

Arkansas Department of Education
SPECIAL EDUCATION UNIT

IN RE:

as Parents in behalf of
-----Student

PETITIONERS

VS. NO. H-10-00

**Hot Springs School District and
Fountain Lake School District**

RESPONDENTS

HEARING OFFICER’S FINAL DECISION AND ORDER

Issue and Statement of the Case

Issues:

Did the Respondents deny the Student a free and appropriate public education (FAPE) according to the Individuals with Disabilities Education Act (IDEA) by failing to follow due process procedures to implement her Individualized Education Plan (IEP) in the least restrictive environment and by failing to identify and evaluate for the Student’s disabilities that were adversely affecting her education for school years 2006-07; 2007-08; and part of school year 2008-09 in the Hot Springs School District and the 2009-10 school year in the Fountain Lake School District.

Procedural History:

On October 5, 2009, a request to initiate due process hearing procedures was received by the Arkansas Department of Education (hereinafter referred to as the “Department”) from -----
----- (hereinafter referred to as “Parents”), the parents of -----
(Petitioner) (hereinafter referred to as “Student”). The Parents requested the hearing because they

believe that the Hot Springs School District (hereinafter referred to as “HSS District”) and subsequently the Fountain Lake School District (hereinafter referred to as “FLS District”) failed to comply with the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 - 1485, as amended) (IDEA) (also referred to as the “Act” and “Public Law 108-446”) and the regulations set forth by the Department according to Arkansas Code Annotated 6-41-202 through 6-41-223 in providing the Student with appropriate special education services as noted above in the issue as stated.

The Department responded to the Parent’s request by designating November 5, 2009, 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 on October 9, 2009, setting preliminary timelines which afforded the Districts with the opportunity to challenge the sufficiency of the due process complaint notice. The order setting preliminary timelines included an order for the HSS District and the FLS District to convene resolution sessions with the Parents on or before October 20, 2009. Both Districts notified the hearing Officer that resolution conferences were held; however, no agreements were reached.

On October 15, 2009 the HSS District challenged the sufficiency of the complaint and the Hearing Officer concurred. An order was issued on October 21, 2009 permitting the Petitioner to amend the due process complaint in accordance with §§ (c)(e)(E) of § 615 of Public Law 105-17. The same order dismissed the Petitioner’s complaints against the HSS District and FLS District for allegations of violations of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and the Fourteenth Amendment of the U.S. Constitution, all of which were considered by the Hearing Officer as non-hearable issues under the IDEA. The same order further

informed the Parents that the alleged complaints against the privately owned and/or the non-profit agencies listed in the complaint were not under the jurisdiction of the Department and therefore could not be adjudicated by the Hearing Officer.

The Parents responded to the order by submitting an amended complaint on October 30, 2009. On receipt of the amended complaint a second order setting preliminary timelines was issued on October 31, 2009; which again afforded both districts the opportunity to challenge the sufficiency of the amended complaint. The amended order setting preliminary timelines again included an order for the both districts to convene resolution sessions with the Parents on or before November 14, 2009. The HSS District and the FLS District notified the hearing Officer that resolution conferences were held; but again, no agreements were reached.

The HSS District responded to the amended complaint with a challenge as to its sufficiency on November 9, 2009. Having not been named in the challenge nor the response to the challenge, the FLS District filed a motion to adopt the responses to the complaint by the HSS District on November 10, 2009. An order was issued by the Hearing Officer on November 10, 2009 denying the challenge of sufficiency by the HSS District and established a pre-hearing conference to be conducted on November 19, 2009. The pre-hearing conference was held as planned with the issue as noted above being agreed to as that which would be adjudicated beginning on November 30, 2009, immediately following the completion of ----- of the Student. Following the admission of testimony and evidence at the hearing of ----- the Petitioner requested and was granted multiple continuances in order to complete that case. Case ----- and the current case were continued by written orders to be heard following the completion of ----- on December 19, 2009, January 9, 2010, January 27, 2010, and February 8, 2010. Case -----

began on February 19, 2010; however, it too was continued due to the need for all parties to obtain testimony and present evidence. Thus the current case, scheduled to be heard following the final day of ----- was continued on February 20, 2010; February 25, 2010; March 10, 2010; March 30, 2010; and April 16, 2010. The final day of hearing -----on April 21, 2010, did not permit time for the parties to prepare the required pre-hearing disclosure briefs, thus another continuance was requested by all parties with the hearing scheduled to begin on April 29, 2010. The HSS District requested and was granted the opportunity to make note on the record that their cross examination of witnesses did not negate their objection as to the sufficiency or their subsequent jurisdictional objection to the hearing. The same objections were adopted on the record by the FLS District.

On the initial day of the hearing the HSS District repeated their request that the Hearing Officer accept as part of the record the HSS District's motion to dismiss as was entered in the ----- cases -----, in that the same issues applied according to the HSS District, with the exception of the assertion of the Student having reached the age of majority as alleged in ----- . At the same time the FLS District filed a verbal motion to adopt the motion to dismiss as requested by the HSS District.

The basis of the motion to dismiss was threefold: (1) the complaint exceeded the statute of limitations on matters in excess of two years; (2) neither the Student nor the Parents are currently residents of the HSS District; and (3) the Student is being home-schooled. The motions were accepted, but the motions to dismiss were denied.

The opinion of the Hearing Officer on denying the motions to dismiss was as follows:

(1). With regard to the complaints having exceeded the constraints of the statute of

limitations as established by the 2004 re-authorization of the IDEA, the HSS District is correct, but only in part. The two year statute of limitations as established by the IDEA states that a parent or agency shall request an impartial due process hearing within two years of the date the parent or agency knew or should have know about the alleged action that forms the basis of the complaint. The IDEA provides two exceptions to the statute of limitations. It does not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or if the local educational agency withheld information from the parent as required by the IDEA. The amended complaint addressed these issues, but was denied only through objections by boh districts, except in their post hearing briefs.

At the hearing, as in the previous cases involving the ----- the Hearing Officer concluded that information for the time exceeding the two year limitation may in fact be important in determining the substantive basis of facts for the subsequent school years which did not exceed the statute of limitations and for which the Petitioners are entitled to be heard. This Hearing Officer did not believe it possible to determine whether or not the Student was denied FAPE for the two years within the statute of limitations without the prior information which led to the various parties' subsequent decisions. To the extent that evidence related to the time period prior to two years before Petitioners knew, or had reason to know of the alleged violations which gave rise to their claim, was considered relevant for background information, but also to the possibility of challenging whether or not the Parents were mislead by either district in decisions they made regarding the placement of the Student. In their amended complaint as well as in their post hearing brief the Parents contended that the inclusion of the 2006-07 school year complaint

was justified because they believed that the facts presented to them at the time were misrepresentations by the HSS District and that information regarding the lack of academic standing with the Department to the program to which they believed the HSS District transferred the Student to was withheld. During the course of the hearing the testimony elicited from the witnesses by the Parents would lead the reader of the transcript to believe that the Parents believed they were misled in making decisions to “home school” the Student by the HSS District, and subsequently by the FLS District, as well as being misled by the non-accredited private agency who was involved in the education of their child. However, nothing in the evidence or testimony indicated that the HSS District or the FLS District intentionally misrepresented anything to the Parents; however, the failure to adequately inform them, and given the intellectual limits of the Parents, it is relatively easy to conclude from the testimony that such might in fact be the case as they saw it.

Also on the initial day of the hearing a discussion was held on the record between council for the HSS District, council for the Parents, and the Hearing Officer regarding the use of a Department investigation of the HSS District’s alternative learning environment (ALE) called Vista. The document was not disclosed within the required five-day time frame for it to be included as evidence, but was referred to as a comparative example by council for the Parents as to issues within the findings of the investigation and those encountered by the Student in the same time frame of her placement in the ALE. Council for the Parents was permitted to ask questions of the witnesses on issues raised in the investigation; however, the document was not entered into the record as evidence.

As noted below under the findings of fact the temporary IEP for school year 2006-07 may

or may not have been comparable to the special education services she had been receiving from the previous district. Consequently, if such facts as were used to provide special education services by the HSS District were not sufficient to warrant application of the statutory exception, the exception would swallow the rule. In hindsight, the Parents might consider the HSS District's initial assessment and placement of the Student to be inadequate, but that does not in and of itself rise to a specific misrepresentation. However, it is the opinion of this Hearing Officer that due weight should still be given as to the factual findings regarding the HSS District's subsequent decision in assessing and providing the Student special education services. Regardless of the Parent's or either District's position on this issue, the Courts have agreed that IDEA hearing officers should make a highly factual inquiry when there is the potential presence of any such exception to the statute of limitations

(2). At the time the complaints were alleged to have begun the Student was a resident of the HSS District and as such the responsibility of the HSS District for purposes of providing an appropriate education. Although the District denies responsibility for the time in which the Student was withdrawn and placed in a private school setting to be home-schooled, the courts have consistently agreed that students who, as in this case, claim a district violated the IDEA by denying a student of an appropriate education in the least restrictive environment, thus forcing the unilateral placement prior to filing an administrative action, are allowed to proceed with a due process hearing and seek relief, such as compensatory education, as well as possible financial reimbursement for any expenses incurred by the parents.

(3). As recorded on the record and in their post-hearing brief the HSS District is correct in citing regulations which bar parents and students from the benefits of due process concerning special education matters when they have unilaterally removed the student from the public

education agency. There is no dispute that the Parents removed the Student twice from enrollment in the HSS District and subsequently once from the FLS District for purposes of “home-schooling,” but why and how those decisions were reached, are part and partial of their complaints, thus the testimony and evidence surrounding the complaints were deemed to be hearable.

The hearing began as scheduled on February 19, 2010. The Parents were not able to complete their desired testimony and requested continuances which were granted without objection for the case to be heard on February, 25, 2010; again on March 9, 2010; again on April 15, 2010; and a final day on April 21, 2010. On the second day of the hearing the FLS District requested and was granted without objection that the case be bifurcated in order to allow them to be absent from issues pertaining only to the HSS District. Although the hearing of testimony was bifurcated this decision and order has not been. Following the final day of the hearing all parties were offered the opportunity to provide the Hearing Officer with post-hearing briefs to be included with the record. They were instructed that their briefs must be received within ten business days from the final date of the hearing. However, council for the Petitioners and council for the HSS District requested and were granted without objection that their post-hearing briefs be continued due to personal issues interfering with preparation of the briefs. All post-hearing briefs with the exception of the HSS District’s, which was never received, were provided to the Hearing Officer on or before the subsequently established deadline and are included as Hearing Officer exhibits.

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, Robert B. Doyle, Ph.D., Hearing Officer of Sherwood, Arkansas, conducted a closed impartial hearing. The Parents were represented by Theresa Caldwell, Attorney of Little Rock, Arkansas; the HSS District was represented by Paul Blume, Attorney of Little Rock, Arkansas; and the FLS District was

represented by Jay Bequette, Attorney of Little Rock, Arkansas.

At the time of the alleged complaints were purported to have begun (school year 2006-07) the Student was a ----- who had transferred to the HSS District as an IDEA eligible student from the ----- as a student entering her fifth grade. On being notified by the Parents in the enrollment procedures, the HSS District requested and received copies of the Student's special education records from the school district in ----- . The Student and the Parents remained residents of the HSS District until they moved their residence into the adjoining FLS District in December 2008 and subsequently requested special education services at the FLS District for school year (2009-10).

Findings of Fact:

School Year 2006-07

As pointed out by the HSS District in their motion to dismiss, and the FLS District's motion to adopt, complaints which were alleged to have occurred during school year 2006-07 fall outside the statute of limitations according to the re-authorization of IDEA in 2004 for which complaints can be filed, and thus it is often assumed they are not hearable by a hearing officer. However, neither the provisions of the IDEA as re-authorized in 2004, nor the regulations interpreting the statute, outline precisely how a hearing officer must consider a claim where the exceptions to the statute of limitations may apply; nor how to address the importance of any prior actions on the part of a petitioner or respondent. Consequently, this Hearing Officer has taken the position that prior actions and decisions made by all parties involved in this due process hearing may or may not be relevant to those complaints or issues which do fall within the period of time in which complaints can be filed for adjudication. At the same time it is recognized that the IDEA is clear and subsequent case law has supported the position that no restitution for the prevailing party can be

awarded for actions of a defendant which fall outside the statute of limitations.¹ In the case before this Hearing Officer the position taken in allowing information in on issues beyond the statute of limitations was deemed appropriate and necessary in providing a fair judicial decision. Such information was considered necessary in that decisions and actions taken by all parties prior to school year 2007-08 were considered relevant in determining how the parties made some, if not all subsequent decisions relevant to the case.

¹ *Evan H. v. Unionville-Chadds Ford School District*, 51 IDELR 157 (E.D. Pa 2008)

Prior to entering the HSS District the Student's school in ----- developed an IEP for school year 2006-07 anticipating that as a -----would continue to be the responsibility of their district. Her IEP that was developed on May 30, 2006 indicated that she qualified for special education services having average or above average intellectual potential; however, she demonstrated a significant discrepancy between her ability and achievement in basic reading skills, reading comprehension, written expression, and mathematics calculation. Additionally she demonstrated a chronic processing deficit, intrinsic, across settings in automaticity/speed and conceptualization.² Her IEP also noted that she struggled with low self-esteem and social skills and that she appeared to be depressed. They determined that she needed specialized instruction in reading, writing, and math for a total of 1,270 minutes per week; as well as 45 minutes per week of speech therapy to further develop expressive language skills; and 10 minutes per week of occupational therapy for development of visual perceptual skills. They also noted that she continued to struggle with low self-esteem and social skills, as well as appearing to be depressed. Consequently, her IEP included 30 minutes weekly of counseling services. Her IEP goals and objectives were to be implemented in special education for fifty-percent or more each day with some participation in a regular education classroom. They noted that placement in a special education class full time for services would be too restrictive and that placement in a regular education class with support fifty percent or more of the day would not provide her with enough structure to meet her educational needs. Therefore they elected placement in a special education classroom for fifty percent or more of each day with some participation in a regular education

² Parent Binder, Page 180

classroom.³ She was assigned to be in the general education setting for art, music, health, physical education, and lunch. Her classroom behavior was not considered as being detrimental to hers or her classmates learning.⁴ At the same time her classroom teacher noted that “her family has been anticipating a move out of state, which has been a great concern to her...she often times brings that frustration and sadness to the school setting...since [she] has a difficult time appropriately expressing her thoughts, when she is frustrated or anxious she will display poor behaviors in the classroom and at recess...[and that] it is important that [she] continue to [be] in a highly structured setting to give her the academic and emotional support needed to be successful in school.”⁵

³ Parent Binder, Page 159

⁴ Ibid, Page 160

⁵ Ibid, Page 192

On being notified by the Parents in June 2006 that she was entering their district, the HSS District obtained consent and received the Student's special education and other school records from ----- . They held a referral conference on August 7, 2006. In lieu of implementing the existing IEP as developed by her previous school the HSS District developed a temporary IEP for the Student and decided to reevaluate the Student. The temporary IEP recognized her learning disability in reading, math, and written language; however, instead of implementing the IEP in an educational environment as determined necessary by her previous school, she was placed in a regular fifth grade classroom and was scheduled to receive specialized instruction for her learning disabilities in a resource room. As in the previous school she would continue to receive related services in occupational and speech/language therapy; however, counseling services were not noted to be a part of her temporary IEP.⁶

⁶ Ibid, Page 51-61

The HSS District's educational examiner completed her evaluation of the Student on September 15, 2006. Her report indicated that she reviewed the previous school records and discovered that the Student had frequent ear infections and failed hearing exams and appeared at one time to need glasses for both reading and board work, but that she had passed a vision and hearing screening administered by the HSS District on August 22, 2006. Although her report indicated that the Student was administered a behavior assessment and two achievement tests, she acknowledged in testimony that they were not in fact administered.⁷ The only behavior assessments completed was a fifteen minute observation⁸ completed during the Student's special education instruction in math rather than in her regular classroom. The only other behavior rating scale was obtained from the Parents. No information was systematically gathered nor were behavioral assessments provided by the Student's classroom teachers. The examiner testified that she used the achievement test scores administered by the Student's previous school to determine if there existed a specific learning disability.⁹ Her conclusions were that the Student exhibited a severe discrepancy only in numerical operations when using the same data that was used in the previous district where it was determined she exhibited specific learning disabilities in reading, math, and written language. She also completed her evaluation without the benefit of a social history or speech and occupational therapy evaluations. The social history was completed on the day of the evaluation and programming conference (September 28, 2006) and the speech/language evaluation was completed two days earlier on September 26, 2006. There was no evidence presented that an occupational therapy examination was completed and the record reveals that neither an

⁷ Transcript, Vol I, Page 179-180; 187 and 202

⁸ Parent Binder, Page 110

occupational therapist nor a speech therapist was present at the evaluation and programming conference held on September 28, 2006. The record does reflect that the speech/language evaluation completed two days earlier did not indicate a need for services.¹⁰

⁹ Transcript, Vol I, Page 204

¹⁰ Parent Binder, Page 139-142

The HSS District convened an evaluation and programming conference as noted above on September 28, 2006 at which time it was decided that the Student continued to be eligible to receive special education services for an identified learning disability of numerical operations, but the IEP indicated that she would continue to receive special education services in math, reading, and written expression; with a reduction in resource room from the temporary IEP of 600 minutes weekly to 450 minutes weekly in a resource room. The stated reason for the reduction in time for receipt of specialized instruction was because of the Student's class schedule and to ensure the least restrictive environment.¹¹ Even though the IEP developed on September 28, 2006, noted that she had difficulty appropriately expressing her thoughts when frustrated or anxious and that she demonstrated poor peer relationships resulting in name calling, no provisions were made for her to receive counseling services, nor were additional assessments recommended for behavior or psychological issues considered or recommended. In fact it was noted that she could follow the HSS District's regular discipline policies.¹²

¹¹ Ibid, Page 103-104

¹² Ibid, Page 44

An IEP conference was requested by the Student's regular classroom teacher in December 2006 and notice was sent to the Parents on December 5, 2006, with the stated reason being that the Student is "having difficulty at school...is refusing to do work of any kind; even physical activities" with no other options being considered due to the teacher's request "and the seriousness of [the Student's] behavior."¹³ No disciplinary records for this period of time were introduced as evidence as would be assumed given the nature of the request for an IEP team meeting. The decision reached by the IEP team was that the Student and her teacher would come up with a signal which would indicate when the Student could not hear or understand what was being said and that the teacher and Student would meet to decide on a reward for being on task in all of her classes each day. Apparently the Student and the Parents believed that the Student had a hearing impairment and requested support from the HSS District in obtaining a medical doctor's referral for an audiological examination. The IEP team did not elect to obtain more information about the Student's classroom behavior or to develop a behavioral intervention plan, but rather agreed to wait for a medical hearing examination, following which they would have a hearing consultant help with her programming.¹⁴ There was no record of evidence to indicate that an audiological examination was conducted and no record of any change in the Student's IEP as the result of such an examination.

Apparently, the Student continued to have behavior difficulties in that another separate programming conference was requested by her classroom teacher on February 22, 2007, because the Student was "at risk for failing at school" and that the IEP team needed to "help her become

¹³ Ibid, Page 100-101

¹⁴ Ibid, Page 95-96

more successful at school.”¹⁵ Again no other options such as a psychological or behavioral analysis being conducted to ascertain how her behaviors were adversely affecting her academic progress. No change in her IEP was the decision reached by her IEP team because prior to the meeting she had improved her grade from an “F” to a “C-“ and her classroom behavior had improved by the time the conference was conducted six days later on March 1, 2007.¹⁶

¹⁵ Ibid, Page 90-91

¹⁶ Ibid, Page 87-88

Prior to the first call by her classroom teacher in October for a separate programming conference, the Student was evaluated by a psychiatrist at Community Counseling Services (CCS). His diagnosis at that time was oppositional defiant disorder and a hearing loss.¹⁷ Somewhat contrary to the HSS District's assessment, he judged her strengths to be "motivation, [her] support system, intellect, and physical health;" he judged her weaknesses to be "judgment/insight, hygiene/grooming, and daily living skills;" and he further indicated that barriers to her treatment were "financial, un-cooperative, and hearing impairment."¹⁸ His assessment indicated that she "often losses temper; easily frustrated; very argumentative; defiant to directives; requests; and rules; annoys others; can be spiteful by lying on others who makes her mad."¹⁹ His report of the family's current environment and living situation included the following statement:

"Parent and family moved here four months ago. All children having problems with adjustment to moving away from-----Parents been married 15 years, marriage is stable. Family is having some grief and loss issues; beloved grandfather passed away 2 years ago; close friend of family died recently (April 2006). Also, paternal grandmother is very angry at the family for moving and has been verbally abusive toward the children by verbally rejecting them due to the parents decision to move."²⁰

¹⁷ Ibid, Page 698

¹⁸ Ibid

¹⁹ Ibid, Page 696

²⁰ Ibid, Page 693

One month later the psychiatrist removed the diagnosis of a hearing impairment, but maintained a diagnosis of oppositional defiant disorder.²¹ On March 1, 2006, the same date the second separate programming conference was conducted as noted above, the psychiatrist provided an assessment of the Student's progress in treatment provided by CCS. He noted that she had made very little progress with decreasing the frequency of defiant interactions with adults and that she continued to be unmotivated to comply with rules or directives of her teachers, often refusing to do her work in class. He further noted that she was often openly defiant in refusing to follow directives of her teachers and she had to go to a BIC room due to disrespecting her teacher.²²

As previously noted the Student's IEP for school year 2006-07 did not include counseling services, but the evidence presented indicated that she received both individual and group psychotherapy services by a school-based counselor from CCS beginning in October 2006. As noted above the working diagnosis for the therapy was oppositional defiant disorder. Progress notes and psychiatric assessments provided as evidence indicated that by the end of school year 2006-07, her global assessment of functioning had not changed since beginning therapy suggesting no improvement in her emotional or behavioral functioning as a result of therapeutic interventions. The HSS District personnel were aware of her emotional and behavioral status as reflected in the progress notes. In April 2007 her therapist noted that she had "met with [the Student's] teacher at the [school] regarding [the Student's] progress and issues of concern...the coach reported that [the Student] was very defiant and disrespectful to him this week and in class...she refuses to participate in the exercise program..she was disrespectful in refusing to talk with him about why she is refusing

²¹ Ibid, Page 686

²² Ibid, Page 682-683

to participate..also, he added that another peer whom [she] talks to all the time also refused to do her exercises as well.”²³

²³ Ibid, Page 594

Towards the end of school year 2006-07 her therapist reported that she “met with [the] counselor at the [school] for report on [the Student’s] conduct...she reported that [the Student] continues to be non-responsive to adults, but she is doing better in that she will do her work more for her teachers...counselor also shared that [the Student] got beat up by a boy on the bus the other day.”²⁴ These records reflect that the HSS District was well aware of the emotional and behavioral difficulties that the Student was experiencing in the school environment; however, the information did not trigger a response from the HSS District that there existed the possibility that such acting out behaviors might warrant the development of a behavioral intervention plan to be included as a part of the Student’s IEP.

²⁴ Ibid, Page 592

Despite the emotional and behavioral issues the Student faced during school year 2006-07 her grades at the end of the year included no failing grades in any subject area, with a satisfactory rating in conduct. She was tardy only two days and absent only twelve and a half days.²⁵ Thus even with the failures on the part of the HSS District to provide a comparable IEP when the Student entered their district and the failure of the educational examiner to appropriately evaluate for her learning disabilities, or provide a more complete examination to determine the potential existence an emotional or behavioral disorder, the Student was able to succeed academically in a regular education with less than fifty percent of her day in a resource room, contrary to what was proposed by the previous school district. Could she have made more progress if a more appropriate evaluation of her learning disabilities or a comprehensive assessment of her behavior and emotional issues been completed is an unanswerable question. The same holds true for how the development and implementation of a behavioral intervention plan may have been helpful in decreasing some of the oppositional defiant behaviors in the regular education classroom. How those procedural failures on the part of the HSS District, and the subsequent decisions made by both the Parents and the HSS District would impact the Student's next school year, is found in the following findings of fact.

School Year 2007-08

The Student's IEP annual review for school year 2007-08 was not held prior to the beginning of the school year; in fact not until October 2, 2007. No explanation in testimony was presented as to why such a long delay. The notice of the conference was sent to the Parents after school had started on September 21, 2007, stating that one action item for the IEP team would be

²⁵ Ibid, Page 736

consideration of extended school year services, even though the summer months for such services had already passed.²⁶ The conference decision developed at the meeting noted that “extended school year services were discussed, 14 factors reviewed and the committee determined services are not necessary at this time.” The decision also noted that the Student continued to have difficulty in reading, language arts and math, being approximately four years behind her peers in those areas, even though the only learning disability continued to be in numerical operations. When the Student began receiving services in the HSS District in 2006 she was only two years behind her peers in the same academic areas. The decision noted that the Parents were making an appointment with a physician for the Student because of hearing problems and a problem with her feet. The Parents also reported to the IEP team that they intended to have the Student tested for dyslexia.

²⁶ Ibid, Page 84

The subsequent IEP that was developed indicated that she would continue to receive 750 minutes weekly of specialized instruction in math, reading, and language arts in a resource room setting. Even though her previous regular education classroom teacher requested IEP conferences due to the Student's behavior and even though the HSS District personnel knew she was being seen in individual and group therapy for emotional and behavioral issues, her IEP team did not consider additional behavior assessments and did not include counseling as a related service. They in fact continued to note that she could follow the HSS District's discipline policies.²⁷

Although her IEP did not reflect the need for counseling services the Student continued to receive school-based counseling by CCS for school year 2007-08. Her diagnosis for therapy remained oppositional defiant disorder, with the CCS records indicating that she would be receiving her counseling on the HSS District middle school campus.²⁸ The justification for continuing therapy services was listed as aggressive behaviors, the likelihood of decompensation, and the need for continued efforts to involve the family. According to the records from CCS she received both individual and group therapy while attending classes at the HSS District middle school; however, no note of such services were indicated in her IEP. A follow up assessment by the psychiatrist in November 2007 showed that she had made no significant progress in her treatment goals which included decreasing the frequency of defiant interactions with adults as "evidenced by self, teacher, school personnel report."²⁹ Such evidence would indicate that the HSS District personnel were aware and knowledgeable of not only the defiant behaviors, but the involvement of her therapist in obtaining and sharing information with them.

²⁷ Ibid, Page 20-29

²⁸ Ibid, Page 669-672

²⁹ Ibid, Page 663

It is not clear from the evidence and confusing in the testimony, but according to the Student's mother the Student's therapist from CCS and the HSS District counselor were both assisting her in transferring the Student from the HSS District to the CCS Excel program in October 2007.³⁰ The Student's mother testified that in her opinion the Student's defiant behavior was a result of not being able to hear and understand her teachers and not knowing what was expected of her in class. Since enrolling the Student in the HSS District the Parents advocated for a smaller classroom setting such as the one the Student was assigned to in the ----- school. She testified that the middle school counselor for the HSS District informed her that such a class, as the self-contained class in the HSS District, "would not work ...because the kids are all handicapped" implying that the overall level of intellectual functioning of the others in the class was much lower than that of the Student.³¹

³⁰ Transcript, Vol II, Page 197

³¹ Ibid, Vol II, Page 202

There was no testimony to ascertain with certainty as to how involved the HSS District personnel were or how much influence the Student's CCS psychiatrist and therapist had in the decision of transferring the Student from the HSS District to the non-accredited educational program at CCS Excel. The evidence presented indicates that on November 15, 2007 the Student's therapist informed the Student that she would "have to talk to her Mother about placing her in the EXCEL program to help her prepare for high school...[advising] her this is not punishment, but to help her in the future" further stating that the Student "understood and thinks she would like to be in the EXCEL program."³² On that same date she recorded a progress note in which she stated that she met with the Student's mother to gain information about the Student's academic and behavior. Her note states that: "Mother stated that [the Student] was having difficulty with her grades and she does not want her to have the same problems as her oldest son. She stated that her oldest son had anger problems because he was frustrated in the classroom and was not getting the help he needed from the school. She asked if [the Student] could be placed in the EXCEL program. Advised her this would be a good time to have her placed in EXCEL before she reaches high school and I would find out if there was a placement available."³³

The Student's psychiatrist at CCS noted in his treatment plan review and the seriously emotionally disturbed (SED) certification that in addition to the need for continued care being related to the Student's aggressive behaviors and likelihood of decompensation, that she also presented with lability of mood, suggesting a possible bipolar disorder or an adjustment disorder

³² Parent Binder, Page 584

³³ Ibid, Page 580

with both anxiety and depressive features.³⁴

Regardless of how the decision was made the evidence presented shows that on November 21, 2007, the Parents completed all of the necessary paper work to transfer the Student from the middle school of the HSS District to the Community Counseling Services Excel program. The program was known by all involved, with the exception of the Parents at the time, that it was a non-accredited educational program. The policy and procedures manual the Parents signed that they had received and understood, contains information that would lead any reader to assume that they would be providing the Student with special education services according to the Department and IDEA standards in a small therapeutic environment which would also address her psychological and behavioral problems.³⁵

³⁴ Ibid, Page 665

³⁵ Ibid, Page 723-731

The Parents were required by CCS Excel to issue the HSS District a notice of intent to home school the Student, even though the Parent did not intend to provide any academic assistance to the Student. The notice to the HSS District was not completed by the Parents, and in testimony it was unclear as to whether assistance in completing the form was provided by CCS or HSS District personnel. Nonetheless, the notice states in handwriting, not that of the Parents, that the Student would be participating the Excel curriculum. The notice went on to state that their “curriculum reflects the AR Frameworks guidelines and includes the following subjects: English, Writing Skills, Reading, Social Studies, Math, Science, P.E., and Life Skills” and that “all information will be presented at the Student’s academic function level.”³⁶ Their program continues on to state that their program is designed to meet not only the mental health needs, but the educational needs of the child and that in order to be enrolled in their program the child must be diagnosed with a serious emotional disturbance. No where in the policy and procedures manual does the agency inform the Parents or prospective client that they will not be receiving an education in an approved program and that they will not be receiving credits that can be applied towards graduating from high school with a diploma. According to the evidence CCS Excel indicated to the Student and the Parents that she her educational goal would be a “general diploma.”³⁷ None of the evidence nor any of the testimony even suggested that the HSS District informed the Parents or the Student that the CCS Excel program was not an approved educational program and that if she continued with the program that she would not be receiving a diploma.

³⁶ HSS District Binder, Page 331

³⁷ Parent Binder, Page 707

In transferring to the CCS Excel program the Student's therapist changed in that the school-based therapist could not follow her in the Excel program; however, her psychiatrist remained the same. Her diagnosis continued to be that of an ----- according to the records of December 2007.³⁸ Those same records reflected that she continued to receive group and individual therapies for her psychological and behavioral issues.

On January 17, 2007 the Student informed the therapist that she had punched a wall, at which time she informed the therapist she wanted to kill herself. Later that same day the therapist engaged the Parents in a discussion of the Student's suicidal threats; however, her concerns were dismissed by the Parents stating that the therapist "just doesn't know [her] enough to know that she says this but doesn't mean it" and that it had to be something that occurred at school rather than at home.³⁹ Her psychiatrist noted in February 2007 that "she expressed suicidal intentions and punched wall because she said she wanted attention. Her parents denied intent (stating she has threatened to kill herself many times in past and has not followed through) and refused acute placement."⁴⁰

³⁸ Parent Binder, Pages 660-662

³⁹ Ibid, Page 554

⁴⁰ Ibid, Page 533

On February 27, 2008 her therapist recorded a note that the Student was “dysregulated today, yelling and cursing peers and kicking over chairs in the classroom..she was angered after a disagreement with a peer and kicked over two chairs....she told -----, ‘I hate this school and everybody here’.”⁴¹ One week later she recorded that she observed the Student in a classroom where she was “walking around and refusing to do schoolwork..she was interrupting her peers.”⁴² One more week later she recorded that the Student “was upbeat and positive today..she appeared happy, smiling and laughing.”⁴³ Another week later she records that she explored the relationships within her family and that she continued to “talk about her brothers in a positive way, sharing how ‘happy’ they both make her..she described one brother as a peace-maker in the family and her ‘protector’ and another brother as more independent but ‘protective when someone hurts’ her..she described the latter brother as ‘happier now’ and shared that her family is ‘happier too.’”⁴⁴ One week following this note she wrote that the Student “was dysregulated today, cursing a teacher, refusing to do work, and running up and down hallways.”⁴⁵

On March 24, 2008 her psychiatrist added major depressive disorder and ADHD along with the oppositional defiant disorder as her treating diagnoses. He also added hearing loss and foot conditions as medical disorders. He attributed no change to her global assessment of functioning and prescribed Concerta an ADHD medication.⁴⁶ Her behavior apparently improved in that

⁴¹ Ibid, Page 517

⁴² Ibid, Page 513

⁴³ Ibid, Page 507

⁴⁴ Ibid, Page 505

⁴⁵ Ibid, Page 503

⁴⁶ Ibid, Page 497

between March 24, 2008 and April 14, 2008 no incidents similar to those noted above were recorded. On that date her psychiatrist removed the diagnosis of -----, but continued to use the others as treating diagnoses.⁴⁷ The next day, however, her therapist recorded that the Student refused to participate in group, stating that the Student's "social anxiety continues to be a barrier."⁴⁸

⁴⁷ Ibid, Page 476

⁴⁸ Ibid, Page 473

Six days later on April 21, 2008, she recorded that she met with the Student and her Parents at which time the Parents stated that they were more connected and stable now, sharing feelings about being good parents and providing for their children, of overcoming generational patterns of abuse, and noting the improvement in social skills of the Student. Two days later on April 23, 2008, another therapist recorded that the Student “was threatening to turn off the video game of another peer who was in the middle of playing a game” and on being confronted by the therapist the Student “disrespected [the] staff by cursing at her.” The same therapist suspended the Student from the program and sent a letter to the Parents the next day stating that “your child has been suspended from the Excel Program and will be unable to return until you have made an appointment with one of the Program therapists to discuss your child’s future at Excel.”⁴⁹ She apparently was allowed to continue the Excel program with the psychiatrist again on April 24, 2008, diagnosing her with both -----, with no change in her global level of functioning.⁵⁰ On May 5, 2008, he changed her ADHD medication from Concerta to Adderall XR.⁵¹

⁴⁹ Ibid, Page 469-470

⁵⁰ Ibid, Page 460

⁵¹ Ibid, Page 453

She completed school year 2007-08 at the CCS Excel program with all “A’s” in all academic areas (Language Arts, Reading, Math & Social Studies), with the exception of Science which was marked “N/A.” Contrary to the classroom behavior as noted above her classroom teacher wrote on her report card that the Student ‘works hard to complete all assignments.’⁵² Such grades as recorded are inconsistent with a “psychological evaluation” administered by a licensed professional counselor, who administered a non-approved intelligence test by the Department, where she achieved a Verbal Index Standard Score of 66; a Performance Index Standard Score of 70; and a Memory Index Standard Score of 30; which yielded a Full Range Intelligence Quotient of 61.⁵³ His results were significantly lower than that obtained by the HSS District examiner where she obtained a Full Scale IQ of 74.⁵⁴ Her therapist misinterpreted the counselor’s test results as the Student achieving a “Standard Score [of] 71 which suggests Borderline Intellectual Functioning.”⁵⁵

She continued to remain in the CCS day treatment program through the summer between the 2007-08 and the 2008-09 school year. The record reflects that she participated in the summer activities with the same degree of defiance and moodiness as she had during the school year which resulted in an increase in her ADHD medication and subsequently another change from Adderall XR to Strattera on July 28, 2008.⁵⁶ The therapist reported that in a meeting with the Parents on July 21, 2008, that they “expressed satisfaction with [the] program and feel [the Student] would benefit

⁵² Ibid, Page 732

⁵³ Ibid, Page 481

⁵⁴ Ibid, Page 128

⁵⁵ Ibid, Page 481

⁵⁶ Ibid, Page 374

from another school year in the program.”⁵⁷

School Year 2008-09

The CCS Excel program’s name was changed to Turning Points; however, the program continued to be a non-accredited educational program according to the Department. Their policy and procedures manual continued to advertise that they were not an “ordinary school” and that they provided a treatment setting where all students are valued and given an opportunity to resolve the problems facing them. They continued to advertise that special education students would receive all services as required by federal law and that their educational program would follow the standards established by the Department for alternative learning environments, with certified teachers and with at least one certified teacher in special education. This information was testified to as knowingly being false by all of the HSS District personnel responsible for dealing with parents and students from the district who have been or might be considering the program as an alternative placement.

⁵⁷ Ibid, Page 409

On returning to school in August 2008, the Student began by returning to the CCS Turning Points (Excel) program. By this point in time the Student had not been a student within the HSS District since October of the previous school year. Since the Parents intended to keep the Student in the CCS Turning Points (Excel) program they met with a social worker from the program on August 22, 2008, to discuss registration and goals for the Student in the coming school year. The Student's mother reported to the social worker that "she has seen progress [for the Student] in more cooperative and calmer behavior since [the medicine] change."⁵⁸ Three days later the CCS psychiatrist signed off on her treatment plan using the same diagnoses of -----
----- as well as, hearing loss and a foot condition. At the same time the record showed that there was no change in the Student's global assessment of functioning, indicating no improvement in her ability to function since the Student entered their program nine months earlier.⁵⁹

⁵⁸ Ibid, Page 354

⁵⁹ Ibid, Page 352

On September 12, 2008, the same licensed counselor who measured the Student's IQ administered the Wide Range Achievement Test; however; no data was produced in the record to address any differences between previous data collected by the HSS District and a current assessment. According to the therapy records provided as evidence, the Student's behavior remained unchanged from where she left off the previous school year with defiance towards the teachers, counselors, therapists and difficulties in relating to other students. On September 26, 2008, one of her counselors at the Turning Points program stated that he was "requested to come to the first floor reception area to help with a disturbance involving [the Student] and her family." He stated in his report that "[her] parents had become upset and verbally abusive toward staff when informed that [the Student] would be sent home for the rest of the day since she was unable to comply with program rules."⁶⁰ On that same day a school suspension notice was sent to the Parents informing them that the Student had been suspended.⁶¹

⁶⁰ Ibid, Page 316

⁶¹ Ibid, Page 315

Three days later on September 29, 2008, the same therapist met with the Parents and the Student to discuss “continuing behavioral problems and [the Student’s] educational needs” and that “there was a consensus that her educational needs were not being met [in the CCS Turning Points (Excel) program] because of her refusal to do the schoolwork she was assigned.”⁶² This assessment was quite contrary to the report she received at the end of the previous school year where she achieved all “A’s” in her academic subjects and was praised by her teacher for having worked hard to complete all of her assignments. At this meeting the therapist reported that the Student’s mother “wondered if it would not be best for [the Student] to return to public school with an IEP” and that ‘pros and cons were discussed and evaluated and [the] parent’s decided they would re-enroll [the Student] in [the] HS Middle School.”⁶³

The HSS District completed a referral form for the Student to return to their middle school on October 2, 2008; however, the date of actual return was September 30, 2008, the day after their meeting with the Turning Points counselor. The educational examination data to be used at the referral conference was to be the same information that the HSS District used prior to her leaving their district the previous year to attend the CCS Excel program. The psychoeducational evaluation they depended on was completed when the Student was entering the fifth grade and she was now entering the seventh grade. The determination of an existing specific learning disability was gaged against achievement data collected from the previous school district in ----- when she was in the fourth grade, where she was determined to have learning disabilities in math, reading, and written expression. As noted above the HSS District evaluator found only a disability in numerical

⁶² Ibid, Page 313

⁶³ Ibid

operations, yet her IEP continued to indicate the provision of specialized instruction in all three areas. The referral form for her seventh grade year noted that her strengths were in written expression and reading, even though the HSS District had found through achievement testing that she was four years behind in both. The referral form does not mention the Student's behavioral or psychological issues that led to the dismissal from the CCS Turning Points day treatment program and return to the public school.

The referral conference was conducted on October 9, 2008, with a check mark by the statement that no evaluation was needed.⁶⁴ The conference decision noted that the IEP developed by the HSS District the previous year had expired and that the committee needed to develop a new IEP and that the Parents believed that a medication change was needed.⁶⁵

⁶⁴ Ibid, Page 74

⁶⁵ Ibid, Page 72

Following the previously developed IEP the Student would be assigned to a regular seventh grade classroom and attend resource classes for specialized instruction in math, reading, and written expression for 750 minutes per week and counseling twice weekly for a total of 60 minutes. Her newly assigned school based counselor (an employee of the CCS program she had just be suspended from) recorded her first note on October 6, 2008, which stated that the Student “was reportedly struggling to adjust to transition without her medication” and that she would “monitor and coordinate with [the Student’s] treatment team, [the Student], family, and school staff to further assess [the Student’s] current status and coping and to establish a treatment plan for the new setting as appropriate.”⁶⁶ On that same day the Student apparently was “marched to the Principal’s office” because she ‘was reportedly refusing to go to class and staff were at a loss on how to manage her.’ The Student was also informed on that same day that the CCS Turning Points Program “can no longer meet her needs and that [her] previous treatment team/parents had agreed that her academic needs would be better suited at public school” and that an “IEP is scheduled for this Thursday.”⁶⁷ The therapist also recorded on the same day that she had met with the HS Middle School counselor “to further assess client options/assist in process of transitioning [sic][the Student] as able.” She went on to record that she gathered the Student’s history, coping and status prior to transferring to HS middle school and clarified with the HS middle school counselor that the Student can not return to the Turning Points day treatment program. She recorded that the Student refused to “accompany IEP/school program coordinator” on a tour of the resource classroom. She further suggested the possibility of placement in a residential setting versus the HSS District’s therapeutic ALE program.

⁶⁶ Ibid, Page 311

⁶⁷ Ibid, Page 309

She discussed with the Parents about issuing a family in need of services (FINS) with the County Courts for additional support.⁶⁸ It appeared from the evidence that all persons involved in the education and mental health treatment of the Student were at a loss as what to do for her. There was no record entered as evidence or testimony given that suggested that a comprehensive evaluation be completed prior to going any further.

The HSS District conducted a separate programming conference on October 16, 2008 at which time it was decided that the Student would be transferred to the HSS District's alternative learning environment (Vista). The decision also noted that the Student's psychiatrist had changed her ADHD medication from Strattera to Concerta.⁶⁹ No additional evaluations were suggested or performed, nor was any classroom data collected between the time the Student enrolled on September 30, 2008 and when the decision for her to be transferred to the Vista program was made on October 16, 2008.

⁶⁸ Ibid, Page 303

⁶⁹ Ibid, Page 71

On October 16, 2008 her therapist noted that she believed the Student would fare better in a more therapeutically intensive program/ALE, such as Vista and that it was unlikely that school based services would address the scope of her needs.⁷⁰ She met with the Student again on October 23, 2008, “who was again camped out in principal’s/admin offices” and recorded that the Student had made no progress towards her ability/willingness to attend classes and appeared to remain inappropriate for the public middle school placement.⁷¹ The justification for her being transferred to an alternative learning environment was not because of particular problems according to testimony from the HS middle school principal, but because she refused to not go to class.⁷² The middle school counselor testified that the Student did not present the District with behavior problems.⁷³ None of the HSS District personnel presented any consistent efforts to encourage the Student to attend class other than the individual efforts of the middle school counselor. The counselor testified that she would “try to encourage her, beg her, talk her into going, walk down with her, get a friend, all of that.”⁷⁴ Her opinion was simply that the Student was upset because she was not being allowed to continue to attend the CCS Turning Points program.⁷⁵

⁷⁰ Ibid, Page 299

⁷¹ Ibid, Page 295

⁷² Transcript, Vol III, Page 153

⁷³ Ibid, Page 159

⁷⁴ Ibid, Page 175

⁷⁵ Ibid, Page 180

On October 16, 2008, the Student's IEP team met to "discuss programming and educational placement" because since being enrolled back in the HSS District on September 30, 2008, she "has refused to go to class and has been sitting in the counselor's office."⁷⁶ The IEP team decided that a referral to the HSS District's ALE, Vista, would be made because they felt that "a smaller setting would be a better educational placement for [her] at this time."⁷⁷ Even though it was referred to as a change in placement by the IEP team the HSS District director of special education denied that to transfer the Student to their ALE program was a change in placement, only a change according to her was where the Student's special education services would be provided.⁷⁸ According to the witness the HSS District also considered the ALE setting as a "regular class" setting where the Student was to receive educational instruction along with same-aged peers in "FACS, science, art, and AR history."⁷⁹ The special education coordinator testified that the exact number of students enrolled in their Vista ALE changes quite often, but that they average about twelve to one in the regular education class setting and that for special education they maintain the same ratio of teacher to student as they do on the main campus.⁸⁰ Even though the Student would be in a classroom with fewer peers than she would be at the middle school campus her special education teacher at the ALE Vista testified that "we still have our basic regular classes, general education."⁸¹

The Student's new IEP for the Vista program was the same as the previous IEP with the

⁷⁶ Parent Binder, Page 67

⁷⁷ Ibid, Page 71

⁷⁸ Transcript, Vol I, Page 154

⁷⁹ Parent Binder, Page 1

⁸⁰ Transcript, Vol I, Page 160-161

⁸¹ Ibid, Vol III, Page 50

exception that the number of minutes for which she would be receiving special education services in reading, math, and written expression would be reduced to 450 minutes per week. Her related services called for group therapy twice weekly for a total of 60 minutes, with individual therapy being reduced to once weekly for 30 minutes. The justification for reducing her specialized instruction for her learning disability was stated as being necessary to accommodate her group and individual therapy time.

In addition to recommending a change in placement for the Student to the HSS District's Vista ALE they were also making it necessary for her to change mental health professionals. The HSS District contracted with a private agency called Therapeutic Family Services (TFS) to provide the mental health services in their Vista ALE.⁸²

On November 17, 2008, the records submitted as evidence indicated that this Student was defiant, knocked over desks, and was disrespectful. A case manager with TFS called in another case manager attempting to de-escalate the situation which resulted in the Student being placed in a "therapeutic hold."⁸³ Her therapist recorded a progress note that stated met she with the Student the same day and inquired as to current stressors to which the Student replied that she wanted to go home. Her therapist noted that the Student "had a history of impulsivity, disruptive and verbally/physically aggressive tendencies with poor communication and social skills – wanting what she wants at all times."⁸⁴ She further noted that she discussed these issues with the Student's teacher. Although she had now been diagnosed with a -----
-----, in addition to her oppositional -----, no indications of how this would be

⁸² Parent Binder, Page 743

⁸³ Ibid, Page 757

addressed in her IEP was attempted. The Student's IEP contained no behavior intervention plan, nor was there any record that a functional analysis of her disruptive behavior was every completed by the HSS District prior to or after transferring her to their Vista ALE.

The Parents contended that the Student received a bruise as a result of the physical restraint applied to her. The Student's mother alleged that the TFS personnel threatened to put her daughter away. She continued to have attendance issues at the Vista program having missed four days for unexcused absences between her enrollment on October 23, 2008, and the first of December 2008. In addition to the incident as recorded above on November 17, 2008, she was given a disciplinary referral on November 19, 2008, for fighting and cursing with another student in the classroom, where she struck the student with her purse. The next day she received another disciplinary referral when she refused to do her work and refused to leave the room when asked. She was apparently escorted from the room, but later returned and "picked [a] guinea pig up off of a desk and tossed it onto another desk," once again being removed from the class.⁸⁵

On December 8, 2008, the Parents once again notified the HSS District that they were removing the Student with the intent to home school her. This time, however, they actually did attempt to provide the education themselves, listing her curriculum as being in math, reading/writing, science, and history. The Student's mother signed the drop notice to the HSS District on December 8, 2008; however, the form was dated at one point as November 24, 2008.⁸⁶

The Student's mother testified that after withdrawing the Student from the HSS District in December 2008 that she "got books and we worked one-on-one."⁸⁷ Her account of how she attempted to home school the Student for the remainder of the school year was:

⁸⁵ Ibid, Page 769-770

⁸⁶ Ibid, Page 773-774

⁸⁷ Transcript, Vol II, Page 241

“I bought one book that was a fourth/fifth grade level, but it was showing English, things that I could teach her about reading, that she was working in...and then my one daughter helped me with the science book..she wrote the questions down for me, because I couldn’t read it all, so she did the questions for me and put answers in the other – in another packet for me, so when [the Student] did the science she wrote down what she thought, you know, I gave her the book and told her to look in the book where the question – where the answer would be, and that’s how I worked with her.”⁸⁸

Although the HSS District has no control over parental decisions to home school children, in this case they failed to adequately assess and provide the Student with an educational program that would have allowed her to at least had a minimal chance to succeed. The failure was most pronounced in not addressing the Student’s behavioral and emotional needs which appear from the record to have been intrinsically embedded in her -----.

The failed attempts by her mental health providers are also evident in the record; however, this due process procedure does not allow for adjudication of their actions.

School Year 2009-2010

⁸⁸ Transcript, Vol II, Page 242

In December 2008 the Student's family had moved from the HSS District into a residence in the FLS District. In July 2009 the Parents approached the special education coordinator for the FLS District to discuss the procedures for enrolling the Student and ----- . The Student's sister, who had assisted her mother with home-schooling, had already been attending the FLS District and was apparently functioning well as a regular education student . The Parents approached the special education coordinator rather than someone else within the FLS District because according to the Student's mother she "explained to her that my children were in Excel, and that when we moved down here [from -----], that my children were taken out of Special Ed and they were having problems, and no one would listen to me about their education."⁸⁹ In actuality only two of her children were removed from special education services. The Student, as noted in the record above, remained entitled and did receive special education services from the HSS District. Her discussion with the special education coordinator also discussed the possible placement of the Student, along with her brothers into the FLS alternative learning environment, also called Excel, and also operated by the same private agency which had previously expelled the Student from their program, sending her back to the public school. The special education coordinator provided the Parents with advise on how to enroll the Student into the district and reported that she attempted to obtain the Student's special education records from the HSS District. The Parents completed enrollment forms with the FLS District middle school on August 5, 2009 which clearly noted that the Student had been a special education student.⁹⁰

⁸⁹ Ibid, Vol IV, Page 148

⁹⁰ Parent Binder, Page 812

Following enrollment into the FLS District and without consideration of the Student's previous evaluations or her IEP from the HSS District, she was immediately referred by the FLS District principal into the district's ALE Excel program. Although the Department requires two reasons for a referral to an alternative learning environment, the referral form signed by the principal included only one – "disruptive behavior."⁹¹ Having come from a non-accredited school and having been recently "home schooled" by the Parents, the FLS District did not attempt to initiate a referral conference or to assess the Student's special education needs. In fact, the director of the ALE, who is also the special education instructor at the ALE, assumed that neither the Student, nor her siblings were eligible for special education services. She acknowledged in testimony that it was not until the day of her testimony, eight months later, that she even knew the Student was eligible for special education services. Further, she testified that she had never seen the records presented as evidence by the FLS District which reflected the Student's previous eligibility and receipt of services.⁹²

Even though the Parents agreed that the FLS District's ALE (Excel) would most likely be the best option for the Student rather than a regular classroom at their middle school, no evidence was presented that indicated an attempt was made on the part of the FLS District to assess the Student for special education services. Why this decision was made by the FLS District without first obtaining all of the previous district's (HSS District) special education information since the Parents were concerned about a learning problem, and without determining if there was a need for a possible referral conference once the Student was officially enrolled, was never testified to as being

⁹¹ Parent Binder, Page 782

⁹² Transcript, Vol IV, Page 165-167

necessary by any of the FLS District personnel, nor as noted above, by the special education teacher assigned to the FLS District's ALE.

The FLS District special education coordinator testified that she did make attempts to obtain the special education documents from the HSS District as well as records from the CCS Turning Points program. She testified that she notified the educational director of the FLS District ALE (Excel) program to inform her of the Parent's registering the Student in the FLS District and their interest in the ALE program. She was aware, but apparently did not inform the ALE special education teacher/director that the Student had been declared eligible for special education services by the HSS District. Even with her awareness of the Student's special education record she did not consider arranging a referral conference once the Student was enrolled in the FLS District. The only record reportedly received that was entered into evidence was a copy of the HSS District's most recent psychoeducational evaluation completed on September 15, 2006. Had the FLS District personnel reviewed the document, even without any additional special education records, they would have seen that the evaluation made it clear that the Student had been deemed eligible for special education due to a learning disability.⁹³

Once enrolled in the FLS District, as noted above, an appointment was arranged for the Student to be referred directly to the FLS District's ALE Program (Excel) by the middle school principal, even though he testified that he did not personally complete the referral form, nor did he recall even seeing the referral form, stating that it was his understanding that the Parents enrolled the Student directly into their ALE and not into his building. Also as noted above only one reason was indicated as the reason for the referral rather than the Department's requirement for at least two

⁹³ Parent Binder, Page 789-797

reasons to be listed.

The ALE administrator/special education teacher, was not present when the Student and her Parents were brought to the ALE campus. She and the only other teacher in the program were out of the state at the time. The intake was conducted on August 19, 2009, not by educators, but by CCS personnel, a social worker and a licensed associate counselor. They apparently had access to the previous CCS program records in that their progress notes reflected diagnoses of both ADHD and oppositional defiant disorder.⁹⁴ They also noted in their intake assessment that the referral agency contact was the ALE educational administrator and that the reason for the referral to the ALE was because the Student had “poor academic performance, ADHD symptoms, truancy, oppositional and disruptive [behavior] at home and school, frequent cursing at peers and authority figures, physical aggression/fighting at home and school...[and that] school records report client daily refused to do her work and presented with a negative attitude when staff tried to assist her with her work.”⁹⁵ They recorded her educational information as “special education” and “learning disability struggles in all subjects; mother reported LD in math and reading..reported she will need modification in all subjects...[and] last grade completed 6th, should be in the 8th .”⁹⁶ This record reflects that the mental health workers assigned to the FLS District ALE were or should have been aware of the Student’s special education history as well as her oppositional defiant behavior and attention problems. Such action and inaction is contrary to the ALE administrator/special education teacher’s comment in testimony that she, the other teacher, and the mental health

⁹⁴ Ibid, Page 291

⁹⁵ Ibid, Page 283

⁹⁶ Ibid, Page 285

providers worked as a team, which would assume the sharing of information regarding the mental health and the special education needs of the Student.

The first day of class on August 24, 2009, the therapy note recorded by the assigned social worker was that the Student “did excellent in group and during her first day...she presented quiet at first but reported being excited to be around peers and staff...she engaged once encouraged by the other girls.”⁹⁷ Two days later on August 26, 2009, her therapist noted that he observed her in the computer classroom along with three other students where the Student “had difficulty understanding instructions and frustrated easily..however, she took feedback well and was able to interact with the teacher and peers respectfully and asked for help appropriately.”⁹⁸ The next day, on August 27, 2009, the same therapist noted that the Student said “that she liked the program and has only had one problem..she got mad at one of the teachers because she required [the Student] to wear headphones on a computer assignment...[the Student] said that she didn’t like to wear headphones because she can’t hear on them and she worries what people are saying around her and thinks that they are talking about her or laughing at her...[and that the Student] reminded [the] therapist that she has a history of hearing/ear problems.”⁹⁹ Four days later he recorded that he advised the Student to “not involve her brother in her drama in the school and that she cease the drama altogether..[and that she] is on the verge of being sent home for her disruptions.”¹⁰⁰ He also recorded that on the same day he discussed the Student’s issues with the ALE coordinator/special

⁹⁷ Ibid, Page 281

⁹⁸ Ibid, Page 277

⁹⁹ Ibid, Page 275

¹⁰⁰ Ibid, Page 269

education teacher who asked him “to isolate [the Student] for today and to make a plan to remediate [sic] in the future.”¹⁰¹

¹⁰¹ Ibid, Page 267

As noted above the ALE coordinator/special education teacher testified that she was not present for the Student's intake evaluation for educational purposes, and even if present did not participate in any of the "mental health intake process" even though she also testified that she, the other teacher, and the mental health staff worked as a team.¹⁰² She further testified that the only time the mental health staff shared mental health issues, such as a diagnosis, with her was when it was affecting what was going on with students in the classroom. Additionally, according to her testimony, she was not aware that in the previous educational program that the Student attended prior to returning to the HSS District was the CCS Turning Points (previously Excel), operated by the same agency from which her mental health team is employed. Nor was she aware that CCS had diagnosed the Student with ----- . At the same time she testified that if such were true that it would be something she would need to know, because it most likely would have a direct carry-over into behaviors in the classroom.

Rather than making an effort to obtain previous testing results or looking at existing evaluations as to the Student's previous educational testing she testified that, as with all students entering the ALE program, she administered a Test of Adult Basic Education (TABE) to determine her level of academic achievement; however, the test data was not entered as part of the due process record by the FLS District, nor was a copy provided to the Parents. She testified that she administers the TABE to all students regardless if they are special education students or not because it helps her determine, based on grade equivalents, the type of curriculum that she needs to use with a student.

By September 10, 2009, less than one month into the new year the Student's therapist

¹⁰² Transcript, Vol V., Page 146

recorded that her oppositional defiant behavior had transferred from provoking other students to provoking the faculty. He stated that the Student's refusal, disruption and lack of focus was her major problem which was keeping her from being successful in the class; however, the mental health providers not being educators made no effort to attempt to explain the possibility that there might be a relationship between the Student's acting out behaviors and her learning disabilities. On September 15, 2009, he reported that she pushed another student out of his seat on the school bus that morning. The next day he observed the Student being quiet in the group and only interacting with one other student, being observed also as laughing when jokes were told. Needless to say she exhibited difficult behaviors for the mental health providers to contend with during the first month of the school year.

The ALE program started the last week of August 2009 and the ALE educational administrator made a note on the Student's referral form that she was dropped from FLS District on September 24, 2009 to be home-schooled by her Parents.¹⁰³ In those nineteen days of school she stated that she did not see any evidence of an attention deficit disorder, recalling only that the Student sought the attention of faculty and staff by exhibiting dramatically disruptive behaviors. She stated on cross examination that she modified the Students curriculum "using lower level things that were easier reading for her..not necessarily because she couldn't do the reading, because she chose not to....the math, I used a series that is geared towards special ed kids, it's called keys to curriculum...and it's an algebra, geometry, math, things that are more simplified, smaller amounts that are easier for kids to digest."¹⁰⁴ Such is further evidence that she was totally unaware of the

¹⁰³ Parent Binder, Page 782

¹⁰⁴ Transcript, Vol IV, Page 186

Student's previous eligibility for special education with specific learning disabilities in numerical operations by the HSS District and in reading and written expression by her previous school district in ----- . Needless to say the intake assessment for a need to be educated in the FLS District's ALE was less than adequate to make an appropriate judgement of educational services that the Student would need in order to succeed.

In spite of the fact that the Student's mother testified that she and her husband both had learning difficulties and could not provide the Student with the necessary educational instruction, they once again elected to withdraw the Student, this time from the FLS District's ALE program, and to educate her themselves in their home. This time, however, they sought out legal council and subsequently submitted a request for a due process hearing.

Between the time the Parents contacted the FLS District in July 2009 and when the Parents decided to withdraw her from the public agency to be home-schooled the FLS District did have the opportunity to obtain all of the Student's educational and therapy records, to conduct a referral conference at the Parent's request, and develop a temporary IEP in order to allow them time to further investigate the Parent's concerns about the Student's learning and behavior problems.

Conclusions of Law and Discussion

Part B of the Individuals with Disabilities Education Act (IDEA) requires states to provide a free, appropriate public education (FAPE) for all children with disabilities between the ages of 3 and 21.¹⁰⁵ The IDEA establishes that the term "child with a disability" means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism,

¹⁰⁵ 20 U.S.C. § 1412(a) and 34 C.F.R. § 300.300(a)

traumatic brain injury, other health impairments, or specific learning disabilities, and who by reason of their disability, need special education and related services.¹⁰⁶

The Department has addressed the responsibilities of each local education agency with regard to addressing the needs of all children with disabilities in its regulations at Section 5.00 of Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education, 2008.

In 1982, the Supreme Court was asked and in so doing provided courts and hearing officers with their interpretation of Congress' intent and meaning in using the term "free appropriate public education." The Supreme Court noted that the following twofold analysis must be made by a court or hearing officer:

- (1). Whether the State (or local educational agency) has complied with the procedures set forth in the Act (IDEA)? and

¹⁰⁶ 20 U.S.C. § 1401(3)(A)

(2). Whether the individualized educational program developed through the Act's procedures is reasonably calculated to enable the student to receive educational benefits?¹⁰⁷

The courts consistently agree that FAPE must be based on the child's unique needs and not on the child's disability.¹⁰⁸ Thus the charge to education professionals is to concentrate on the unique needs of the child rather than a specific disability. It is necessary, therefore to look at the facts in this case as to whether or not the HSS District and subsequently the FLS District concentrated on the unique needs of the Student and not specifically at her disabilities as identified by her Parents, her counselors, her case managers, her physicians, or other healthcare professionals.

In more specifically defining what is meant by FAPE the Supreme Court, in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, held that an educational agency has provided FAPE when it has provided personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction. The Court noted that instruction and services are considered "adequate" if:

- (1). They are provided at public expense and under public supervision and without charge;
- (2). They meet the State's educational standards;
- (3). They approximate the grade levels used in the State's regular education; and

¹⁰⁷ *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

¹⁰⁸ 34 C.F.R. § 300.300(a)(3)

(4). They comport with the student's IEP.¹⁰⁹

The definition of children covered under IDEA is doubly circular. A child with disabilities must be so disabled as to require special education and related services. Special education and related services as noted above are those that meet **the unique needs of a child** with disabilities. Moreover, related services are those that **assist a child to benefit from special education**, which can only be received by a child with disabilities.¹¹⁰ Such related services might include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services may also include school health services and school nurse services, social work services in schools, and parent counseling and training.¹¹¹

¹⁰⁹ *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

¹¹⁰ 20 U.S.C. § 1400©

¹¹¹ 34 C.F.R. § 300.34(a)

As noted above FAPE is defined as special education and related services that are provided at public expense, under public supervision and direction, and without charge, **which meet the standards set forth by the Department.** Consequently, a hearing officer must look at the issue to determine whether or not a district has been compliant with that definition and whether or not any single violation or the accumulation of violations are severe enough to constitute a denial of FAPE. The educational document that must contain how a district will be in compliance with those standards and the document that defines what specifically designed instructions are to be implemented to meet the unique needs of a student is the Individual Education Plan (IEP). The Supreme Court as noted in the Rowley case opined that an IEP must be considered appropriate if it is “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.”¹¹² In an administrative due process hearing, the petitioner has the burden of proving the essential elements of its claim.¹¹³ The Parents in the instant case bore such burden.

The first issue of compliance for the HSS District is whether or not they met the Department’s standards with regard to providing FAPE for the Student when she entered their district for school year 2006-07.¹¹⁴ The Department in adopting the IDEA standards has outlined the responsibilities for a district to follow when a special education student enters their district with an IEP from another district or state. That standard reads that:

“if a child with a disability (who had an IEP that was in effect in a previous public

¹¹² *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982)

¹¹³ *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed 2d 387]

¹¹⁴ The reader is referred to the argument by the HSS District and the Hearing Officer’s response to the challenge and motion to dismiss that the 2006-07 school year went beyond the statute of limitations for redress.

agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (**including services comparable to those described in the child's IEP from the previous public agency**, until the new public agency) -

- A. Conducts an evaluation pursuant to 34 CFR 300-304 through 300-306 (if determined to be necessary by the new public agency); and -
- B. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR 300-320 through 300-324.”¹¹⁵

In this case the Student's IEP developed by her previous school outlined her special education needs to assist her with specific learning disabilities in reading, math, and written expression. They anticipated that when she returned to their district for school year 2006-07 that she would need far more time in receipt of specialized instruction than what the HSS District provided for her in their temporary IEP. Thus the evidence and testimony presented in the course of the hearing reflects that the HSS District failed to follow the standards of the Department by not implementing and providing the Student with a comparable IEP. The temporary IEP did not address any health or behavior issues brought to their attention by the Parents, which were also addressed in her previous IEP. At the same time, for school year 2006-07, it was not shown that the HSS District did not make a concerted effort based on the limited evaluation process conducted by their examiner to offer the Student with at least a minimal opportunity to succeed. Had that

¹¹⁵ *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education, 2008, Section 8.03.4.1

evaluation been more comprehensive the outcome of the Student's subsequent school years might have been different for everyone.

From the testimony elicited in the course of the hearing in general it became clear that neither the HSS District personnel, nor subsequently the FLS District personnel, had a good handle on the specific and unique educational needs of the Student. The issues she presented to both school districts was obviously clouded by the perceptions and difficulties presented to them by the Parents who were quite concerned with how the Student was being treated by all individuals involved in her education and mental health therapies. The HSS District did evaluate and consider her previous school's assessment of the possibility of there existing a specific learning disability and concluded that she indeed did demonstrate a specific learning disability in numerical operations; however, the data from which their conclusions were drawn are highly questionable as to being relevant to the current academic achievement level of the Student. The HSS District never considered even a year later to assess the Student for a serious emotional disorder or an attention deficit disorder as was diagnosed by her mental health care providers while attending school within the HSS District.

The HSS District, and subsequently the FLS District, relied only on the behavioral assessments and opinions provided by the Parents, rather than gathering additional data from the other professionals working with the Student and the family. They elected to base their decisions on this limited information rather than formerly and judicially making their own assessment by their own professionals to determine the possible existence of any other disability category which might help explain the Student's difficulties that she had been experiencing in their education environment and develop a more appropriate IEP.

Although the school year 2006-07 may have been outside the statute of limitations for which

the Parents could seek redress, the decisions reached by the HSS District, and subsequently by the FLS District, made at that time led to the decisions by both the districts and the Parents with regard to options for educating the Student.

The evaluation conducted by the HSS District did show that the Student was eligible under the Department's standards for students to receive special education in that the data supported the existence of a specific learning disability. The HSS District did attempt to address not only the identified disability, but also the other disabilities as recorded by the previous district. Thus it can be effectively argued that the HSS District provided at least a base of instruction from which the Student could have achieved some success in her academic endeavors. The HSS District did not however take into consideration any other issues such as health impairments which might also have contributed to her learning difficulties.

Since the Student was not adapting well to the regular classroom setting she was referred to a non-accredited school operated by an organization who advertised themselves as being a non-traditional school for students who had difficulty adapting to a regular school environment. At the same time the HSS District had available for the Student their own ALE which was accredited and offered the same therapeutic environment, and to which one year later she was referred. Had the HSS District's alternative learning environment been made available the previous year it may have allowed her access to more one-on-one instruction as well as counseling for her and her Parents.

By assisting and possibly encouraging a transfer to a non-accredited program was not in and of itself a violation of FAPE according to the federal and state guidelines; however, the failure to make sure the Parents and the Student were fully informed about the potential consequences of their choice appears in the record and testimony as a failure in ethics for which there is no redress under the IDEA.

Subsequent testing by the private agency to which the Student was transferred for educational and psychological services indicated the possibility of the existence of not only a serious emotional disorders (oppositional defiant disorder and major depressive disorder), but also with a diagnosis of an attention deficit disorder as defined by the mental health diagnostic manual (DSM-IV).

The Office of Special Education has responded to numerous inquiries regarding the use of the DSM-IV as a means of addressing eligibility for services under IDEA. Their response has been consistent in that a diagnosis under DSM-IV, as provided in this case by the physician of the private agency to which the Student was assigned for home-schooling, does not guarantee eligibility under the IDEA.¹¹⁶ These diagnoses were not available at the time the Student first entered the HSS District; but were available when she re-enrolled and also when she enrolled into the FLS District.

The HSS District's decision to not fully inform the Student and Parents of the consequences of removing the Student from their district, and for her to be "home-schooled" by a private agency, and later by the Parents themselves, was not in and of itself a violation of IDEA. However, the failure to implement the existing IEP in 2006-07 and to provide a comprehensive evaluation to include formal classroom assessments of the Student's behavior and to assess for the possibility of either an attention deficit disorder or a serious emotional disorder, was a failure to provide FAPE, not only for the school year in which she entered the HSS District, but subsequent years when she returned to the HSS District. The FLS District even more blatantly disregarded the due process accorded students with disabilities when she entered their district. This action was even more surprising given that the alternative learning environment to which she was transferred was directed

¹¹⁶ *Letter to Coe*, Office of Special Education Programs, 32 IDELR 204, September 13, 1999

by someone with special education training.

The Rowley case, as noted above, addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. In that case the Court determined that a student's IEP be reasonably calculated to provide him or her with **some** educational benefit; however, the Court also stated that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services to maximize a student's abilities.¹¹⁷ The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to **specialized instructional and related services** which are individually designed to provide educational benefit to the student.¹¹⁸ The evidence presented in this case adequately demonstrated that the Student was denied both specialized instruction in a setting consistent with the previous school for addressing her disabilities when she entered the HSS District. Even the program to which she was transferred did not adequately address the behavior issues for which she was transferred. They did however, according to their own records, provide her with an opportunity to achieve academically. This assumption is being made solely on the grades she was given by this non-accredited educational program rather than any comparative achievement testing.

¹¹⁷ *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200, 102 S.C. 3034 (1982), at 198 - 200.

¹¹⁸ *Ibid* at 201.

The Supreme Court in the Rowley case recognized the importance of adherence to the procedural requirements of the IDEA.¹¹⁹ The analysis of whether a student has been provided a FAPE, as noted above, is twofold. In this case it must be decided as to whether the procedural safeguards of the IDEA have been satisfied and whether the FAPE offered was substantively appropriate. According to the evidence presented and the testimony given the Student had a need for not only specialized instruction for specific learning disabilities, but for her and her parents to have qualified psychological services in order for her to receive a basic floor of opportunity to succeed. It cannot be said by the evidence presented that either of the alternative learning environments to which she was assigned for mental health services were successful in addressing her psychological and behavioral needs.

Contrary to the assessment results and opinions of the HSS District, the evidence presented regarding her educational needs were not adequately evaluated and thus inconsistent with the development of an appropriate IEP. Therefore, the evidence shows that not only was there a denial of FAPE by the HSS District for the year she became their educational responsibility, but the two subsequent years she lived within the district.

For the FLS District to have accepted only the evaluation provided them by the HSS District in deciding, without interview or further assessment by education professionals, prior to the Student being transferred to their ALE is also a reflection of dereliction of responsibility in not considering the unique needs of the Student in determining the best course of action to take with regard to providing her an appropriate educational opportunity, thus a denial of FAPE according to the IDEA. **Order**

¹¹⁹ Ibid at 205

The Parents have introduced sufficient evidence in the record to reflect that the decisions made by both the HSS District and the FLS District on being approached with the challenge to meet the educational needs of the Student contributed to the production of there being an adverse affect on her educational progress. Those decisions do not appear to have been intentional or malicious, but rather the accumulatively basis of first impression – that being that the Student’s failure to succeed in the regular education environment and subsequently in two different alternative learning environments, was more related to her stubbornness, her dramatic needs for attention, and her families support and promotion of her defiant behaviors. Both districts have acquiesced in responding to the demands of the Student’s extremely concerned, overly zealous parents with limited skills themselves. The immediate and subsequent failures to address and appropriately assess all of the Student’s needs on entering the HSS District, and then the FLS District, proved to be decisions which contributed to the Student’s failure to receive FAPE. Unfortunately these decision were made not only by the two districts, but also by the private agencies involved in this saga, as well the decisions made by her parents under their guidance.

In order to compensate the Student with what has not been provided as an appropriate education it is hereby ordered that:

1. The financial and administrative resources of both the HSS District and the FLS District will be equally utilized to provide the Student with a comprehensive evaluation which will include an assessment of any emotional disorders, attention problems, as well as any learning deficits as defined by the Department which may allow her to benefit from special education services.

2. The comprehensive evaluation as ordered in (1) above will be conducted by examiners that the Parents, in coordination with their council, agree are appropriate to conduct the examinations, which can be those typically contracted with by the districts or independent

evaluators.

3. The comprehensive evaluation as ordered in (1) above will be completed no later than August 1, 2010.

4. Upon completion of the evaluation as ordered in (1) above and no later than August 15, 2010 both the HSS District and the FLS District special education coordinators will assemble an appropriate IEP team, to include the examiners contributing to the evaluation, to consider the results of the evaluation and to develop an IEP if indicated by the results of the evaluation.

5. Between the date of this order and the completion of item (4) above, the HSS District and the FLS District will jointly provide the Student with opportunities and number of hours as deemed agreeable to by the Parents for compensatory educational opportunities consistent with the known levels of educational functioning. The specific educational opportunities are not being ordered; however, the amount of time to be offered will be no less than four (4) hours per week until item (4) above is completed.

Finality of Order and Right to Appeal

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall file a civil action in either federal district court or a state court of competent jurisdiction pursuant to the Individuals with Disabilities Education Act within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

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

It is so ordered.

Robert B. Doyle, Ph.D.
Hearing Officer

June 21, 2010

Date