredictable with triggers that have not been able to specified or predicted. At home and with family members or elsewhere, he has other inappropriate, dangerous, and dysfunctional behavior . . . . " [Parent's Ex, pg 211] Speck-Kern's report noted that "the Student's emotional state and behavioral non-compliance are his biggest obstacles to learning." [Parent's Ex pg 213] Speck-Kern concluded that "[the Student] needs to be in long term residential placement with education at the facility. He is a danger to himself and the community at this time. [Parent's Ex, pg 213]

23. On August 18, 2014, the District sent a Notice of Conference to the Parent for an IEP meeting on August 27, 2014, to "Consider a referral for special education and related services" and "review new test data; review 504 info," Parent's Ex, pg 83]

24. The District completed several Notice of Decisions dated August 27, 2014. [Parent's Ex, pgs 80-82] The team noted that "'the Student' is currently in the 504 program." Previously, he was in the special education program but was dismissed. The Parent's requested that he be placed in special education. [Parent's Ex, pg 84] Under Summary of Evaluation Data, it was noted that the Student has been diagnosed with Reactive Attachment Disorder, Severe Emotional Disturbance (Educational), Conduct Disorder, and ADHD . . . ." [Parent's Ex, pg 80, 84] Under Related Services Provider Data, it was noted that the, "The psychologist stated that his biggest obstacles to learning were his emotional state and behavioral non-compliance. At times, he has exhibited inappropriate, dangerous and dysfunctional behaviors such as threatening to hurt himself and others, members; playing with fire and knives, threatening to report unfounded abuse charges, and crying about situations. . . . ." [Parent's Ex, pg 80-82] The team found that the evaluation data by Dr. Speck-Kern substantiated the presence of a disability - Emotional

Disturbance. [Parent's Ex, pg 80, 82, 91] The team did not run any comprehensive evaluations as required by the IDEA. [Parent's Ex, pg 85-85]

25. The District issued a Prior Written Notice to the Parents on August 27, 2014, indicating that the Student would be placed in special education, noting that:

> "[The Student] was previously placed in special education as Other Health Impaired. He was re-evaluated by TASD 1-29-14. At that time, all scores were within the Average to High Average range of functioning . . . . At that time, the IEP Committee agreed that dismissal from special education was appropriate and he was placed on a 504 program so he could continue to received accommodations and modifications. Parent requested an independent evaluation from Elizabeth Speck-Kern, PhD in Little Rock, Arkansas. The evaluation was completed 7-9-14. . . . This IEP meeting is to review the independent evaluation. His parent has requested that he be placed in special education. She has asked for a paraprofessional for him while at school." [Parent's Ex, pg 88]

Under options considered, the team noted that they considered and rejected continuing a 504 plan. "The Parent is concerned that the 504 accommodations cannot be enough to help [the Student] be successful at school. The Committee agreed that special education services would be more beneficial than only 504." [Parent's Ex, pg 89]

26. The IEP team met on August 27, 2014, to develop the Student's 5th grade IEP. The IEP provided for 1800 general education minutes and 30 special education minutes were to be in math, literacy, science, social studies, and "activity/electives." The RIAS indicated the following results Verbal IQ 97; Nonverbal IQ 103; Composite 98. [Parent's Ex pg 5] The Woodcock Johnson revealed the following results: Reading 104; Math 98; Written Language 111. [Parent's Ex, pg 5] State test scores were Math 512 (Basic) and Literacy 712 (Proficient)." [Parent's Ex, pg 5] Under the Statement of Parental Concerns, the team documented the Parent's concern about "his screaming and refusal to complete homework. Parent is very concerned about his behaviors at school and home and that behaviors are very unpredictable. Previously he has threatened to harm himself and others." [Parent's Ex, pg 5] In the minutes of the meeting, the

team noted that "Mom showed video incident - not a good summer - playing with fire and knives." [Parent's Ex, pg 85] Under Consideration of Special Factors, the team noted that the Student needed positive behavioral interventions, and stated "he needs to have the behavior modifications that are addressed." [Parent's Ex, pg 7] Additionally, the team noted under other factors that need consideration, "Teachers need to be aware that he qualified for special education as a student with an emotional disturbance." [Parent's Ex, pg 7] The team documented "The psychologist [Dr. Speck-Kern] recommended that he be placed in a long-term residential treatment facility. His long-term counselor does not agree with that recommendation. His parent's do not agree with that recommendation." [Parent's Ex, pg 5]

27. Under Justification for LRE Setting, Question 13 indicates that "Personnel will provide indirect special education services." [Parent's Ex, pg 13] Under least Restrictive Environment, Regular Class/Indirect Service is marked. [Parent's Ex, pg 14] The team indicated that "the student's scores on testing indicates adequate ability to receive services in the general education classroom. Accommodations and modifications will be utilized in the general education classroom." [Parent's Ex, pg 14]

28. The District sent a Notice of Conference to the Parent on September 18, 2014, for an IEP meeting on September 24, 2014, to discuss a functional behavioral assessment. [Parent's Ex, pg 90]

29. On September 19, 2014, a disability related behavior incident occurred where the Student threatened to kill himself and another student. He was admitted to Methodist the same day. [Parent's Ex, pg 349, pg 258-259]

30. On September 29, 2014, he was discharged from Methodist Behavioral Hospital, with diagnoses of Mood Disorder, RAD, and ADHD. [Parent's Ex, pg 256-258] It was

recommended that he have a mental health paraprofessional throughout his school day. [Parent's Ex, pg 256-257] Specifically, it was noted that "Due to his severe problems, related diagnosis, of social, environmental and psychological, he needs additional services such as this in order to function appropriately and still remain in the least restrictive level of care regarding mental health. Without such intervention, the Student is very likely to decompensate with symptoms related to his mental health diagnosis of : Mood Disorder, NOS, Reactive Attachment Disorder, Attention-Deficit/Hyperactivity Disorder, Combined Type....If he had the aid of a such paraprofessional, he could be better equipped to manage at school since they might continue assisting him with the goals and objectives like he has been working here at Methodist Hospital in the Inpatient Acute Unit." [Parent's Ex, pg 256-257]

31. The District sent a Notice of Conference to the Parent on October 3, 2014, for an IEP meeting on October 8, 2014, to discuss a Manifestation Determination Review. [Parent's Ex, pg 92]

32. On October 8, 2014, the team held a Manifestation Determination Review, suspended the Student for ten days. [Parent's Ex, pg 93, 97] The team found that the Student's behavior had a direct and substantial relationship to his disability [Parent's Ex, pg 94], and that he had a "history of exhibiting this type of behavior. [Parent's Ex, pg 99] The ream noted that "BIP was addressed" and noted the Parent's request for additional support on the BIP. [Parent's Ex, pg 100] The team noted a letter provided by the Parent from the Student's physician indicating that he would benefit from having a paraprofessional to help him with his instructional day. [Parent's Ex, pg 92, 93, 97, 256-257] The team also noted the Parent's concern that the Student had been out of school for over three weeks when the Manifestation Determination Review meeting was held. [Parent's Ex, pg 98]

33. The student attended a therapeutic camp on October 20-24, 2014, conducted by Southwest Arkansas Counseling and Mental Health Center. [Parent's Ex, pg 104] The Parent testified that she sent numerous resources from the camp to Ms. Jolley, Ms. Thomas, and Ms. Hillier. [TR Vol 5, pg 51-52] The Parents also purchased a DVD for the District from camp, which contained all the instructor resources, explained what RAD is, and demonstrated how to communicate effectively. [TR Vol 5, pg 53-54] The Parents also provided a flowchart to the District that gave examples of how to address problem behaviors and suggested strategies for addressing them. [TR Vol 5, pg 54]

34. A Behavior Support Plan was drafted on December 9, 2014, and revised on December 12, 2014. [Parent's Ex, pg 321] In the December 9, 2014, plan the team noted that the Student's behavior impedes his learning because "unavailable for instruction' and listed the severity of the behavior as "serious." [Parent's Ex, pg 321] Predictors of behavior were listed as "negative peer interactions. Demands from teachers. Unstructured areas: playground and hallway" Under problem behavior supports, the team indicated "conflict resolution and negotiation skills need to be taught along with anger management skills." [Parent's Ex, pg 321] Under the hypothesis concerning inappropriate behavior function, the team indicated "To gain adult attention. To avoid or protest a demand or request or reprimand. To avoid or escape peers." [Parent's Ex, pg 322] However, there was no data or observations to support the hypotheses, nor is it clear whether the person completing the behavior support plan understands that each of these hypotheses represent different behaviors and scenarios. Under replacement behaviors, the team indicated "Use language taught in verbal resolution conflict training. Teach him to ask for a cool off period." [Parent's Ex, pg 321-322] Under reinforcement strategies for developing the replacement behavior: "Verbal praise. Reinforcement schedule contingent on zero office

referrals. He will be reinforced at the end of the day with desired activity." [Parent's Ex, pg 323] Under "Strategies to be used for recurrence of problem behavior," the following were noted: "Prompt him to stop and think about the situation. Allow time for student to calm down and regain composure. Debrief student to understand while [sic] the problem escalated after the problem has calmed down." [Parent's Ex, pg 323]

35. The Parent's expert testified that there was not a good "tie in" between the FBA conducted by the District [TR Vol VI, pg 22, Parent's Ex. pg 316] and the Behavior Support Plan that was created. [Parent's Ex pg 320] The expert testified that many of the recommendations that were made [Parent's Ex, pg 317-318] were evidence based practices, such as visual schedules, behavior specific praise, teaching strategies on how to deal with anger issues and coping strategies, and teaching social skills using role play and practice. [TR Vol. 6, pg 23-24] The expert noted that "although the Behavior Support Plans noted [the Student's] behavior problem as "serious," there were no positive behavioral interventions or teaching strategies to support [the Student] when he engaged in problem behaviors." [Parent's Ex, pg 428]

36. The Behavior Support Plan was revised on December 12, 2014, to add "Teach restitution to [the Student]" as a replacement behavior [Parent's Ex, pg 322] Under strategies to be used for recurrence of behavior it was noted: "Utilize the brain building activities at least two times a day as needed for . . . . intervention most effective strategies to be used for deescalation of behaviors is: cue words "[the Student], CHECK" or "[the Student], FLIGHT CHECK." Any necessary further classroom or school consequences." The Parent's expert testified that these types of conflict resolution skills or interventions would be ineffective and would not work if staff waited until the Student was "at the top of the rage cycle" and was engaging in extreme behaviors. [TR Vol 6, pg 27] The BSP indicated that [the Student's] behavior goal as: "By the

end of the school year, [the Student] will be able to recognize anger and appropriately request 'time away' 85% of the time by teacher observation. "The December 12, 2014, plan indicated that "four core teachers will email parents regarding behaviors." [Parent's Ex, pg 325] The Parent's expert testified that he would not expect that [the Student] would be able to follow regular school discipline policies based on the "different types of problem behaviors he does have with the RAD's diagnosis, and emotional disturbance." [TR Vol 6, pg 56]

37. A Notice of Decision was sent to the Parents regarding an IEP team meeting on December 12, 2014, to discuss revising the IEP, conducting a functional behavior analysis, and parent concerns. [Parent's Ex, pg 105]

38. A prior written notice was issued on December 12, 2014, indicating that the "Team reviewed the FBA, revised and accepted BIP, agreed to meet to review BIP during the week of January 26." [Parent's Ex, pg 117]

39. A facilitated IEP team met on December 12, 2014, to review [the Student's] educational programming. [Parent's Ex, pg 106-107] At the meeting, the Parent expressed the following concerns: 1) "Are the discipline issues [the Student] is experiencing a manifestation of his disability?, 2) Failure of the school to have a current revised behavior intervention plan in place, 3) What special education accommodations are being met when he is in ISS?, 4) Assignments have not been received while in ISS, 5) lack of communication from District and school staff, 6) Administrator's failure to acknowledge RAD disability and the assumption that he is a normal middle schooler, 7) lack of understanding that he is taking four psychotropic drugs at adult dosages, 8) moving him from indirect placement to one with more structure, 9) lack of data to substantiate [the Student's] math goals being met, and 10) lack of paraprofessional to assist [the Student]." [District's Ex, pg 339-340] The team discussed the functional behavior

assessment document. [Parent's Ex, pg 108-111, District Ex pg 341] The Parent expressed her concern about having [the Student] "cool down" in the hallway and stated that this approach did not seem to be effective. [District's Ex, pg 341] Additionally, the Parent stated that "assigning [the Student] to ISS or OSS has not changed his behavior." [District Ex, pg 341] The team discussed revisions to the behavior intervention plan, which included cues to check his behavior that the Parent was utilizing at home, i.e., "flight check". [District's Ex, pg 342-343] The team discussed the need for substitute teachers to be familiar and have access to [the Student's] BIP and IEP. [District's Ex, pg 343] The Parent asked the team to reach a consensus that [the Student's] behaviors were a manifestation of his RAD diagnosis and requested that his four core teachers send daily emails to her regarding his behaviors. [Parent's Ex, pg 325, District Ex pg 343] The team documented that the Parents would be emailed behavior data by [the Student's] four core teachers in his BIP. [Parent's Ex, pg 325] The team documented that [the Student's] behaviors "occur more when he feels isolated or different from the other kids." [District Ex, pg 344] The IEP team also recommended school make connections with his outside counselor with work with the College Hill Middle School Staff " to increase the support system for [the Student]." [District's Ex, pg 344-345] The IEP team determined that [the Student] needed to be evaluated to determine whether he needed occupational therapy. [District's Ex, pg 345]

40. The December 12, 2014, IEP team added three behavioral goals to [the Student's] IEP, "By the end of the school year, [the Student] will be able to recognize anger and appropriately request "time away" 85% of the time by teacher observation" [Parent's Ex, pg 10], "[the Student] will be taught cueing signals to use when be needs to have a "time away" for impulse control 85% of the time by the end of the school year," and "[the Student] will be taught skills to calm him down during periods of anxiousness 85% of the time by the end of the school

year." [Parent's Ex, pg 10A-10B] There is no data to indicate that these goals were ever implemented. [Parent's Ex, pg 429]

41. The December 12, 2014, facilitated IEP listed the accommodations to manage the Student's behavior as: "clear, concise directions, frequent reminders/prompts, review rules and expectations, provide cooling off period/place, supervise free time, avoid strong criticism, consequences for appropriate behavior, consequences for inappropriate behavior." [Parent's Ex, pg 11]

42. A functional behavior assessment was filled out at the December 12, 2014, facilitated IEP meeting. [Parent's Ex, pg 108-111, 428] The Parent's expert's review of the District paperwork failed to uncover any data that was collected, thus it was not possible to come to an accurate decision about the Student's behavior. [TR Vol 6, pg 16] Although the form was filled out, there was not any data to support the statements and hypotheses made about the Student's behavior by District staff. [TR Vol 6, pg 16] The Parent's expert outlined the FBA process and types of data and observations typically used to create it. [Parent's Ex, pg 420-421, TR Vol, 6 pg 13-14] The Parent's expert testified that staff who conduct FBA's should be trained in how to property collect data and observations of the student and record this information so that it can be incorporated in to the BIP. [TR Vol 6, pg 14-15] Additionally, he stated that if "we don't know why they are doing it [problematic behavior], we can't prevent them from doing it. We can't apply consequences that are going to decrease that from happening, because . . . we don't know what strategies to teach them." [TR Vol, 6 pg 15]

43. The FBA listed problem behaviors of cursing and yelling and hitting and spitting towards peers and staff. [Parent's Ex, pg 108] The team listed the frequency as "Happens weekly with a deviation of 1-10 minutes. Intensity, he yelled at the teacher' you raging ass bitch.' He has

spit on a student and hit a student with a fist." [Parent's Ex, pg 108] The team included no information about the environmental factors, where these behaviors occurred, or which staff or students were present when these behaviors were occurring. Under antecedent analysis, the team listed "negative peer interactions, demands from teachers. Behavior is seen in unstructured areas, playground and hallway." [Parent's Ex, pg 109] Under consequence analysis, the team stated "during the behavior he gets adult attention, he avoids work. After behavior he goes to ISS or OSS." [Parent's Ex, pg 109] It appears that if the Student's goal was to escape the demands placed on him, that the chosen approach was actually reinforcing his behaviors because it permitted him to escape the demands or go to ISS or OSS. Under Communicative Intent of Behavior, the team indicated "He wants teacher attention and to escape from task and peers." [Parent's Ex, pg 110] However, there was no data or observational data to support this hypothesis; the Parent's expert testified that the lack of data made it very difficult to prevent the behaviors from occurring again. [Parent's Ex, pg 428, TR Vol 6, pg 11-12, 16] Additionally, because no data was collected, it was not clear whether the Student was attempting to escape from teachers, peers, or a particular task, therefore it was not possible to determine exactly what the Student was escaping from. [TR Vol 65, pg 17] Under Ecological Analysis of behavior, the team indicated "behavior of peers, environmental constraints, cool off period." [Parent's Ex, pg 110] There was no data or observational data to support this hypothesis. Under Summary of interventions, the team noted " Let [the Student] cool off in the hall. He has been practicing his coping skill and it has been effective since the beginning of the school year. It has also reduced his office referrals, In School Suspension and Out of School Suspension days. His assignment to ISS or OSS have not changed his behavior." [Parent's Ex, pg 111] The Parent's expert indicated that removing [the Student] to ISS or OSS actually reinforced his behaviors because it allowed

him to escape the demands placed upon him, rather that reducing them. [Parent's Ex, pg 428, TR Vol 6, pg 19] The expert noted that the District's documentation that ISS and OSS was not working to reduce [the Student's] problematic behaviors was an indication that removal was "not working as a punisher" and may instead be a "reinforcer" because it increased his behavior. [TR Vol 6, pg 20]

44. On December 12, 2014, the team issued a Prior Written Notice to the Parents, for "FBA/BIP, revise IEPs" and indicated that the "Team reviewed FBA, revised in accepted BIP, agreed to meet to review BIP during the week of January 26th." [Parent's Ex, pg 117] Under options considered and rejected, the team noted, "Considered using previous BIP, new one needed based on FBA; further evaluation needed." [Parent's Ex, pg 118]

45. The IEP team issued a Notice of Decision on December 12, 2014, indicating that the team "needed to review the functional behavioral analysis, behavioral recommendations, behavior support plan, IEP/accommodation review and parent concerns." [Parent's Ex,106-107] Under decisions of team and actions to be taken, the team noted that "revised and accepted behavior intervention plan, will re-meet to review BIP the week of January 26, 2015. Need occupational therapy evaluation - reviewed and revised accommodations & modifications." [Parent's Ex, pg 106] Under description of adverse effect on educational/developmental performance, the team noted, "[the Student's] emotional disturbance affects his educational performances with poor impulsivity, aggressive tendencies and he has anxiety issues due to RAD." [Parent's Ex, pg 107]

46. On January 27, 2015, the IEP team met to discuss a disability related behavior incident, conducted a Manifestation Determination Review ("MDR") discussed an evaluation for Occupational Therapy, and changed [the Student's] placement to "four hours per week"

homebound instruction with thirty minutes per week of occupational therapy. [Parent's Ex, pg 123-127, District's Ex, pg 119] At the time the MDR, Timothy had been suspended out of school for ten days with a recommendation for expulsion. [Parent's Ex, pg 123, District's Ex, pg 119] During the meeting, the meeting, the team's recommendation was presented to the Parents - "home bound placement for five hours a week (4 hours academic and 1 hour school-based counseling) with a specific transition plan to get back to the school campus OR therapeutic day treatment (TDT) at Riverview with a specific transition plan back to the school campus." [District's Ex pg 122]

47. Despite a unanimous finding that the Student's behavior was directly and substantially related to this disability, the IEP team decided to change his placement to the most restrictive setting in violation of the IDEA's mandate to return child to his previous placement. [Parent's Ex, pg 124, TR Vol, 6, pg 86, 88-89, District's Ex, pg 121] The Parent's expert testified that under the IDEA, if the District believed that the Student was a danger or a safety risk, the District could file for due process to request a hearing officer to remove him to an alternative placement and demonstrate their efforts to prevent the problematic behaviors from occurring. [TR Vol 6, pg 90-91]

48. The IEP team did not conduct an FBA and revise the Student's BIP after the MDR as required under the IDEA. [TR Vol 6, pg 87] The expert testified that based on the Student's history as a foster child, RAD diagnosis, and difficulty with transitions, an FBA was the most important factor needed to stabilize his behavior and allow him to learn. [TR Vol 6, pg 95-96]

49. The team determined that the Student's placement would be changed to homebound. [District Ex, pg 123] The Parent's advocate indicated that neither placement was appropriate for the Student and asked if there was any other options. [District's Ex, pg 122] The

team also noted that "due to significantly impaired emotional disturbance, a more restricted structured educational environment is needed to make successful progress on general curriculum." [Parent's Ex, pg 2] The Parent's expert testified that four hours instruction per week was not sufficient to keep the Student progressing and on grade level with his peers. [TR Vol 6, pg 97] In addition, the expert testified that as the Student fell further and further behind, the tasks presented to him would "become more aversive," and thus would likely increase the Student's behaviors due to his desire to escape the demands placed upon him. [TR Vol 6, pg 97-98]

I. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

The first and foremost purpose of the IDEA is "insure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. 1400(d).

A "free appropriate public education" includes "special education and related services that . . . have been provided at public expense . . . and are provided in conformity with the individualized education program [("IEP') of the Student]." 20 U.S.C. Section 1401(9); see, 34 CFR. Section 300.101-300.109. "Special education" means "specifically designed instruction, at no cost the parents, to meet the unique needs of the child with a disability . . . ." 34 CFR 300.39 (a)(1). To provide FAPE, a school formulates an Individual Educational Program ("IEP") during a meeting between the student's parents and school officials. See USC Section 1414 (d)(1)(A)-(B). Specially designed instruction means adapting, as appropriate to the needs of an eligible child . . . the content, methodology, or delivery of instruction– to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general

curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all the children. See 34 CFR Section 300.39.

Prior to putting a child with a disability on an IEP, the District is required to conduct a comprehensive evaluation to identify all areas of suspected disability. See 20 U.S.C. 1414(a)(1); 20 U.S.C. 1414(b)(2); 34 CFR Section 300.15; ADE Regulation Section 6.00. In addition, the District is required to use a variety of instruments, evaluations and information provided by the parents, assessments and classroom observations, and observations by service providers, to ensure that "the child is assessed in all areas of suspected disability," and to determine the nature and extent of the special education and related services that the child needs. 20 U.S.C. 1414(b)(2); 34 CFR. Section 300.15. In this case, [the Student] could have been identified under several disability categories based on his diagnoses, his behavior, and his academic deficits in mathematics including Emotional Disturbance, Other Health Impaired, or Specific Learning Disability. [Parent's Ex, pg 436 (ED), 445 (OHI), 450 (SLD). The Parents made three referrals for special education (October 20, 2010; January 18, 2011; and June 11, 2014 [Parents Ex, pg 188, 190, 149], however, the District only conducted one evaluation – January 29, 2014. [Parent's Ex, pg 221-227, 145-146] The report prepared indicated that the evaluation was a "Re-evaluation" rather than an initial evaluation. [Parent's Ex, pg 221] The District's failure to conduct a comprehensive evaluation of Timothy when the Parent first submitted a referral in 2010 ensured that he was not identified as a child with a disability. Failure to identify a child with a disability and identify all areas of suspected disability needlessly delayed the provision of special education and related services to Timothy for several years, which constituted a denial of FAPE.

Prior to removing a child with a disability from special education, i.e., changing the

child's eligibility, the District is required to conduct a comprehensive evaluation "before determining that the child is no longer a child with a disability." 20 U.S.C. 1414(c)(5). The dismissal from special education was on February 20, 2014. [Parent's Ex, pg 146] The District failed to conduct a comprehensive evaluation prior to dismissing Timothy from special education in accordance with 20 U.S.C. 1414(c)(5) and 34 CFR Section 300.15.

An IEP "means a written statement that is developed, reviewed, and revised in accordance with this section and that includes a statement of the child's present levels of academic achievement and functional performance, . . . a statement of measurable annual goal, including academic and functional goals, . . . a statement of the special education and related services and supplementary aids and services. . . to be provided to the child . . .and a statement of the program modification or supports for the school personnel that will be provided for the child . . ." See 20 USC Section 1414(d)(1)(A)(I). An IEP must be established for a student with a disability at the beginning of the school year and reviewed and revised periodically as needed, "but not less that annually, to determine whether the annual goals for the child are being achieved." See 20 USC Section 1414(d)(4)(A) (I); 34 CFR Section 300.324(b)(1)(I). The school administering the IEP must revise the IEP "as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum. . . the results of any reevaluation . . . information about the child provided to, or by, the parents . . .the child's anticipated needs; or other matters." 20 U.S.C. Section 1414(d)(4)(A)(ii)(I)-(V).

An IEP is appropriate if it is "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Bd. Educ. Hendrick Hudson Central School Dist. v. Rowley*. 458 U.S. 176, 203 (1982). FAPE is satisfied when the state provides "personalized instruction with sufficient support services to permit a child to benefit educationally from that

instruction, and that this instruction should be reasonably calculated to enable the child to advance from grade to grade." *See Rowley*, 458 U.S. at 203. Through the development and implementation of an IEP, a school district fulfills its statutory responsibility of providing a disabled child with a free and appropriate public education. Although the IDEA reflects a structural preference in favor of providing special education in public schools, it recognizes that certain public schools are unable or unwilling to provide appropriate special education services. The IDEA, therefore, provides a remedy of reimbursement to Parents when the public school did not make FAPE available to their child in a timely manner. See 20 USC Section 1415 et seq.

In analyzing whether a child has received educational benefits, courts must ask two questions:

1. Has the District complied with the IDEA procedures; and

2. Is the IEP developed through those procedures reasonably calculated to enable the Student to receive educational benefits. *Rowley*, 458 U.S. at 206-207.

If the answer to both questions is "yes," the judicial review is concluded. *Supra.* On the other hand, a "no" answer means no FAPE was provided, thus qualifying for appropriate relief, including reimbursement for private expenditures on special education services, if such services are determined to be necessary because the District's IEP failed to provide a free appropriate public education. School Committee of the *Town of Burlington v. Dept. of Educ. of Massachusetts*, 471 U.S. 359, 369 (1985).

The achievement of IEP goals and objectives is one measure of educational benefit. *See Walczak v. Florida Union Free Sch. Dist*., 27 IDELR 1135 (2d Cir. 1998); *M.B. v. Hamilton Southeastern Schs*., 58 IDELR 92 (7th Cir. 2011); and *M.N. v. State of Hawaii, Dept. Of Educ*., 60 IDELR 181 (9th Cir. 2013, unpublished). The key question is whether the student made gains in

his areas of need. A finding that a child's goals are vague or immeasurable generally leads to a ruling that the district denied FAPE. *See, e.g., Independent Sch. Dist. No. 701 v. J.T.*, 45 IDELR 92 (D. Minn 2006) (an IEP's statement that a student would "improve his functional academic skills from a level of not completing assignments independently to a level of being able to read, write and do basic math skills independently" was too vague to permit measurement of the student's progress); and *Anchorage Sch. Dist.*, 51 IDELR 230 (SEA AK 2008), aff'd, 54 IDELR 29 (D. Alaska 2009) (the Hearing Officer determined that the lack of clear, measurable goals in a child's IEP precluded an objective measurement of the child's progress).

In this case, the Parent's Expert reviewed [the Student's] IEPs and the District's documentation. There was no evidence or data to indicate [the Student] was making any progress on his IEP goals and objectives. [Parent's Ex, pg 429] The homebound teacher, Mr. Piggee testified that he did not administer any progress monitoring [TR Vol 5, pg 13] that could be used to determine how [the Student] was progressing grade-wise, did not administer any curriculum testing [TR Vol 5, pg 15] The failure to instruct on IEP goals and objectives constitutes a failure to provide FAPE.

In this case there was a substantial testimony that [the Student's] need was primarily his behavior. The evidence is overwhelming that [the Student] was not provided the needed supports and services to address his behavior using evidence based practices to allow him to benefit from the instructional program. The Parents produced numerous witnesses and documentation showing that [the Student] was denied a Free Appropriate Public Education by the Texarkana School District.

A district's continuation of inadequate services will almost certainly be regarded as a denial of FAPE. *See, e.g., District of Columbia Pub. Schs.*, 49 IDELR 267 (D.D.C. 2008)

(noting that a student's present levels of performance remained stagnant for several years); *Unionville-Chadds FordSch. Dist*.., 47 IDELR 280 (SEA PA 2007) (finding that a district should have addressed a child's reading deficiencies when it became apparent that the student was not making any progress); and *Department of Educ., State of Hawaii*, 47 IDELR 238 (SEA HI 2007) (criticizing the ED's decision to continue an ineffective reading program despite the student's lack of progress over a three-year period). Here, the fact that [the Student] was not provided an FBA using peer reviewed practices discussed in detail by the Parent's expert, was not provided a BIP that utilized evidence based practices to address his disability relate behaviors, and was not provided intensive instruction on basic math are evidence of the denial of FAPE.

The IDEA requires that IEP team address behavior management whenever a student's behavior interferes with the child's ability to benefit from his educational programming. See 20 USC Section 1414(d)(3)(B), 20 U.S.C. Section 1414(d)(4)(A). Specifically, the IDEA states that the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning and that of others." 34 CFR 300.324 (a)(2)(I); 64 Fed. Reg. 12,620 (1999); see also 71 Fed. Reg. 46,643 (2006) (If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted."); 71 Fed. Reg. 46,683 (2006)(a student's need for behavioral interventions and supports must be decided on an individual basis by the student's IEP team.); 64 Fed. Reg. 12,620 (1999) ("IEP teams need to be able to address the various situational, environmental and behavioral circumstances raised in individual cases.")

The IDEA provides a two step approach to addressing problematic behavior that interferes with a student's learning or the learning of others: the Functional Behavior Assessment, ("FBA") which analyzes the student's behavior and the need or function that it

serves and seeks to replace it with desired behavior, and the Behavior Intervention Plan ("BIP"), which specifically identifies problematic behaviors, outlines procedures to follow when the problematic behavior occurs, and specifies an intervention plan to address inappropriate behaviors and increase positive behaviors. See 20 U.S.C. 1415(F)(I-ii); 34 C.F.R. 300.530(d)(1)(ii) and (f)(1)(I-ii). See generally 64 Fed.Reg. 12,618 (March 12, 1999); Turnbull, IDEA, *Positive Behavioral Supports, and School Safety*, 30 J.L. & EDUC 445, 456-58 (2001).

Ongoing disciplinary issues, recurring problematic behaviors, or a student's inability to benefit from the instructional program serve to put a district on notice that a student is in need of an FBA and a BIP. *See, e.g., School Bd. Of the City of Norfolk v. Brown,* 769 F. Supp. 2d 928 (E.D. Va. 2010) (holding although District records contained little information documenting Student's behavioral pattern, the guidance counselor's records, which were much more thorough, indicated a series of disciplinary events which placed te School Board on notice that Student was in need of a functional behavioral assessment and a BIP).

Although the IDEA does not state who may conduct FBA's districts must ensure that those who do conduct them are adequately trained**.** *See H.D. v. Central Bucks Sch. Dist.,* 59 IDELR 275 (E.D. Pa. 2012) (finding that an FBA was appropriate, in part because the FBA was conducted by a qualified, board-certified associate behavioral analyst). In this case, testimony by Dr. Mancil made it clear that the FBAs completed by the District were flawed because they were not based on data, thus they could not be used to reliably predict the problematic behavior or help reduce it from occurring in the future. [TR Vol 6, pg 12-38] Thus it is not surprising that the District's attempted interventions were not only unsuccessful, ut as in the case of ISS and OSS, actually helped to reinforce Timothy's behavior by allowing him to escape the demands placed upon him. [TR Vol 6, pg 19-20]

One of the most common reasons to develop a BIP includes behavior that "interferes with the important teaching and learning activities of school." See 64 Fed. Reg. 2,405; 64 Fed. 12, 586 (1999). For example, a child's frequent napping during class necessitated a BIP in *Ingram Independent School District*, 35 IDELR 143 (SEA TX 2001). In *RK v. New York City Department of Education*, 56 IDELR 212 (EDNY 2011), aff'd 59 IDELR 241 (2D Cir. 2012), a 5-year-old with autism required a BIP because she was unable to access her education due to self-stimulatory behaviors, inappropriate vocalizations, and inability to focus.

While the IDEA is silent regarding the specific content of a BIP, many courts and hearing officers require that a BIP be written with sufficient specificity and address the student's behaviors and possible consequences with consideration of the student's individual needs. *See C.F. v New York City Dep't of Educ.,* 62 IDELR 281 (2d Cir. 2014) (the lack of an FBA led to the development of an inappropriate BIP and caused the district to offer an inappropriate placement); *Kingsport City Sch. Sys. V J.R.*, 51 IDELR 77 (E.D. Tenn. 2008) (finding a denial of FAPE where the BIP was not appropriate for the behavior management needs of the student); *New* York *City Dep't of Educ.* 49 IDELR 270 (SEA NY 2008) (holding that without appropriate behavior interventions in place, the child could not receive meaningful educational benefit in a district program).

The failure to develop a BIP when a child needs one can result in a denial of FAPE. *See R.K. v. New York City Dep't of Educ.*, 56 IDELR 212 (E.D.N.Y.2011); *Rialto Unified Scho. Dist*. 48 IDELR 296 (SEA CA 2007) (ordering a district to provide 250 hours of compensatory education to a sixth-grader who was expelled because of his escalating behavioral problems); *Neosho R'V Scho. Dist. v Clark*, 38 IDELR 61 (8th Cir. 2003) (any slight academic benefit the student received was lost because of ongoing behavior problems that interfered with his ability to

learn); *R.K. v New York City Dep't. of Educ.,* 56 IDELR 212 (EDNY 2011), aff'd 59 IDELR 241 (2d Cir. 2012). A district also may deny a child FAPE by developing an inappropriate BIP. See *C.F. v New York City Dep't of Educ*., 62 IDELR 281 (2d Cir.2014) (the lack of an FA led to the development of an inappropriate BIP and caused the district to offer an inappropriate placement; and *Pencader Charter Sch*., 113 LRP 21474 (SEA DE 05/10/3).

In addition, failure to properly or consistently implement the behavioral interventions identified in a student's BIP can amount to a denial of FAPE. *See Guntersville City Bd. of Educ.*, 47 IDELR 84 (SEA AL 2006) (district failed to implement a teenager's BIP by taking disciplinary action in response to certain incidents of misconduct while allowing other outbursts and disruptions to be ignored); *Stroudsburg Area Sch. Dist. v Jared M*., 284 (Pa. Commw. Ct. 1998) (district's failure to implement an appropriate BIP required it to reimburse the parent for the costs of the student's out of state residential placement).

Here, testimony by the Parents and District staff indicated that despite the fact that [the Student's] behaviors continued to worsen (increasing in frequency and severity over a period of month and years, a December 12, 2014, was conducted, but not based on data interviews, observations, and ABC data sheets. As testimony demonstrated, the FBA and BIPs that were created did more harm than good because they reinforced [the Student's] problematic behaviors and were not effect in reducing these behavior in the future because they were based on flawed hypothesis about the function of the behavior.

The District's failure to conduct a comprehensive evaluation to identify all areas of suspected disability despite repeated referrals and steadily increasing behavior, which should have put them on notice to the presence of a disability, combined with the services and supports to address all of [the Student's] disabilities and deficits constitutes a denial of FAPE.

Additionally, the District's refusal to conduct an FBA after holding a manifestation determination review on January 27, 2015, and revise [the Student's] BIP as required under the IDEA constitutes a denial of FAPE.

II. MANIFESTATION DETERMINATION

Pursuant to 20 USC Section 1415(k)(l)(E), "Within ten (10) days of any decision to change a child's educational placement for disciplinary reasons for more than ten (10) school days, the school district, the parent, and the relevant members if the IEP team shall:

1. Review all relevant information in the student's file, including the IEP and any teacher observations.

2. Review all relevant information provided by the parent; and,

3. Determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

4. Determine if the conduct in question was the direct result of the school district's failure to implement the IEP.

The Parents assert that the change in placement subsequent to the January 27, 2015, incident was a change in placement due to disciplinary reasons. The Parents are correct. It is difficult to construe this otherwise, because at the time of the MDR, the Student has been suspended out of school for ten days with a recommendation for expulsion. [Parent's Ex, pg 123, District's Ex, pg 119]. The team ultimately determined that the Student's behavior was a manifestation of his disability. 20 USC Section 1415(k)(l)(F), provides that "If the child's conduct was a manifestation of the disability, the IEP team shall:

1. Conduct a functional behavior assessment, and implement a behavior interventions plan (if no FBA had been done prior to the conduct); or

2. If a BIP had been developed prior to the conduct, review and modify the existing

BIP as necessary to address the problem; and

3. Return the child to his/her previous placement, unless the school district and the parents agree to a change in placement as part of the modification of the behavior plan.

Therefore, as the team determined that the Student's behavior was a manifestation of his disability, the Student should have been returned to his previous placement. Although the Parents agreed to a change in placement, there is no evidence to suggest that the change in placement was part of the modification of the behavior plan. Furthermore, the District's option under the IDEA, under these circumstances where the District thought that the Student was a danger to himself or others, would have been to file for due process and request a hearing officer to send the Student to an interim alternative educational setting.

III. LEAST RESTRICTIVE ENVIRONMENT

The plain language of 20 USC 1412(5)(B) provides that "[t]o the maximum extent appropriate, children with disabilities...[must be] educated with children who are not disabled, and ... special classes, separate schooling or other removal of children with disabilities from the regular educational environment [shall occur] only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." See also 34 CFR 300.114; OSEP Memorandum 95-9, 21 IDELR 1152 (OSEP 1994). The IDEA requires a school district to do more than simply provide educational instruction- that is, educate children with disabilities in the least restrictive environment ("LRE") which means the disabled student is to be educated with non-disabled students to the "maximum extent appropriate." 34 C.F.R. & 300.114; *Pachl v. Seagren*, 453 F.3d 1064, 1067 (8th Cir. 2006) (citing 20 U.S.C. & 142 (a)(5). Consequently, "a disabled student should be separated from his

peers only if the services that make segregated placement superior cannot 'be feasibly provided in a nonsegregated setting.'"*Id*. (Quoting *Roncker v. Walter*, 700 F.2d 058, 1063 (6th Cir. 1983); see also *T.F. v. Special Sch. Dist. Of S. Louis County*, 449 F. 3d 816, 820 (8th Cir. 2006) (noting IDEA reflects a "strong preference" that disabled children attend regular classes with non-disabled children and a presumption in favor of public placement). Arkansas law and special education regulations are consistent with the IDEA in mandating that children with disabilities be provided an inclusive environment with their non-disabled peers.

In sharp contrast to the vagueness provided in the statute as to the meaning of FAPE, the IDEA has a very specific prescription for the educational environment for a child with a disability. Particularly, the IDEA requires a balancing of the need for the provision of a free and appropriate public education with the need for providing such an education in the least restrictive environment. *See Sacramento City Unified School Dist. v. Rachael* H., 14 F.3d 1398 (9th Cir. 1994); *Daniel R.R. 874 F.2d at 1044-45; Lachman v. Illinois State Board of Educ*., 852 F.2d.290, 295 (7th Cir. 1985), cert denied, 488 U.S. 925; *A.M. v. Northwest R1 School Dist*., 8113 F.2d 158, 162 (8th Cir. 1987). *Cert denied,* 484 U. S.. 847 (1987).

> Under the Act, a school district is required to ensure:
>
> That, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled ; and
>
> That special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily . . . .

34 CFR & 300.14 (a)(2)

With this provision, Congress created a strong presumption for mainstreaming, i.e., placing students in the least restrictive environment. However, as recognized by the Court in *Rowley*, sometimes regular classrooms and regular school settings are unsuitable for the education of children with disabilities *See Rowley*, 458 U.S. 181 n.4. That is not to say that IDEA and its regulations contemplate "an all or nothing" educational system in which students attend regular or special education. Rather, the Act and its regulations require schools to offer a continuum of services." *Daniel R.R*.. 874 F.2d at 1050; *Lachman*, 852 F.2d at 296, n.7 *(citing Wilson v. Marana School Dist. No. 6 of Pima Coumty*, 735 F.2d 1178, 1183 (9th Cir. 1984). *See also* 34 C.F.R. 300.551.

IDEA mandates a "continuum of placements," often referred to as the "LRE Continuum" or the "Placement Continuum." The continuum begins in a general education classroom and continues to get more restrictive at each placement on the continuum. 34 CFR 300.115 (a). The IDEA requires that each public agency have a continuum of alternative placements to meet the needs of children with disabilities. The continuum should include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. 34 CFR 300.115 (a); and 34 CFR 300.39. *See Letter to Anonymous*-11/08/2000. The district also must make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with placement in a general education setting. 34 CFR 300.115 (b)(2). Each child's educational placement must be determined on an individual case-by-case basis depending on each child's unique educational needs and circumstances, rather than **by** the child's category of disability, and must be based on the child's IEP. 71 Fed.Reg. 46,586 (2006).

The IDEA is very specific about what factors should be considered prior to changing the child's placement or moving down the continuum to a more restrictive placement. The burden of proof for educational benefit in a given placement is on the school district; the law specifies that movement down the continuum to more placements should occur only following reasonable, appropriate and failed attempts for success in the current placement.

In particular, the IDEA requires a school district to take steps to place a child in a regular setting for some academic classes and a special education setting for other academic classes where appropriate. The appropriate combination will vary from child to child and from school year to school year based upon the particular child's educational needs. *See Daniel R.R.,* 874 F.2d at 1048 (articulating a two pronged approach to determine whether an IEP places a student in the LRE); *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 983), *cert. denied*, 464 U.S. 864 (1983).

While the Supreme Court has not addressed a standard for evaluating mainstreaming issues, various circuit courts of appeal have formulated tests to determine when the Act's mainstreaming requirements are met. In *Roncker*, the Sixth Circuit Court of Appeals stated the proper inquiry is whether a proposed placement is appropriate under the IDEA. In some cases where a segregated facility is considered superior, the court or hearing officer should determine whether the services that make the placement superior could feasibly be provided in a non-segregated setting. *See Roncker*, 700 F.2d at 1063. The IDEA's strong preference mainstreaming should be balanced against the possibility that:

> [S]ome handicapped children simply must be educated in segregated facilities either because the handicapped child would not benefit from mainstreaming, because any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting, or because the handicapped child is a disruptive force in the non-segregated setting.

Id. See also Lachman v. Illinois State Board of Education, 852 F.2d 291, 295 (7th Cir. 1988).

The *Roncker* test has been adopted by the Eighth Circuit Court of Appeals. *See A.W. v Northwest R-1 School Dist*. 813 F.2d 158 (8th Cir. 1987), *cert. denied*, 484 U.S. 847 (1987) (the mainstreaming requirement should be implemented "to the maximum extent appropriate," and that it is inapplicable where education in a mainstream environment cannot be achieved satisfactorily); *Mark A. V. Grant Wood Area Educ. Agency*, 795 F.2d 52, 54 (8th Cir. 1986), *cert. denied*, 480 U.S. 936 (1987) (rejected view that IDEA's mainstreaming provisions are only satisfied if a student with disabilities is educated in the same class with non-disabled peers); *Johnston by Johnston v. Ann Arbor Public Schools*, 569 F. Supp. 1502, 1508-09 (E.D. Mich. 1983) (no violation of IDEA was found where transfer of child with disability from a regular classroom to a special education classroom was necessary and appropriate.)

The *Roncker* test, adopted by the Eighth Circuit, requires an examination of whether the proposed placement is appropriate under the IDEA, and whether the services that make the placement superior could feasibly be provided in a non-segregated setting, and, if so, the services should be provided in the non-segregated setting. The tests enunciated by the other circuit courts of appeal also require an examination from the point of view of the more restrictive placement of the academic and non-academic benefits of placing the Student in a less restrictive environment, along with the negative effects.

A change in placement triggers the prior notice requirements of the IDEA. The IDEA requires that the district notify parents of the impending placement decision and provide the parents with procedural safeguards notice of 34 CFR 300.504.34 300.503 (a) *See also* 34 CFR 300.530 (h).

300.116 Placements. In determining the educational placement of a child with a

disability, including a preschool child with a disability, each public agency must ensure that-

(a) The placement decisions-

Is made by a group of persons**,** including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

Is made in conformity with the LRE provisions of this subpart, including Sections 300.114 thorough 300 118;

The child's placement-

Is determined at least annually;

Is based on the child's IEP**;** and

(3) Is as close as possible to the child's home;

Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Authority 2 U.S. C.1412 (a)(5)

34 C.F.R. Section 300.116. See also ADE Regulation Section 3.00 Least Restrictive Environment, 13.03 Placement.

ADE Reg. 9.02.3 Parent involvement in placement decisions.

9.02,3.1 Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decision on the educational placement of the parent's child.

In implementing the requirements of Section 9.02.3.1 of this part, the public agency must use procedures consistent with the procedures described in Section 8.06.1.1 and 8.06.2.1 of these regulations and 34 CFR 300.322 9a) through (b) (1). If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

ADE Regulation Section 9.00.

The Arkansas Department of Education echoes the IDEA in requiring the District to consider the potential harmful effects of a more restrictive placement as well as prohibiting restrictive placements solely because of the child's disability or needed accommodations. ADE Regulation Section 13.03 states:

> In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and A child with a disability **is** not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

ADE Regulation Section 13.03.

Both the IDEA and the ADE indicate that due process procedures apply when a child with disabilities is removed from their current placement due to disciplinary issues. Specifically, the IDEA requires that "within 10 school days of any decision to change the placement of a child with disability because of a violation of a code of student conduct" the District shall conduct a Manifestation Determination Review and "review all relevant information" to determine whether the Student's conduct had a "direct and substantial relationship" to their disability. 20 U.S.C. Section 45 (k)(1)(E). If the child's conduct is determined to be a manifestation of their disability, the "IEP Team shall conduct a functional behavior assessment, and implement a behavioral intervention plan, or if the child already has a behavior intervention plan,"modify it as necessary, to address the behavior:" and return the child to placement from which the child was removed..." 20 U.S.C. Section 1415(K)(1)(F).

Similarly, the ADE Regulation 11.00-Change of Placement Because of Disciplinary Removals states:

> 11.01.1 For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR 300.530 - 300.535, a change of placement occurs if-
>
> The removal is for more than 10 consecutive school days, or

> The child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a school year, and because of factors such as the child's behavior is substantially similar to the child's previous incidents that resulted in the series of removals, the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

ADE Regulation Section 11.01

In this case, the Parents have not shown by a preponderance of the evidence that the Student was not educated in the least restrictive environment. The Fifth Circuit Court of Appeals outlined factors which should be considered. These factors include: whether the school has taken steps to accommodate the child in the regular program; whether the child would receive educational benefit from the regular program, considering the educational benefit would include not only academic benefit but other benefits; and the effect of the child's presence on the education of other students. *Daniel R.R. v. State Bd. of Educ*., 874 F.2d 1036 (5th Cir. 1989) Balancing these factors, the undersigned hearing officer does not weigh lightly the effect of the Student here on the education of the other students, considering the gravity of his conduct and the disruptions that he has caused.

III. STAY PUT

The essential purpose of the IDEA's Stay Put provision is to preserve the status quo pending a resolution of dispute between the parties, thereby preventing unilateral action by a school district in contravention of a student's or parent's objection, until the completion of due process proceedings. 20 U.S.C. Section 1415 (j) is entitled Maintenance of current educational placement. This provision states:

> Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current education placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

20 U.S.C. Section 1415(j). *See also M.M. v. Special Sch. Dist. No. 1*, 512 F.3d 455, 463 (8th Cir.), cert. denied, — U.S. —, 129 S. Ct. 452, 172 L.Ed.2d 343 (2008), applying *Honig*, 484 U.S. at 323-25, 108 S.Ct. 592.

Courts have recognized what due process proceeding are lengthy and have enforced the IDEA stay-put provision in an effort to avoid the harm that would naturally flow from the abrupt cessation of services provided to a special needs child. The stay-put provision was fashioned to prevent, as Justice Brennan pointed-out in *Honig v. Doe*, the "unilateral exclusion of disabled children" by the school district. The Ninth Circuit in *Joshua A. v. Rocklin Unified School District* further elucidates the reasoning behind the injunctive nature of the stay-put provision:

> The fact that the stay put provision requires no specific showing on the part of the moving party, and no balancing of equities by the court, evidences Congress's sense that there is a heightened risk of irreparable harm inherent in the premature removal of a disabled child to a potentially inappropriate educational setting. In light of this risk, the stay put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process.

The strong language used by the Supreme Court and the Ninth Circuit underscore the importance of the stay-put provision in the IDEA as a preventative measure against the unilateral removal of a disabled child from his or her placement.

The Arkansas Department of Education Rules & Regulations implementing the IDEA further state:

> 10.01.46 Child's status during proceedings.
> 10.01.46..1 Status during hearings on any of the matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE

> to the child - A. Except as provided for in 34 CFR 300.533 and Section 11.06, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 34 CFR 300.507 and these regulations, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his current educational placement.

ADE Reg. 10.01.46.1.

As stated above, the "stay put" provision of the IDEA provides that "during the pendency of any proceedings conducted pursuant to this section, unless that State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child" 20 U.S.C. Section 1415(j). The purpose of the provision is "to maintain the educational status quo while the parties' dispute is being resolved." *T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 152 (2nd Cir. 2014). *Also see C.P. v. Leon Cnty. Sch. Bd. Florida*, 483 F.3d 1151, 1156 (11th Cir. 2007) ("provision amounts to, in effect, an automatic preliminary injunction, maintaining the status quo and ensuring that schools cannot exclude a disabled student or change his placement without complying with due process requirements"); *Verhoeven v. Brunswick Sch. Comm.*, 207 F.3d 1, 3 (1st Cir. 1999) (preservation of the status quo ensures that the student remains in the last placement that the parents and the educational authority agreed to be appropriate).

The parties met for a Manifestation Determination Review on January 27, 2015, and on the same day held a Separate Programming Conference in which the Student's placement was changed to homebound. This was subsequent to an incident described by the District as a violation of the student code of conduct. The Parents filed a due process complaint on March 14, 2015.

As part of their pleadings, the Parents provided exhibits that contain a Manifestation Determination Review dated January 27, 2015, an IEP dated January 27, 2015,

(described by Parents earlier referencing this exhibit as "Homebound IEP" (wherein placement was changed to homebound), and an IEP dated August 27, 2014, (described by Parents earlier referencing this exhibit as "Last Agreed Placement") . The August 27, 2014, IEP (Last Agreed Placement) provided by the Parents contains a signature page for IEP team members, including the mother. However, the January 27, 2015, IEP (described as Homebound IEP), provided by the Parents, does not contain a signature page and is three (3) pages long. Conversely, the District presented this IEP as eleven (11) (D.Exh. Vol. II, pp. 115-126) pages long and containing a signature of the mother on page 11 and an individual identified as an advocate. The undersigned hearing officer considers this significant because the Parents have asserted numerous times that the District unilaterally placed the Student to homebound placement without the Parents' consent, without a properly constituted IEP Team and without conducting an IEP meeting. The Parents have not maintained that this was signed because the Parents were coerced or under duress.

Therefore, the hearing officer finds that homebound placement is the Student's stay put placement during the pendency of the proceedings. The hearing officer would further note that the stay put provision may only be invoked "during the pendency of any proceedings." 20 U.S.C. Section 1415(j). Accordingly, the stay put provision does not apply unless and until a request for a due process hearing is filed. *See Zvi D. V. Ambach*, 694 F.2d 904, 906 (2nd Cir. 1982). Here, the IEP meeting was held on January 27, 2015, and the due process complaint was filed in March, therefore, stay put did not go into effect until March.

ORDER

1. As the Hearing Officer finds that the January 27, 2015, change in placement was

made in contravention of the requirements of the IDEA, he orders that the Student be returned to his prior placement in accordance with 20 USC Section 1415(k)(l)(F), including modifying the existing BIP as necessary to address the problems, unless the school district and the parents agree to a change in placement as part a modification of the behavior plan.

2. The Hearing Officer also finds that the District violated the IDEA and denied the Student FAPE in the following respects: failing to conduct evaluations in accordance with the IDEA and implementing regulations by not conducting an initial evaluation before the provision of special education services; failing to conduct comprehensive evaluations; failing to instruct on IEP goals and objectives while the Student was in homebound instruction; and failing to provide an appropriate behavior management plan.

The Parents are awarded the following relief:

3. **Compensatory Education** - tutoring four days a week for at a total of eight hours during the week for one school year (to total the same number of days as a school year); and

4. **Functional Behavior Assessment and Behavior Intervention Plan** - comprehensive behavior assessment and behavior plan conducted, written, and monitored by an outside BCBA, who will monitor of the data and plan implementation for a minimum of two years; and

5. **IEP and Comprehensive Academic Assessment** – comprehensive IEP written and monitored by an outside BCBA based on a comprehensive academic assessment, which addresses the Student's behavioral as well as academic deficiencies using evidence based practices, and includes the administration of interest surveys and/or preference assessments to determine appropriate potential reinforces, with data to be maintained and monitored by the

outside BCBA; and

6. **Staff and Parent Training** – Staff and parents should be trained on the behavior plan and techniques to be used with academics to transfer to homework tasks in the home setting. The training should consist of training on the particular disability, appropriate interventions, and on the IEP and FBA/BIP by an outside BCBA.

7**.** **Training in IDEA Due Process Procedures**, by the ADE - specifically to include all District administrators.

Finality of Order and Right of 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 of the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing. It is so ordered.

DATED:

September 20, 2015

SIGNATURE:

S/ Garry J. Corrothers

GARRY J. CORROTHERS,
HEARING OFFICER