KENTUCKY DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND EARLY LEARNING AGENCY
AGENCY CASE NO. 2425-13
BEFORE THE EXCEPTIONAL CHILD APPEALS BOARD (ECAB)

[redacted] PETITIONER/APPELLANT

v. **FINAL DECISION AND ORDER**

[redacted] SCHOOLS RESPONDENT/APPELLEE

I. BACKGROUND AND PROCEDURAL HISTORY

This case concerns a first-grade student who qualified for special education services under the category of speech. Student contended that School should have suspected that Student also had a behavioral-related disability and evaluated him for such, and should have designed an IEP with social and behavioral goals. Failure to do so, Student contended, resulted in a Child Find violation and denial of FAPE. Student also alleged that School "removed" Student from general education placement in connection with misbehavior, which Student characterized as failure to properly implement the speech/language IEP. Student further alleged procedural violations.

A Due Process Complaint was filed on Student's behalf on November 14, 2024. By Order entered February 12, 2025, the Hearing Officer specified the four (4) issues which had been identified for the Due Process Hearing:

1. Whether Respondent failed or failed to timely evaluate Student for disabilities other than speech/language.
2. Whether Respondent should have designed an IEP that included goals, modifications, and supports in the social/emotional area or health areas.
3. Whether Respondent failed to properly implement an IEP placement in general education by removing him from the general education environment or, alternatively, whether placement in the general education environment itself was inappropriate.
4. Whether the following occurred and constituted procedural violations resulting denial of FAPE:

a. The absence of his regular general education teacher at the August 30, 2024 ARC Meeting.
b. Failure to give proper notice of the 8/30/24 ARC meeting.
c. Failure to properly consider communicated parental concerns and opinions about behaviors and evaluations and/or convene an ARC to discuss them.
d. Predetermination of the 8/30/24 ARC decision moving student from resources to general education.

The in-person Administrative Due Process Hearing took place on April 14-16, 2025. Present at the Hearing were the [redacted], Counsel for Petitioner, and the [redacted] Counsel for the Respondent. Also present were: Mike Wilson, Hearing Officer; [redacted], Mother of the Petitioner; [redacted], Father of the Petitioner; and [redacted] Director of Special Education for [redacted] Schools. Eleven (11) witnesses offered testimony and were examined by the parties: [redacted] (Student's Mother), [redacted] (Superintendent [redacted] Schools), [redacted] (Student's kindergarten teacher / Assistant Principal), [redacted] (SpEd teacher), [redacted] (Principal), [redacted] (SpEd teacher), [redacted] (Student's Father), [redacted] (Student's Maternal Grandmother), [redacted] (Speech Language Pathologist), [redacted] (First Grade Teacher), [redacted] (Director of Special Education).

A number of Exhibits were offered by both parties and admitted as follows: Joint Exhibits 1-33 and Petitioner's Exhibits. The Hearing was conducted pursuant to 34 CFR Part KRS 13B and 707 KAR 1:340. The parties filed post-hearing briefs.

The Hearing Officer entered Findings of Fact, Conclusions of Law and a Final Decision/ Order on July 5, 2025. The Hearing Officer found that the Respondent did not violate any provision of IDEA and that Petitioner was not entitled to relief. Specifically, the Hearing Officer held:

1. School did not fail or fail to timely evaluate Student for disabilities other than speech/language.
2. Petitioner did not prove that Respondent should have designed an IEP that included goals, modifications, and support in the social/emotional area or health areas.
3. Petitioner did not prove Respondent failed to properly implement an IEP placement in general education by removing Student from the general education environment or, alternatively, whether placement in the general education environment itself was inappropriate.
4. School did not commit any procedural violations:
    a. School complied with 707 KAR 1:320.
    b. Parent waived the formal 7-day written notice for the August 30, 2024 ARC meeting; alternatively, no substantive harm resulted from any notice deficiency.
    c. Petitioner did not prove Respondent did not consider communicated parental concerns and opinions and evaluations or should have convened an ARC to discuss them.
    d. Petitioner did not prove predetermination of the 8/30/24 ARC decision moving student from resources to general education.

Petitioner filed a timely appeal to the Exceptional Child Appeals Board (ECAB) on or about August 1, 2025. The matter was assigned to the ECAB consisting of Hon. Kathleen Schoen, Chair; Hon. Kim Hunt Price; and Hon. Janet K. Maxwell-Wickett on August 7, 2025. A telephonic conference was held, with counsel for both parties participating, on Friday, August 15, 2025, and a briefing schedule was entered. Both parties filed briefs.

II. ISSUES RAISED ON APPEAL

The Petitioner-Appellant alleged the following errors:

1. The Hearing Officer erred in finding that the School did not fail to timely evaluate Student for disabilities other than speech/language.

2. The Hearing Officer erred in finding that Petitioner did not prove that Respondent should have designed an IEP that included goals, modifications, and supports in the social/emotional area or health areas.

3. The Hearing Officer erred in finding that Petitioner did not prove Respondent failed to properly implement an IEP placement in general education by removing student from the general education environment, or alternatively, whether placement in the general education environment itself was inappropriate.

4. The Hearing Officer erred in finding that School did not commit any procedural violations.

5. The Hearing Officer erred in finding that Petitioner is not entitled to any relief.

III. PRELIMINARY ISSUES

A. JURISDICTION BEFORE THE EXCEPTIONAL CHILDREN APPEALS BOARD

This is an appeal of a hearing officer's decision as permitted by 707 KAR 1:340 Section 12, which provides:

> (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal, within thirty (30) days of the date of the hearing officer's decision.

Student's appeal was timely filed.

B. ECAB IMPARTIALLY REVIEWS THE RECORD DE NOVO AND MAKES AN INDEPENDENT DECISION

Where a state has established a two-tier administrative process, the appellate review is to be conducted pursuant to 20 U.S.C. § 1415(g). Kentucky has adopted such a two-tier system. See 707 KAR 1:340 § 12. ECAB is required to "conduct an impartial review" of a hearing decision and "make an independent decision upon completion of such review." 20 U.S.C. § 1415(g)(2). ECAB reviews the record de novo and can make fact-findings it deems necessary to address legal issues raised on appeal.

34 CFR § 300.514(b)(2) provides that the appellate panel is to examine the entire hearing record before making its independent decision. The appeals panel owes no deference to the

Hearing Decision except where such Decision relates to the credibility of witnesses. *500 Associates, Inc. v. Natural Resources and Environmental Protection Cabinet*, 204 S.W. 3d 121, 131-132 (Ky. App. 2006). The only limitation on the de novo review is that ECAB must give deference to a hearing officer's fact findings based on credibility judgments "unless non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion." *Carlisle Area School District v. Scott P.*, 62 F.3d 520, (3d Cir. 1995). Such deference applies only to those situations involving record-supported credibility determinations. *Id.* at 529.

Further, the ECAB panel may make fact findings contrary to those of the Hearing Officer as long as the ECAB's fact findings are supported by substantial evidence in the record and not based upon different views about credibility of witness testimony. *Id.* at p 529. The existence of conflicting testimony does not necessarily mean that any particular finding of fact was implicitly a credibility determination by the Hearing Officer rather than differences in overall judgment as to proper inferences. *Id.* at p 529.

C. STUDENT BEARS THE BURDEN OF PROOF

The Student (Appellant), who requested the hearing, bears the burden of proving entitlement to relief by a preponderance of the evidence. In this case, the Student bears the ultimate burden of persuasion on the elements of the Student's claims. *Schaffer v. Weast*, 546 U.S. 49, 57-58 (2005); KRS 13B.090. *See also*, *City of Louisville, Div. of Fire v. Fire Serv. Managers Ass'n by and Through Kaelin*, 212 S.W.3d 89, 95 (Ky. 2006) providing, "The party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought." KRS 13B.090(7). The Student must "bear the burden by

proving by a preponderance of the evidence" that the local school district violated the IDEA. *Doe v. Bd. of Educ. of Tullahoma City Schools*, 9 F. 3d 455, 458 (6th Cir. 1993).

IV. FACT FINDINGS

The ECAB has reviewed the Hearing Officer's findings of fact and has generally accepted them as determined by the Hearing Officer, as they are well supported by the testimony and documentary evidence contained within the hearing record.

Student qualified for special education in the category of speech/language. Except for the August 30, 2024 IEP, which was never implemented because the Student stopped attending [redacted], all of Student's IEPs placed Student in the general education classroom setting except for delivery of individualized speech instruction in the resource room. Student has had four IEPs in two counties between Spring 2022 and August 30, 2024, none of which have had behavioral goals, and all of which have focused exclusively on speech. See JT EX 4, 9, 12, and 29.

Student received speech services at [redacted] as a three-year-old, then was enrolled in [redacted] as a full-day preschool student in the Fall of 2022. There were a couple instances of elopement. In an email to the DoSE dated September 19, 2022, Parent reported that Student's anxiety was triggered during pickup and drop-off. JT EX 5. An ARC was convened on September 29, 2022, to discussed Parent's concerns. A plan was developed to implement new interventions. Neither Parent nor School suggested that an evaluation for behavioral disability should be undertaken at this time.

On October 10, 2022, Parent sent an email to the DoSE asking for a full evaluation, then 45 minutes later emailed withdrawing that request. JX 0054. See also HT1, p. 42, 53. Days later, Parent withdrew Student from [redacted] and enrolled Student in [redacted] preschool

on October 17, 2022, with no substantial change to Student's IEP. Neither the original [redacted] IEP nor the [redacted] IEP addressed behaviors or issues other than speech language services. Student did well at [redacted] Preschool. Parent had no behavior concerns for the 2022-'23 school year at [redacted] Preschool.

Student returned to [redacted] for kindergarten for the 2023-'24 school year but enrolled at [redacted] rather than [redacted]. At a November 30, 2023 ARC meeting, Parent expressed concerns about Student's recent behaviors at home. However, no teachers or other school personnel expressed any concern with Student's behaviors at school. JT EX 13. Teachers at [redacted] did not observe behaviors from the Student that the Parent observed at home and expressed concerns about. HT1, p. 155-156, 158-162, 167, 169-170. The kindergarten teacher, [redacted], testified that Student had no adjustment issues any different than all of her students, presented no peer interaction concerns, that she knew of no instances of Student not wanting to come to school or to her classroom, and that Student did not present in school the concerning behaviors Parent reported seeing at home. HT2, p. 147-150; 154-157. The Student's social-emotional status was commensurate with same-aged peers and Student did not, in the kindergarten teacher's opinion, need behavioral interventions different than his same-age peers. HT2, p. 153-154. There were no special educational or behavioral supports given to Student. From the time Student began preschool in [redacted] on October 17, 2022, until the completion of kindergarten at [redacted] in May of 2024, Student exhibited no significant behaviors or anxiety at school.

Parent asked [redacted] to assign Student to a first-grade teacher who had a structured classroom for first grade. HT1, p. 23, 60. [redacted] assigned Student to first-grade teacher [redacted]

[redacted], who, like the kindergarten teacher, also utilized structure in a similar manner. HT2, p. 169-170.

Student began having anxiety about going to school during the second week of the fall semester of first grade. Student was absent on Friday, August 23, 2024. Student's first-grade teacher noticed a change in Student's attitude the week of August 26, 2024. On Monday, August 26, 2024, Student had pickup and drop-off issues and would not get out of the car. However, once he was in school, he "played with friends, and seemed as happy as can be." See text exchanges JX 0166-0169.

On August 26, 2024, Parent requested a meeting to discuss concerns. Later that day, School confirmed an ARC would be scheduled. Parent thought that Student needed a different first-grade teacher because Student's friends were in the other first-grade classroom. Parent was also concerned that Student was "walking laps" during recess for punishment. However, the "walking laps" was actually the teacher, [redacted], asking students to take a walk for a minute or two during recess to reflect on the choice that led to misbehavior. This was something that [redacted] did with other students as well. HT3, p. 31-32.

Student did not want to come to school on August 27, 2024, but did so and attended class. However, the next school day, August 28, was tumultuous and involved unprecedented behaviors from the Student. Student was staying in the office and refusing to go to class. HT1, p. 27. Student was also throwing things and taking things off the wall. Id.

The following day, August 29, 2024, Student's father carried Student into the school because Student would not enter voluntarily. Student again refused to go to the classroom. Student hit staff and was restrained. HT1, p. 35-39. Student's destruction of property and violence toward staff were behaviors that had not occurred in a school setting during preschool or kindergarten.

HT1, p. 91-93. Video footage of Student's behavior on August 28th and 29th was included in the record under seal.

While Student's classroom teacher at the start of first grade in August 2024 was [redacted], Student's first-grade teacher was to be changed to [redacted] effective August 29, 2024. This change was made at Parent's request because Parent believed that Student's friends from kindergarten were mostly in [redacted] room instead of [redacted] room. HT1, pp. 29, 65, 101, 105, 110, P045. Parent met with Student's former kindergarten teacher, [redacted], now assistant principal [redacted], on August 26, 2024, to discuss changing Student to [redacted] classroom. While the change was to be effective August 29, 2024, [redacted] was ill on that date, and a substitute teacher was there in her place. This was contrary to what Student expected on August 29th and could have contributed to Student's unwillingness to be in Student's new classroom on that day and to Student's destruction of property and aggression towards staff. HT1, p. 107-108.

An ARC previously scheduled for September 4, 2024, was, on August 28, 2024, moved up to August 30, 2024, at the request of the Parent, which made a formal 7-day notice impossible. See HT1, p. 97-98. Parent was aware of who was invited to the August 30, 2024 ARC and that Student's original first-grade teacher, [redacted], had not been invited. See HT1, p. 110. Parent did not request that [redacted] attend the August 30, 2024 ARC, and there was no proof that [redacted] absence adversely impacted the ARC meeting or was necessary. None of Student's serious behaviors during the beginning of the 2024-2025 school year occurred in [redacted] classroom. HT1, pp. 112-113. Student's then-current teacher, [redacted], attended the August 30, 2024 ARC.

The ARC agreed on August 30, 2024, to evaluate Student in the area of social and emotional development because the changes exhibited in Student's behaviors were now potentially impeding Student's learning or the learning of others. According to Parent, Student was diagnosed with ADHD, anxiety, and attachment dysregulation in September 2024. However, he had not had any diagnosis prior to that date.

After meeting with School on September 6, 2024, concerning the events of August 28-29, 2024, Parents disenrolled Student from [redacted] Schools. Student currently attends a virtual academy through the [redacted].

V. CONCLUSIONS OF LAW AS TO ISSUES ON APPEAL

ISSUE 1: THE HEARING OFFICER CORRECTLY FOUND THAT THE DISTRICT DID NOT FAIL TO TIMELY EVALUATE THE STUDENT FOR DISABILITIES OTHER THAN SPEECH LANGUAGE IMPAIRMENT.

Parents allege that the Hearing Officer erred when he determined that the District complied with its Child Find obligation during the time period at issue. The IDEA requires that the State have in effect policies and procedures to ensure that all children with disabilities residing in the State who are in need of special education and related services are identified, located and evaluated. 34 C.F.R. § 300.111(a)(1). The Student qualifies for special education and related services under the disability category of speech language impairment. (FF[1] #1.) Parents allege that the District failed to identify and evaluate the Student as a student in need of special education and related services related to behavioral deficits. While the Student was enrolled in the District for preschool, in Fall 2022, Parent expressed that the Student experienced anxiety during school pick-ups and drop-offs and reported that outside of school, the Student would elope in response to anxiety. Parent expressed these concerns to the District. Other than one instance of elopement at

[1] "FF" refers to the Hearing Officer's Findings of Fact.

school during delivery of speech language services, District personnel did not witness the anxiety and elopement that Parent related. (FF # 3, 6-7.) In response to Parent concerns, the Admissions and Release Committee (ARC) convened on September 29, 2022, and agreed to attempt behavioral interventions for one month, collect data, and then reconvene on October 27, 2022, to review the data. (FF # 12.) On October 10, 2022, Parent sent an email to the DoSE requesting a full evaluation, then forty-five minutes (45) later, emailed withdrawing that request. (FF # 13.) Parents then withdrew the Student from the District and enrolled him in another school district on October 17, 2022. (FF # 14.) During Fall 2022, the Student made progress on his speech language goals and progressed academically prior to being withdrawn from the District. (FF #15-16.) The school district to which the Student was transferred by Parents did not make any substantial changes to the Student's IEP. (FF #17.)

Based upon the testimony and documentary evidence presented at hearing, and the findings of fact of the Hearing Officer, which are well supported by the hearing record, the District, at all times during Fall 2022, provided the Student with a free and appropriate public education (FAPE). The behaviors of concern to Parents were not present at school, and the Student made progress academically and toward his speech language goals. Although the concerning behaviors were not present at school, the District responded to Parents' concerns – convening an ARC meeting and agreeing to provide interventions and collect data. The District could not complete these initiatives, as Parents withdrew the Student from the District. Parents' allegations that the District denied the Student a FAPE are without merit and are unsupported by the hearing record.

The Student returned to the District in Fall 2023 having successfully completed preschool in another school district without behavioral issues and without the need for behavioral interventions and supports other than those supports utilized with all general education students.

(FF # 6, 17-20.) The Student successfully completed kindergarten in the District without the need for behavioral interventions other than those implemented with all general education students. At the conclusion of kindergarten in spring 2024, there was no reason for the District to suspect the Student had a disability which required special education and related services for behavioral deficits. (FF # 22-23.)

At the beginning of the 2024-2025, school year, on August 28 and 29, 2024, the Student displayed unprecedented behaviors in the school setting – refusing to enter the school building, refusing to go to class, hitting staff, and destroying school property. (FF # 37-38.) The District responded by moving up the previously scheduled September 4, 2024, ARC meeting date to August 30, 2024, to address the behavioral concerns. (FF # 41.) At the August 30, 2024, ARC meeting, the team recommended evaluation of the Student in the area of social emotional development. (FF # 45.) The Parents disenrolled the Student from the District on September 6, 2024. (FF #47.)

Child Find extends to children "who are suspected of [having] ... a disability ... and in need of special education, even though they are advancing from grade to grade." 34 C.F.R. § 300.111(c)(1); *accord Bd. of Educ. of Fayette Cnty., Ky. v. L.M.,* 478 F.3d 307, 313 (6th Cir. 2007); *Taylor v. Altoona Area Sch. Dist.,* 737 F. Supp. 2d 474, 484 (W.D. Pa. 2010). Child Find does not demand that schools conduct a formal evaluation of every struggling student. *See, e.g., J.S. v. Scarsdale Union Free Sch. Dist.,* 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011) ("The IDEA's child find provisions do not require district courts to evaluate as potentially 'disabled' any child who is having academic difficulties."). A school's failure to diagnose a disability at the earliest possible moment is not *per se* actionable. *A.P. ex rel. Powers v. Woodstock Bd. of Educ.,* 572 F. Supp. 2d 221, 226 (D. Conn. 2008).

A School District is not required to jump to the conclusion that student misbehavior denotes a disability or disorder because hyperactivity, difficulty following instructions, and tantrums are not atypical during early primary school years. *See L.M.,* 478 F.3d at 314 (finding no violation where witnesses testified that the student's "difficulties would not necessarily indicate a disability or a need for special education, and that it would be inappropriate to rush to identify a child that young as disabled"); *id.* (noting that "[s]chool personnel ... testified that [the student's] behavioral and learning problems were not atypical of immature young boys").

As the Hearing Officer appropriately notes, *DK v. Abington School District,* 696 F.3d 233 (3d Cir. 2012), cited by Parents, in which the court concluded that the school district violated child find by failing to initiate an evaluation after repeated parental reports of behavioral problems, reflects that the student's concerning behaviors occurred at school. *Id. Department of Education v. Cari Rae S.*, 158 F. Supp. 2d 1190 (D. Haw. 2001) found that the district's delay in evaluating the student deprived her of a free and appropriate public education (FAPE) – however, in that case, the student had 79 absences during the school year and multiple behavioral referrals at school, over multiple school years. These cases are not analogous to the instant matter. There exists no statutory or regulatory requirement under the IDEA for a school district to identify and evaluate a student for a behavioral disability based upon out-of-school behaviors that are not manifesting at school and which are not interfering with the student's ability to receive an education.

The testimony and documentary evidence introduced at the hearing illustrate that the Student did not display behavioral difficulties in the school setting until August 28 and 29, 2024. In response, the scheduled ARC meeting date was advanced to August 30th and the team agreed to evaluate the Student in the social emotional domain. At all times at question, the District met its child find obligation and provided the Student with a free and appropriate public education

(FAPE). Parents' allegations to the contrary are without merit. The Hearing Officer correctly determined same.

ISSUE 2: THE HEARING OFFICER CORRECTLY FOUND THAT THE STUDENT DID NOT REQUIRE AN IEP THAT INCLUDED GOALS, MODIFICATIONS, AND SUPPORTS IN THE SOCIAL EMOTIONAL OR HEALTH AREAS.

The Student's disability category is Speech Language Impairment. (FF #1.) The Student had Individualized Education Programs (IEPs) in two school districts between Spring 2022 and August 2024, none of which had behavioral goals. (FF #6.) The Hearing Officer correctly determined that the Student's behavioral difficulties were similar to those displayed by his same age, non-disabled peers and did not require further evaluation by the District or interventions beyond those used for all same age, general education students. Prior to two days, during the last week in August 2024, the Student had successfully completed two years of school without social emotional goals, modifications, or supports. (FF # 6-17, 21-24, 26, 28-29.) As the Student was correctly identified as a student who did not require social emotional goals and behavior supports, beyond those required by his same age, non-disabled peers, his IEPs did not require the inclusion of such goals, modifications, and supports. (FF # 6-17, 21-24, 26, 28-29.) The Student displayed two days of behavioral difficulties in the last week of August 2024, before Parents removed him from the District. (FF #33-38, 45-47.) The Student was making progress in the general education setting, was advancing from grade to grade, and was meeting the speech language goals set forth in his IEP. No evidence was presented to support Parents' contention that modifications to his IEP were required to address behavioral difficulties, and the Hearing Officer correctly determined same.

ISSUE 3: THE HEARING OFFICER CORRECTLY FOUND THAT RESPONDENT SCHOOL DISTRICT DID NOT FAIL TO PROPERLY IMPLEMENT THE IEP PLACEMENT IN GENERAL EDUCATION BY REMOVING STUDENT FROM THE GENERAL EDUCATION ENVIRONMENT.

The IEP in place during the 2024-2025 school year called for Student's placement in the general education environment, with speech services to be delivered in the resource room. JX 0082-0089. Appellant alleges that Student was "removed" from this placement multiple times. (Appellant's Brief, p. 17). Appellant alleges that this occurred when Student was "removed from his non-disabled peers to walk laps during the recess period"; "removed from his non-disabled peers to be isolated and restrained"; and "removed from the general education environment to go into a resource room with special education teachers [redacted] and [redacted], without any advance notice to Student's parents and outside of an ARC." Id. Appellant alleges that these removals "caused a lack of speech services, which was again, the only reason he had the IEP." Id.

What Appellant refers to as "walking laps" was actually Student being asked by [redacted] to take a walk during recess to reflect on his actions and choices. This occurred on the recess grounds during which, for a few minutes, Student could not play with other children around him. This reflective period was something that first-grade teacher [redacted] did with other students as well. (HT3, p. 31-32). This did not constitute an unauthorized removal from the general education environment.

On August 28-29, 2024, Student refused to go to class or to the speech room. Therefore, the speech services provider could not give Student speech services on the 29th. Student withdrew from School before this speech session could be rescheduled. During the 20 school days in August, Student attended only 11 days and then withdrew from [redacted] Therefore, the speech therapist was unable to deliver all the scheduled speech sessions. HT1, p. 70-71, 198. This is insufficient to constitute failure to implement the IEP.

Placement in the general education setting with pull-out for speech services was appropriate and had been successful until the events in late August 2024. There was not evidence that Parent or anyone, prior to that date, thought placement in general education was inappropriate.

Regarding the events of August 28-29, 2024, [redacted] testified that she went to talk to Student in the office on August 28th to try to convince Student to go back to his classroom. He was sitting on the secretary's counter and did not want to go to class. He played basketball for a short time after asking to do so (HT2 pp. 15-16).

On August 29, 2024, there was a substitute teacher for [redacted], who was to be Student's new teacher. [redacted] was called to assist the substitute teacher with Student. [redacted] suggested Student take a break and started walking with him. Student eventually ran towards the office. Student then came to [redacted] / [redacted] classroom[2] and stated that he did not want to go back to his classroom. (HT2 p. 18). [redacted] and [redacted] tried to encourage Student to return to his classroom and eat lunch with his class, but Student did not want to return to his classroom and ended up staying in [redacted] / [redacted] room for the duration of the day and played with puzzles and blocks. (HT2 pp. 19, 26). Student did run out of the room at the end of the day and wanted to stay out in the hallway when it was time for Parent to pick up. (HT2 pp. 21-23). The Student struck [redacted] in the back, and [redacted] led Student by the hand to sit in a chair.

The Appellant did not identify any punitive behavior interventions, missed classes, seclusion, restraint, etc., on any days other than one instance of walking laps at recess and two days (8/28 and 8/29) on which the student refused to go to his scheduled classes or speech therapy. Student's mother admitted she had no reason to believe he had ever been removed from class on

[2] [redacted] and [redacted] share a resource room.

any day prior to August 28, and she had no reason to believe he had been made to walk laps more than one time. HT1, pp. 180-182.

Even if these incidents were deemed involuntary removals for disciplinary reasons, collectively, these incidents do not add-up to ten (10) days of disciplinary removals from the placement described in Student's IEP. Under 707 KAR 1:002, §1(8), and 707 KAR 1:340, §14(2) & (3), anything less than ten (10) days of disciplinary removals is considered *de minimis* and does not afford a student any procedural rights or right to relief under the IDEA. Procedural safeguards for discipline do not kick in until the student has been removed from his IEP placement for at least ten (10) school days. Student did not introduce evidence suggesting that the collective time Student was out of his regular classroom on August 28-29 exceeded ten (10) school days during the brief portion of the 2024-2025 school year in which Student was enrolled in the [redacted] Schools.

While Petitioner/Appellant asserts that Student was improperly removed from the general education environment, there was no evidence that school personnel removed the Student from the general education environment or that the actions of any school personnel caused the Student to miss any speech therapy sessions in August 2024. *See* JX 0221; HT1, pp. 197-198. Had Student not withdrawn at the end of August, Student was on pace to receive all the scheduled speech therapy he required (6 sessions every 20 school days). The School District personnel did not intentionally or knowingly prevent Student from receiving speech therapy.

ISSUE 4: THE HEARING OFFICER CORRECTLY FOUND THAT THE DISTRICT DID NOT COMMIT ANY PROCEDURAL VIOLATIONS.

Student alleged that the District committed the following procedural violations in relation to the August 30, 2024 ARC meeting: failed to have the regular education teacher of the child from the beginning of the 2024 school year to the date of the incidents attend the meeting; failed to give

proper notice of the meeting; failed to properly consider the parental concerns and opinions, concerning behaviors and evaluations and/or convening an ARC meeting to discuss them.

School began on August 14, 2024. At that time, the student was placed in [redacted] first grade classroom and was adjusting well pursuant to a text that [redacted] sent to the parents on August 20th (HT3 p. 12, 41). There was one incident with a Chromebook in which [redacted] had the child walk laps for a few minutes at recess, which was not an uncommon occurrence with other students. During the second week of school, the student began having severe anxiety about attending school (HT1 p. 174). He complained of his stomach hurting and did not want to go to school and refused to go inside the school building (HT1 p. 24). He also came home with banana smeared on his clothes by another student one time and dried blood in his nose on one occasion. The student also relayed to his parents that his teacher said that he used the bathroom on himself and needed to go change his underwear in front of the whole class (HT1 p. 25).

Student was absent on August 23rd. [redacted] noticed a change in his attitude the next week of August 26th and conveyed that to the parents (HT3 p. 24). On August 26, 2024, student would not get out of the car at drop off, but after eventually getting into the school, played with his friends and seemed to be happy (Joint Exhibit 0166-0169). As a result of the incident, the parents requested an ARC meeting to discuss concerns on that same day one was scheduled for September 4, 2024. Parent thought perhaps the fact that most of students' friends were in a different classroom was contributing to the problem (JX 0169).

Parents stated that these behaviors in August 2024 were similar to those that occurred two years earlier at [redacted] School during preschool. In both the Fall of 2022 and Fall of 2024, the student was adjusting to having a new baby sibling at home. There were no other similar circumstances cited by either party for the Fall of 2022 and Fall of 2024 (HT1 p. 87-88). During

testimony, the mother admitted that the transitions at [redacted] in 2022 were difficult for student partly because of a baby brother staying home while he had to go to school (HT1 p. 143). However, she did not believe that the Fall 2024 behavior related to another new baby sibling in the home (HT1 p. 216).

Effective August 29, 2024, student's teacher was changed to [redacted] in an attempt to have him in a classroom with most of his friends from kindergarten. This occurred at the parents' request (HT1 p. 26, 65, 101, 105 & 110). On the date that this room change was to occur, [redacted] was ill and there was a substitute teacher in her place (HT1 p. 105-106). On August 28 and 29, the student exhibited behaviors where he refused to go to the classroom. The school called the parent multiple times telling her that the child was staying in the office and refusing to go to class, throwing things and taking things off the wall (HT1 p. 27). On the 29th, the father had to carry student into the school because he would not voluntarily enter, and there were similar behavioral issues of refusing to go to class, hitting staff, and being restrained (HT1 p. 35-39). The behavior of destroying property and violence towards staff had never occurred in the school setting before.

As a result of the behaviors on August 28 and 29, the ARC which had been scheduled for September 4, 2024 was moved up to August 30th at the parents' request sent via email on August 28 at 9:41 am. (HT1 p. 97-98, 105). The mother was aware that the original first grade teacher, [redacted], had not been invited and did not ask that she be added to the list of those invited (HT1 p. 110). The current classroom teacher, [redacted], attended the ARC meeting. Parent acknowledged that none of the behavioral incidents in August of 2024 had occurred in [redacted] classroom and that parent had all information from [redacted] about minor classroom behaviors from their phone conversations before the ARC occurred (HT1 p. 112-113).

1. It was not a procedural violation that the original classroom teacher from August 14th through August 28th, [redacted], did not attend the August 30, 2024 ARC.

707 KAR 1:320, Section 3 (b) requires the regular education teacher attend an ARC meeting "to provide information about the general curriculum for same aged peers." [redacted] had only had the child in class for a few days. [redacted] was the student's regular education teacher effective August 29, 2024 and was able to provide information about the general curriculum for same aged peers. Further, [redacted] was familiar with Student, as she had been a student teacher in his Kindergarten classroom the year before. In addition, the mother was aware that [redacted] was not attending and did not, under her discretion in 707 KAR 1:320 Section 3 (f), invite [redacted] to attend. Further, [redacted] had not observed any disruptive, violent, or other behavior or the need for any extraordinary behavior interventions during the first few days of school, so her absence from the ARC meeting did not deprive the parents, or other ARC members from having adequate information during the meeting. Neither [redacted] nor [redacted] had observed the student's significant conduct issues that occurred on August 28 and 29.

2. There was not failure to give proper notice of the August 30, 2024 ARC meeting.

As stated above, the meeting had originally been scheduled for September 4, 2024. Timely notice of same was provided, but after the incidents on August 28 and 29, the parent asked for the meeting to be moved up via email on August 28 (HT1 p. 105). The school granted the request. Nothing was changed that was to be discussed at the meeting. The original notice was for the same purpose, to discuss the student's behavior (JX p. 0199). The purpose of notice of an ARC meeting is to provide parents with the information to allow them to fully participate in the meeting. There was no surprise to the parents and no changes as to what was to be discussed at the ARC.

3. The ARC considered all parental concerns and opinions about behaviors during the ARC meeting and thus there were no procedural violations.

The parents fully participated in the ARC meetings. The mother and both of her parents, Student's grandparents, were present at the August 30, 2024 ARC meeting (JX p. 0203) The mother had invited the grandparents. The basis for the ARC decision (JX p. 0201) is almost exclusively indicated to be parental input.

> "Parent stated [Student] is complaining about not liking school and does not want to go. She is concerned with some of the behaviors that he has developed in response to not wanting to be at school. She is concerned with his emotional well being and wants to do what is best for [Student] to help him be successful at school. Parent stated that he responds well to routine and likes to (sic) informed of changes to routine in advance. She is concerned with his physical and emotional safety. Parent and grandparent noted they have concerns for data and documentation including: unknown amount of time spent walking laps, no documentation of removal from classroom and lack of discipline data to show this. Also, it was reported to family by [student] that he spent the day in the office on Wednesday and Thursday; he spent 30 minutes in classroom and went to resource room; and the family was informed that a staff member removed [student] from a desk."

The summary notes reflect that parents were requesting a re-evaluation due to recent behavioral concerns and their suspicion that student may have a Developmental Delay in the area of social and emotional development. (JX p. 0204-0206) Parental and grandparent concerns were specifically discussed as noted in the summary notes (JX p. 0206). After the ARC meeting on August 30, 2024, evaluations were to take place on behavioral issues. However, same never occurred, student did not return to school after the ARC meeting. Parents withdrew the student after Labor Day.

Knable v Bexley City Sch. Dist., 238 F3d 755, 764 (6th Cir. 2001) requires that even if there were procedural violations, the student can only be granted relief if the procedural violations result in substantive harm. Since there were no procedural violations, it follows that no substantive

harm could come from same. Further, no evidence was presented as to any substantive harm from the alleged violations.

ISSUE 5: THE HEARING OFFICER CORRECTLY FOUND THAT APPELLANT WAS NOT ENTITLED TO ANY RELIEF.

Appellant argues that the child should be awarded compensatory education for the time in which he was denied a FAPE; that the District should pay the cost of a private school education for the child including transportation; that the school District personnel be required to undergo training in positive behavior interventions, de-escalation techniques, procedural safe guards and other special education procedures; and that all District faculty and staff who interact with students be trained in safe crisis management, documentation and debriefing.

1. The Hearing Office correctly found no basis for an award of compensatory education.

As there was no finding that FAPE was denied, compensatory education is not available in this case. Further, under the standard of Board of Educ. of Fayette County, Ky v. L.M., 478 F 3rd 307(6th Cir. 2007), the burden of proof to obtain an award of compensatory damages requires that the fact finder be able to identify particular evidence which supports and justifies a specific award of compensatory education based on where the student would have been but for the alleged deprivation of services, and what compensatory services are reasonably geared toward correcting the deficit. L. M. further recognized the standard set forth in Reid ex. rel. Reid v. Dist. Of Columbia, 403 F3rd 516, 518 (DC Cir. 2005), holding that a "compensatory award should aim to place disabled children in the same position they would have occupied but for the school district's violation of IDEA." Student did not provide any evidence at the hearing of where he would have been in his performance had the school not committed the alleged violations in providing FAPE.

Further, he did not submit any evidence as to what services were needed to place him in the position he would have been in if the school had not violated IDEA.

The Petitioner's Exhibit 4, page 115 was the psychoeducational evaluation performed by [redacted]. Mother testified that she was satisfied with this evaluation and no longer wanted an independent evaluation or other evaluation by the District (HT1 p. 83). This evaluation was performed in January 2025, when the child was six years and seven months old, and halfway through first grade. It showed his academic achievement to be age equivalent of six years, six months, or above in all areas tested and to be grade equivalent for first grade in every area tested. Thus, the only evidence introduced concerning where the child would have been, shows that he did not have any academic deficit that needed remedied. Further, the evaluation did not place the child in any elevated range by either parent or teacher in regard to social difficulties or behaviors. The evaluator did not recommend any eligibility in social or behavioral difficulties (p. 126).

707 KAR1:002, Section 1(22) defines developmental delay to include social emotional development where a child fails to achieve commensurate with recognized performance expectations for his age as measured by Norm Referenced Evaluation instruments. The definition of emotional behavior disability set forth in Section 1:24(a) is defined to include a child with severe deficits in social competence or appropriate behavior shown across settings over a long period of time and to a marked degree. In this case, there were two days of elevated behavior. Evaluated under the [redacted] evaluation and testimony at hearing, there would not be eligibility under either of these definitions.

2. The District is not required to pay for the cost of private school education or transportation for Student.

707 KAR 1:350, Section (7) requires a student be educated in the school he would attend if non-disabled unless his IEP requires some other arrangement. Nothing in the IEP shows student required another placement that could not be delivered in the district school. FAPE was offered in this matter, but even if it was not, Appellant did not provide evidence at all about what private school, if any, the child would be attending or should have been attending, what services any such school would offer, or any cost associated with such said school. Berger vs Medina City Sch. Dist., 348 F 3rd 513, 523 (6th Cir. 2003) requires that a private placement must "at a minimum, provide some element of special education services in which the public-school placement was deficient." The testimony showed that the child was at another public school at the time of hearing and no evidence indicates that student ever went to any private school. No evidence introduced showed that any private school had ever been considered.

To obtain tuition reimbursement, a student must show the IEP offered by the district failed to offer FAPE. L.M. v Hamilton City, Dept of Educ., 900 F2d 779, 796 (6th Cir. 2018). No proof was offered that the August 30, 2024 IEP failed to offer FAPE. An IEP is "a snapshot, not a retrospective." Roland M. v Concord School Committee, 910 F2d 983, 992 (1st Cir. 1990) When the IEP was adopted, Student did not have any diagnosis to warrant consideration of other health impaired eligibility. Therefore, at said "snapshot" moment, the district could not have looked at other placement.

The second component necessary to create an obligation for a district to pay private tuition requires proof that the private school is appropriate and why. No proof was offered that Student had attended a private school or even explored what school would be appropriate for him.

3. Requiring district personnel to undergo training for positive behavior intervention, de-escalation techniques, procedural safeguards and other special education procedures or requiring staff to be trained in safe crisis management documentation and debriefing is not appropriate.

Relief in a Due Process Hearing is equitable and must focus on an individual student. L.M. at 316-317. If such training was within the area of available relief, there must be proof of deficient training prior to the events of the case and that same caused harm to student. Further, it would require proof of what training was necessary to prevent future harm. No evidence was produced in any such areas. The "safe crisis management" requested by Student as part of his relief is a proprietary program of [redacted]. relating to physical restraint and de-escalation. Neither such topic is within the scope of IDEA and thus is not available relief.

All evidence points to the Student being at the same level of his peers academically and behaviorally.

For the reasons cited above, there was no proof FAPE was denied in this case. In such case, the ECAB has no ability to require any staff training. Further, the request that staff be trained in safe crisis management, documentation and debriefing, is outside the scope of IDEA.

FINAL DECISION AND ORDER

It is the Order of the ECAB that the Hearing Officer's decision is affirmed, and that no relief is due to the Appellant.

So issued at the direction of the ECAB, consisting of Hon. Kim Hunt Price, Hon. Janet Maxwell-Wickett, and Hon. Kathleen Schoen, Chair, this **19th** day of December, 2025.

NOTICE OF APPEAL RIGHTS

This decision is a final, appealable decision. Appeal rights of the parties under 34 CFR 300.516 state:

(a) General. Any party aggrieved by the findings and decision made under §300.507 through 300.513 or § 300.530 through 300.534 who does not have the right to an appeal under § 300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 300.507 or § 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

In addition, 707 KAR l :340 § 8. Appeal of Decision provides the following information to aggrieved parties, in subsection (2):

> A decision made by the Exceptional Children Appeals Board shall be final unless a party appeals the decision to state circuit court or federal district court.

KRS 13B.140, which pertains to appeals to administrative hearings in general, in Kentucky, and not to civil actions under Part B of the Act (the IDEA), provides:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provision of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court

of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appeal party resides or operates a place of business. Copies of the petition shall be served by the student upon the agency and all parties of the record. The petition shall include the names and addresses of all parties to the proceeding and agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Although Kentucky Administrative Regulations require the taking of an appeal from a due process decision within thirty (30) days of the Hearing Officer's decision, the regulations are silent as to the time for taking an appeal from a state level review.

SO ISSUED at the direction of the ECAB members: Hon. Kim Hunt Price, Hon. Janet Maxwell-Wickett, and Hon. Kathleen Schoen, Chair, this **19th** day of December, 2025.

EXCEPTIONAL CHILDREN APPEALS BOARD

BY: /s/ *Kathleen Schoen*
Kathleen Schoen, ECAB CHAIR

CERTIFICATE OF SERVICE

The foregoing ECAB Decision was served on the parties by electronic mail as follows on this the **19th** day of December, 2025:

[redacted]
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Kathleen Schoen, Chair
EXCEPTIONAL CHILDREN APPEALS BOARD