

**KENTUCKY DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND EARLY LEARNING  
AGENCY CASE NO . 2425-13**

██████████

**PETITIONER**

**V**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER**

██

**SCHOOLS**

**RESPONDENT**

This case concerns a first-grade student who qualified for special education under the category of speech. The due process complaint was filed November 15, 2024. Student contends that School should have suspected that student also has a behavior-related disability and evaluated him for such, and should have designed an IEP with social and behavioral goals. Failure to do, Student contends, resulted in a Child Find violation and denial of FAPE. Student also alleges school “removed” student from general education placement in connection with misbehavior, which Student characterizes as failure to properly implement the speech/language IEP. Additionally, Student alleges procedural violations.

The due process complaint included other grievances that, in a series of motions and orders, were found to be beyond the jurisdiction of this IDEA proceeding. By order dated February 12, 2025, the Hearing Officer specified four issues for the 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 constitute procedural violations resulting in 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 hearing took place on April 14-16, 2025. The parties have filed briefs. Petitioner bears the burden of proof by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49 (2005).

#### FINDINGS OF FACT

In the findings below, except when otherwise stated, “Parent” refers to Student’s mother and Grandparent refers to Student’s maternal grandmother.

**1. Student qualified for special education in the category of speech/language.**

This is undisputed.

**2. Except for the August 30, 2024 IEP, which was never implemented because the student stopped attending [REDACTED] all IEPs placed student in the general education classroom setting except for delivery of individualized speech instruction in the resource**

**room; the August 30, 2024 IEP would have provided speech instruction in the general education setting to promote generalization and carryover of speech sounds; scores on testing performed in January, 2025 suggest Student's progress in speech may be such that he no longer qualifies as disabled in the category of speech.**

See Jt. Ex. 4, 9, 12, and 29. See HT2, p. 240-241

**3. Student on occasion has been a "runner," a child who elopes in reaction to anxiety.**

Parent and Grandparent testified this had been a problem outside of school and that they communicated this concern to school personnel at the various schools Student attended. See HT1, p. 47, 130. Elsewhere in these findings instances of elopement at school are discussed.

**4. Student's Grandparent has experience and expertise in special education, has attended all of Student's ARC meetings, and has guided Parent through the special education process.**

HT2, p. 91-98.

**5. Student's anxiety increases if there is a lack of structure or a break in routine.**

Parent and grandparent testified that this is true and that it was communicated by them to school personnel at the various schools Student attended and in ARC meetings.

**6. 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.

**7. When Student was evaluated for speech at [REDACTED] in the spring of 2022,**

**parent did not suspect any behavioral disability but requested a behavioral observation as part of the speech evaluation because she “[j]ust wanted them to let me know if there [were] any issues.”**

HT1, p.129.

**8. Parent had behavior concerns in March of 2022, but thought the behaviors might be a function of the Student’s age.**

Student was three months shy of his fourth birthday and parent thought behaviors might be a function of his age. HT1, p. 126

**9. The speech therapist who evaluated Student in March of 2022 noted Student was reported to be a runner, but testified there weren’t any adverse behaviors toward her or during the evaluation process.**

HT2, p. 223.

**10. Parent began to have concerns about Student anxiety about attending school and elopement behaviors at [REDACTED] preschool; the anxieties were triggered during pickup and drop-off.**

Student had received speech services at [REDACTED] in spring of 2022 as a three-year old, then was enrolled in [REDACTED] as a full-day preschool student in Fall of 2022. There were a couple of instances of elopement. Parent testified that in one instance when she came to get him “he was at the bus loading dock, going towards the buses by himself” and that in another instance he ran away from the classroom. HT1, p. 13-14; also, see Grandparent’s testimony HT2, p. 101. The speech therapist’s testimony corroborates one of the elopements. HT2, p. 226. Parent father testified that in response to Parent mother telling him about an elopement, Parent father

had phoned the Superintendent to ask for help. HT2, p. 87. In an email to the DoSE dated September 19, 2022, Parent reported anxiety was triggered during pickup and drop-off:

[Student] doesn't want to go in then doesn't want to leave. He's running, refusing to transition. In the mornings, I'm having to pick him up to put him in the school while he's kicking and screaming. I'm having to arrange for me to be able to carry him in/out of the school....When there was a sub last week, he ran away at the end of the day as I was walking to the door to pick him up....

Jt. Ex. 5. Also see Grandparent's testimony HT2, p. 106. At a subsequent ARC meeting ten days later, Parent also reported that "[Student] has made remarks about how it's not fair that his new baby brother [gets] to stay home with mom while he has to go to school." JX 0050. At that time, Parent brought the baby with her when picking up or dropping off student. HT2, p. 101.

**11. The drop-off routine at [REDACTED] was fixed and supported by school personnel.**

[REDACTED] DoSE, testified as follows:

Q. Describe, if you could, the -- kind of the daily routine -- I guess I would ask you if you're familiar with it first. Are you familiar with the daily routine at [REDACTED] [REDACTED]? Are you ever there during morning drop-off?

A. Yes.

Q. So what does -- what does that look like? What did that look like in the fall of '22 for [REDACTED] Head Start preschool students coming into the building?

A. So when parents jumped off in the morning and they would come to the front of the building, and then there would be a staff member there that they would bring them to the door, the front door, and they would sign the student in. And then the -- the staff would have the students there prior to taking them to wash their hands and go to breakfast.

Q. Was that a fixed schedule each day as far as exactly how the students came in and what they did first and what they did next?

A. Yes. Yes.

HT3, p. 95-96.

**12. An ARC was convened on September 29, 2022 to discuss Parent's concerns; a**

**plan was developed to implement new interventions and to formally collect and review data from those interventions at an ARC to be reconvened on October 27, 2022; neither Parent nor School suggested that an evaluation for behavior disability should be undertaken at this time.**

See Jt. Ex. 6.

**13. On October 10, 2022, Parent sent an email to the DoSE asking for a full evaluation, then 45 minutes later emailed withdrawing that request.**

In the first email, Parent stated “I think the next best step is to conduct a full assessment.”

The second email, 45 minutes later, states:

Actually, let’s hold off on that. I need more time to think and process. I am just trying to figure out what the best possible solution is for my son. Maybe we can discuss again at the ARC meeting on the 27<sup>th</sup>, once I have heard everyone’s views on how the strategies are working. I am even open to trying a different school or district.

JX0054. Also, see HT1, p. 42, 53.

**14. Days later, Parent withdrew Student from [REDACTED] ; Student enrolled in [REDACTED] preschool on October 17, 2022.**

HT1, p. 54; HT2, p. 107. Grandparent was familiar with [REDACTED] personnel, investigated the preschool program, and facilitated the change. HT2, p.107.

**15. Student’s behaviors at [REDACTED] in fall of 2022 did not prevent Student from receiving speech services due under his IEP; notwithstanding the behaviors, Student progressed in speech therapy.**

Student behaviors did not interfere with delivery of speech services. See HT 1, p. 133, 139. In one instance the student ran from speech therapy but came back and finished the session successfully. HT2, p. 226. No behavior strategies were utilized by the speech therapist with

Student that are not utilized with all students of that age. HT2, p. 230. The therapist saw progress in Student's speech. HT2, p. 241 Unrelated to Student behaviors, some sessions cancelled due to the speech teacher's other commitments, but those sessions were, according to parent, rescheduled. See HT1, p. 135-138.

**16. There was not evidence presented proving Student's behaviors ██████████  
██████████ at in Fall of 2022 prevented student from progressing  
academically.**

While the anxiety transitioning and elopements at ██████████ are concerning in themselves, there was not proof establishing that they prevented Student from progressing academically during this period.

**17. When Student enrolled in ██████████ there was no substantial change to the IEP.**

Parent testified that ██████████ "pretty well kept the IEP the same." HT1, p. 16. As noted elsewhere, neither the original ██████████ IEP nor the ██████████ IEP addressed behaviors or issues other than speech/language services.

**18. ██████████ preschool was a partial day rather than a full day as had been the case in ██████████ ; teachers at ██████████ met with parent outside the building to get Student in building, but ██████████ had not.**

HT1, p. 151-152.

**19. Student did well at ██████████ ; parent attributed this to Student knowing what his schedule was.**

Parent opined that Student "thrived" at ██████████ because of "the visual schedules they had up for the kids." HT1, p. 16. There was not testimony that ██████████ preschool

did *not* have visual schedules, but Parent believed the [REDACTED] classroom was more structured than [REDACTED] had been:

If something gets messed up from his routine, he gets very anxious. That's when he runs if something doesn't stay how it's supposed to stay. But yeah, he had a really great year, he had really great teachers, and he was happy.

HT1, p. 17. Grandparent also attributed success at [REDACTED] to a structured classroom.

HT2, p. 110. Parent testified there were no problems with transitioning at [REDACTED]. HT1, p. 55. Grandparent testified that pickup and drop-off was orderly, school personnel were at the door to greet arriving students, and the routine did not change. HT2, p. 111-112. There was testimony that school personnel would come out to walk student from car to the building if needed (HT2, p. 112). There were no elopement issues. HT1, p. 154. Parent testified as follows:

Q. And so for the remainder of that 2022-'23 school year [at [REDACTED]], did you have any more behavior concerns with him at school?

A. No.

HT1, p. 55-56.

**20. There was not proof that Student was treated differently than non-disabled students at [REDACTED] with regard to pickup and dropoff or classroom instruction. Student returned to [REDACTED] for kindergarten but enrolled in [REDACTED], rather than [REDACTED], because student did not want to return to [REDACTED].**

HT1, p. 18.

**21. At a November 30, 2023 ARC, parent expressed concerns about Student's recent behaviors at home connected with Thanksgiving and emphasized the importance of maintaining structure at school; no teachers or other school personnel expressed any concern with Student's behaviors at school.**



Jt. Ex. 13. Parent also reported observing at home, during the past year, disorganization, frustration, fidgeting in his seat, and becoming upset with change. JX 0099. However, there was not evidence such behaviors were causing problems in the school setting.

**22. Teachers at [REDACTED] did not observe behaviors from the Student that Parent observed at home and expressed concern about.**

HT1, p. 155-156, 158-162, 167, 169-170. Student's kindergarten teacher characterized Student as "a normal kid" with no elopement issues or instances of running or crying. HT1, p. 235, 238-239. She testified he sometimes had trouble following instructions or transitioning but "nothing different than any other child his same age." HT1, p. 239; HT2, p. 51-52. Parent expressed concerns about crying and running seen at home in the October 13, 2023 ARC, but the ARC chair testified that no such behaviors were seen at school, that the ARC told parents School would watch for such behaviors but none were seen. HT2, p. 42-43. Tier 1 PBIS documents infractions of student misbehavior and Student had no infractions during his kindergarten year. HT2, p. 42-43. Not every instance of behavior for which a student is redirected or told to reflect is considered an infraction. HT2, p 53-55. However, the kindergarten teacher testified 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. Student was not distracted by peers in the classroom, although the speech teacher recommended pulling him to the resource room for delivery of speech therapy avoid distraction speech therapy. HT2, p. 151. 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.

**23. Student had a good kindergarten year at [REDACTED], which Parent attributes to a structured classroom; there were no special educational or behavioral supports given Student; Student was not treated or taught differently any other students in his class.**

Parent testified that Student had a good kindergarten year. “They had structure, they had a routine, they knew what to expect in their classroom. He had – he had a good year in her - in their classroom.” HT1, p. 20. Parent testified that she did not ask the teacher to do anything different with student than the teacher was doing with the other students. HT1, p. 21. Parent testified that the teacher was doing structured visuals for the entire class. HT1, p. 172. Student’s kindergarten teacher testified she used no special supports for Student, only “the same strategies that I do for all my children. I mean, it was nothing exceptional for him.” HT1, p. 240. She and all the teachers at [REDACTED] use PBIS, which encourages positive behaviors. “It’s just the expectations of how we act in the hallway, how we act in the classroom. It’s just a whole school program.” She testified PBIS was not unique to her classroom and is employed schoolwide. HT1, p. 241.

**24. 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 anxieties at school.**

While there is evidence that parent and grandparent report observing behaviors at home, the record is clear that behaviors at school were not an issue for nearly two years. There was no testimony of instances of elopement, difficulties during pickup or drop-off, or other concerning behaviors at school during this period.

**25. Parent asked School to assign Student to a first-grade teacher who had a**

**structured classroom for first grade; parent expressed concern about student’s potential for anxious behavior, and School said they would “monitor” behavior, meaning they would keep an eye out to notice if student was having difficulty.**

See HT1, p. 23, 60. At the hearing, Petitioner suggested that use of the word “monitor” meant systematic data collection in the manner in which progress on IEP goals are often measured, but clearly this was not the meaning intended by either the parent or the school at the time of the discussion. Student had just completed preschool at [REDACTED] and kindergarten at [REDACTED] with no significant behavior issues while being instructed in the same way as all Student’s classmates and without any special behavioral supports. While this changed dramatically in first grade during the last week of August in 2024, there had been no reason to systematically collect behavior data prior to that date.

**26. Student did well in kindergarten without any special schedule reminders or other measures not utilized for all students; his teacher perceived no need for special supports going into first grade.**

Question and answer appearing in HT1, p. 60, implies that Student was getting special interventions not set forth in the IEP and that they should have been set forth. However, Student’s kindergarten teacher [REDACTED], in response to Parent’s concerns, after advising that routine and visual schedules were appropriate for Student, reported “[Student} responds well to class-wide PBIS and school expectations.” JX0136.

Transitioning from kindergarten to first grade, the kindergarten teacher perceived no need for any special strategy or support for Student different from what all students received:

Q. Did you perceive anything special that was needed for [Student} for 1st grade school year compared to his peers that were leaving your classroom?

A. No.

Q. Was there anything you did the entire kindergarten school year that you -- a strategy you had to use only for [REDACTED] that wasn't just part of your normal classroom routine?  
A. No.

HT2, p. 168.

**27. School selected a first-grade teacher for Student who utilized structure in the same way the kindergarten teacher utilized it.**

The kindergarten teacher testified as follows:

Q. Did you have a perception as a kindergarten teacher of whether [Student's first-grade teacher] [REDACTED] classroom strategies or classroom structure was similar to yours or different than yours?  
A. She's very similar to me.

HT2, p. 169. The kindergarten teacher testified that [REDACTED] was "the right choice" for Student. HT2, p. 170. All the things that Student needed were part of routine teaching that would be given by [REDACTED] to all students in first grade. When questioned about notes from the summary of that ARC meeting, the kindergarten teacher testified as follows:

Q.[T]he parent expressed concerns for behavior and requested for structured environment. And that looks like the next part of that is your contribution to that meeting, correct?

A. Yes.

Q. So those couple of sentences, "[REDACTED] advised having a routine visual structured environment, verbal reminders, and relationship building are appropriate for [Student]. to succeed in the classroom. [REDACTED] added "Student] responds well to class PBIS and school expectations."

A. Yes.

Q. Is there any part of that list of things that you were discussing in that meeting that was unique to, that you did uniquely for [Student].?

A. No.

Q. Was there any part of that list that you believe would be -- would not be duplicated in [REDACTED] classroom?

A. No.

Q. Was there ever a request made either at that November meeting, or at this meeting, that all of those strategies should be memorialized in the IEP so that everybody would know that [Student] needs these things?

A. No.

Q. In your experience of 19 years as a kindergarten teacher, did you ever see any of those just standard classroom behavior management techniques memorialized in a student's IEP?

A. No.

HT2, p. 171-172. [REDACTED] testified that she utilized PBIS, the school-wide program used for all students, and it included visual schedules in the classroom. HT3, p. 9-10.

**28. Student began having anxiety about going to school during the second week of the fall semester of first grade.**

School began August 14, 2024. Student's first grade teacher, [REDACTED], texted to Parent on August 20, 2024, that Student was adjusting very well to school HT3, p. 12; P041. [REDACTED] testified that notwithstanding the Chromebook incident that led to "walking laps," student's behaviors in class were not, prior to August 28 and 29, atypical or noteworthy and there were no elopements or issues with transitions inside the school building. HT3, p. 15-17. But during the second week, Student began having severe anxiety about having to attend school. HT1, p. 174.

Parent testified:

I say it started around maybe the second week of school, where he got to the -- he would complain of his stomach hurting and he didn't want to go to school, refusing to go to school (HT1, p. 24.)

The second week of school.· I'm sorry.· He had came home with banana smeared on his clothes. He said that another student had smeared banana on him. He also came home one day with dried blood in his nose. And also, he had came home and told me that, in front of the whole class, his teacher said that he had used the bathroom on himself and needed to go get different underwear. (HT1, p. 25)

[H]e got to the point where his dad or me would have to try to -- well, I never did, but his dad had to carry him into school.· There -- he -- he refused to go to school.· He didn't want to go to school. He would cry.· He would be so sick in the mornings.· Like, he couldn't -- he was unwell.· He didn't want to go, and I -- I couldn't understand why. (HT1, p. 26).

**29. Parent testified some of Student's behaviors at school in August of 2024 were similar to behaviors that had last occurred two years earlier at [REDACTED].**

When questioned about a text message exchange contemporaneous with events of late August, 2024, Parent testified as follows.

Q. Within that message, [REDACTED] says, “These are brand new behaviors for him in the school setting.” Do you disagree with that statement, that those behaviors that week were the first time they received those things at school?

A. Yes, I disagree.

Q. You think that there were other instances where he refused to go to class, to where he had to be corralled by multiple staff members?

A. I think during the Head Start [in Fall of 2022 at [REDACTED]], they were the same issues. The running and not wanting to stay in the classroom, running out of the classroom.

HT1, p. 96-97.

**30. In Fall of 2022, and again in Fall of 2024, Student was adjusting to a new baby sibling at home; there was no evidence offered by either party suggesting any other correlations between circumstances in fall of 2022 and in fall of 2024 that might account for increased anxiety at pickup and drop-off.**

See HT1, p. 87-88. Correlation is not causation, and no psychologist testified on this point, but there also was no comparison of pickup/drop-off procedures, visual schedules, or specifics of routines at the various schools to account for why student objected so strongly to attending school during those two particular periods in Student’s life. Parent agreed that transitions at [REDACTED] were difficult for Student in part because the baby brother got to stay at home but Student had to go to school. HT1, p. 143. However, Parent does not believe the behaviors in Fall 2024 were related to another new baby sibling. HT1, p. 216. Parent was bringing the new baby with her to drop-off and pick-up at [REDACTED] (HT2, p. 101) but there was not testimony regarding whether that was the case when Student attended [REDACTED] or [REDACTED].

**31. Procedures for pickup and drop-off can be modified for any student, regardless**

**of whether the student qualifies for special education.**

HT3, p. 132.

**32. On August 22, 2024, Parent reported to school that Student had recently started being violent at home when he became upset.**

██████████, Student's kindergarten teacher, was assistant principal at ██████████ at the beginning of 2024-2025 and remained a contact point for Parent regarding Student. Parent texted ██████████ on August 22, 2024, stating "I'm not sure what's gotten into him lately but he's started using violence when he gets upset." JX0164; Ht1, P. 61. Grandparent testified as follows:

[W]e began to see some extreme behaviors at home. He was trying to run away at home for no -- like, we had no idea. And these were extreme behaviors that even we hadn't seen before. He was weepy, he was having nightmares, and he would -- he was getting aggressive, like combative. He did not want to go to school, and he was going to fight about it if -- if forced to go to school.

HT2, p. 121.

**33. On August 26, a Monday, Student had serious pickup and drop-off issues and would not get out of the car; once he was finally in school, eventually "played with friends, and seemed happy as can be";**

See text exchanges JX0166-0169.

**34. Student's first-grade teacher noticed a change in Student's attitude the week of August 26.**

Student had been absent on Friday August 23. ██████████ noted a change in his attitude the next week:

Q. Does anything stand out to you about the 26<sup>th</sup> or 27<sup>th</sup> that was -- other than what this says about he was a little disrespectful, but did better the last part of the day? In that message, you say, "I'm not sure what has changed since he missed last Friday."

A. Because I had never seen anything like that before then.

HT3, p. 24.

**35. On August 26, Parent requested a meeting to discuss concerns; later that day, School confirmed an ARC would be scheduled.**

Parent testified:

I asked to have a meeting with her then to discuss [Student] not wanting to go to school.· I was also concerned about the teacher.· I thought that he needed a different teacher.· Also, the -- all of his friends were in a different classroom and for a 6-year-old, that's -- that's a -- that's a big deal.· You lose all of your friends.· Yeah, I asked to meet with her to talk, to discuss that, to discuss what we could do to help [Student]want to come to school.

HT1, p. 29. Parent also had an issue with the teacher's method of handling behaviors, which parent characterized as "walking laps" during recess for punishment (HT1, p. 30), School confirmed that afternoon that an ARC would be scheduled. JX0169.

**36. The "walking laps" was actually having a misbehaving student take a walk for a minute or two during recess to reflect on the choice that led to the misbehavior and was something [REDACTED] does with other students as well.**

HT3, p. 31-32.

**37. Student exhibited tumultuous behaviors on August 28 and 29 that were unprecedented in the school setting.**

Prior to August 28 and 29, Student had not exhibited any behaviors at [REDACTED] that required removing him from the classroom. HT1, p. 182. Any misbehaviors up to that point were dealt with by Tier 1 techniques applicable to all students such as redirection and did not merit an infraction or require collection of data under PBIS. HT3, p. 33-35.

Student did not want to come to school on the 27<sup>th</sup>, but did so and attended class. HT1, p.



65. However, the next school day, August 28, was tumultuous and involved unprecedented behaviors. Parent testified:

August 28th, that they had called me multiple times, telling me that [Student] was staying in the office, refusing to go to class. He was throwing things, taking things off the wall. I mean, they said he was just destroying the room, and I was concerned about him not being in the classroom.

HT1, p. 27. The following day, the 29<sup>th</sup>, the father had to carry the student into the school because Student would not enter voluntarily and there were similar issues regarding extraordinary behavior, refusing to go to class, hitting staff, and being 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. Parent testified as follows:

Q. [D]o you have any reason to believe, any time prior to the 28th, that he tore stuff off the classroom or hallway walls?

A. No.

Q. Do you have any reason to believe, prior to [August] the 28th, [2024] that he ever climbed up on desks and threw things off of desks in an office?

A. No.

Q. Do you have any reason to believe, prior to the 28th or 29th, that he had gone around the classroom dumping trays of pens or student activity materials?

A. No.

Q. Do you have any reason to believe, prior to the 28th or 29th, he took binders or books full of materials from the teacher's desk or shelving and threw them on the floor?

A. No.

HT1, p. 91-93. Video footage documenting Student's behavior on the 28<sup>th</sup> and 29<sup>th</sup> is included in the record under seal.

**38. Because Student refused to go to class or to the speech room on the 28<sup>th</sup> or 29<sup>th</sup>, the speech teacher could not give Student speech services on the 29<sup>th</sup>; during the 20 school days in August, Student attended only 11 days and then withdrew from [REDACTED]; consequently the speech therapist was unable to deliver all the scheduled speech sessions.**

HT1, p. 70-71, 198.

**39. Student's classroom teacher at the start of school in August 2024 was [REDACTED], but this was changed to Ms. [REDACTED] effective August 29, 2024; the change was made because Student's friends from kindergarten were, Parent thought, mostly in [REDACTED] room instead of [REDACTED] room.**

The change was made at the parents' request because they believed he had more friends in [REDACTED] 1st grade classroom. HT1, pp. 29, 65, 101, 105, 110. Grandparent testified:

I reached out to Superintendent [REDACTED] that day, and we had a conversation and -- and I shared that day, like, we have to figure this out because he's -- he doesn't have friends in [REDACTED] classroom.

HT2, p. 128. Parent texted to his first grade teacher that "[Student] cries [at home] because he's separated from his friends. Most all of his friends are in the other classroom." P045. [REDACTED] was familiar with Student from student teaching during Student's previous school year in kindergarten. HT1, p. 99. Parent met with Student's former kindergarten teacher, now assistant principal, on August 26 to discuss changing Student to [REDACTED] classroom. HT2, p. 195-196.

**40. Student was happy he was being moved to [REDACTED] room, but on the 29<sup>th</sup>, when it was to occur, [REDACTED] was ill and a substitute teacher was there in her place.**

HT1, p. 105-106. [REDACTED] absence was contrary to what Student had expected on August 29, 2024, and may have contributed to Student's unwillingness to be in Student's new classroom on that day and to his destruction of property and aggression towards staff. HT1, p. 107-108,

**41. An ARC previously scheduled for September 4, 2024, was, on August 28, moved up to August 30, 2024, at the request of the parent, which made formal 7-day notice impossible.**

See HT1, p. 97-98;

**42. Parent knew 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.

**43. Student's now-current classroom teacher, [REDACTED], attended the August 30, 2024, ARC.**

This is undisputed.

**44. 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.**

Parent testified she never asked if [REDACTED] could attend, was never told [REDACTED] could not attend, and had no reason to believe the principal would have refused her request if she had asked for [REDACTED] to attend the meeting. HT1, pp. 110-112. Parent testified that none of the serious behaviors during the beginning of the 2024-25 school year occurred in [REDACTED] classroom, and that she had all the information from [REDACTED] about minor classroom behaviors from their phone conversation prior to the ARC meeting. HT1, pp. 112-113. Grandparent's testimony suggests that Grandparent wanted [REDACTED] at the meeting to interrogate her about the "walking laps" incident. HT2, p. 133.

**45. The ARC agreed on August 30, 2024, to evaluate student in the area of social and emotional development because the change in his behaviors now impeded his learning or the learning of others.**

See Jt. Ex 28; HT1, p. 42, 73. Parent agreed that the behaviors prompting this evaluation had never been seen by the School prior to August 28 and 29. HT1, p. 187.

**46. After the August 30, 2024 ARC, student had a mental breakdown, was**

**hospitalized, and was diagnosed with ADHD and anxiety.**

During Labor Day weekend that followed, Student exhibited aggressive behaviors at home, such as trying to bust holes in walls, that Parent had never seen before. HT1, p. 194. Parent testified “[Student] had kind of a mental break. He was admitted to [REDACTED] September 3rd. So after we did that September the 3rd through the 5th, he stayed at [REDACTED].” HT1, p. 44. Student was diagnosed with ADHD and anxiety on September 3, 2024. HT1, 10. He had not had any diagnosis prior to that date. HT1, p. 184. Subsequently, student began seeing a therapist and taking medication for these conditions. HT1, p. 11. Student also was diagnosed with attachment dysregulation according to Parent. HT1, p. 118,

**47. After meeting with School on September 6 concerning the events of August 28-29, parent disenrolled Student from [REDACTED]; Student currently attends Kentucky Virtual Academy through the [REDACTED] School District.**

HT1, p. 44. The August 30, 2024 ARC meeting was on a Friday. Monday, September 2, was Labor Day, but Parent planned to bring Student to school September 3 to [REDACTED] class. HT1, p. 115. However. Student was hospitalized September 3-5 and did not return to [REDACTED].

**48. Student introduced a Psychoeducational Report, dated January 27, 2025, conducted virtually through Student’s virtual school; neither the psychologist conducting the evaluation nor the teachers involved appeared at the hearing; the evaluation opined the student may qualify for special education eligibility under O.H.I..**

See Pet. Ex. 4; HT1, p. 76-77. Respondent objected as follows:

We don't have the evaluator or the teachers that did any of the assessments.· So we don't have any ability to cross-examine the data that's within it. I'm fine with it coming in for what it's worth.· But we don't have the evaluator's testimony or anybody else that could interpret the evaluator's instruments.

While the report was admitted into evidence, the hearing officer agrees that the limitations noted in the objection reduce the value of the report. The hearing officer also has questions about the limitations of virtual evaluations. Student's virtual teacher noted in the report that "it is difficult to discern behaviors due to the virtual setting." Additionally, Parent testified that she had failed to share with the virtual evaluator Student's diagnosis of attachment dysregulation. HT1, p. 118.

## CONCLUSIONS OF LAW

### **1. School did not fail or fail to timely evaluate Student for disabilities other than speech/language.**

20 USC 1412(a)(3)(A) requires that children with disabilities who are in need of special education and related services be identified, located, and evaluated. 20 USC 300.8 defining "child with a disability" limits application of Child Find to a disabled child "who, by reason thereof, needs special education and related services." The obligation arises when a school has reason to suspect a student has a disability.

In the present case, while there were issues with pickup and drop-off at [REDACTED], and Parent had concerns about behavior at home, Petitioner did not prove that the few instances of elopement were enough to mandate evaluation. Student was progressing in speech and it was not proved that Student was lagging in the classroom. Parent had suspected Student behaviors might be a function of Student's age. The ARC agreed to try interventions for a month, collect data, and then reconvene the ARC on October 27 to review data and consider the next step. A few weeks after adopting that plan, Parent sent an email requesting a "full" evaluation, then 45

minutes later instructed [REDACTED] *not* to do an evaluation. Days later, student was withdrawn from [REDACTED].

When Student returned to [REDACTED] in Fall of 2023, Student had just completed seven months of preschool in [REDACTED] without behavior issues and without special behavioral or instructional supports not utilized with all students. Student then completed his kindergarten year at [REDACTED]. without behavior issues and without special behavioral or instructional supports not utilized with all students. Student was progressing in speech and Parent described both the [REDACTED] preschool and the kindergarten year at [REDACTED] as good years. At this point in time, there was not reason to suspect Student had a disability requiring special education and related services. Then, during the last week of August in 2024, Student exhibited unprecedented behaviors and the ARC decided to conduct an evaluation for social and emotional issues. School has complied with its Child Find obligations.

Petitioner argues that parent or grandparent's report to school of concerns about Student's behaviors at home should have prompted the school to evaluate Student for a behavioral disability, notwithstanding that the Student was not having behavior issues at school. Authority cited in Petitioner's reply brief does not support that argument. Petitioner quotes *OSEP Letter to Anonymous*, 55 IDELR 172 (OSEP 2010) ("A parent's request or concern about their child's behavior or academic performance must be considered as part of a district's child find obligations."). The quoted language does not appear in the document cited. Petitioner states that in *D.K. v. Abington School District*, 696 F.3d 233 (3d Cir. 2012), the court held that the school district violated child find by failing to initiate an evaluation after repeated parental reports of behavioral problems. However, review of that decision reveals that the concerning behaviors occurred at school. Petitioner states that in *Department of Education v. Cari Rae S.*, 158 F. Supp. 2d 1190 (D. Haw. 2001), the court found that the district's delay in evaluating a student after receiving parental concerns deprived the student

of FAPE. However, in that case the student's behaviors occurred at school and were the subject of teacher referrals. No case, statute, or regulation cited by Petitioner requires a school to evaluate a student for behavior disability based upon out-of-school behaviors where those behaviors are not manifesting at school or interfering with a student's education. Additionally, given Grandparent's expertise in special education, the hearing officer believes if Parent and Grandparent had wanted student evaluated they would have requested an evaluation.

**2. 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.**

Student's disability category is speech. None of Student's IEPs have had behavioral goals or supports. Pickup and drop-off routines can be adjusted for individual students whether or not they have IEPs. As described hereinabove, prior to the last week of August in 2024, Student had completed nearly two years of school successfully without any social/emotional goals, modification or supports.

**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.**

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

Regarding allegations of removal from the general education setting, Petitioner references "walking laps" at recess. This occurred on the recess grounds, during which, for a few minutes, Student couldn't play with the other children around him. This hardly constitutes removal from the general education setting. On August 28 and 29, Student refused to go to his

classroom and, consequently, Student missed a scheduled speech therapy session and withdrew from school before it could be rescheduled. This is insufficient to constitute failure to implement the IEP.

**4. School did not commit any procedural violations.**

**A. School complied with 707 KAR 1:320.**

Petitioner argues that [REDACTED] was required to attend the August 30, 2024 ARC because she was Student's regular education teacher. Petitioner is incorrect. [REDACTED] was Student's regular education teacher effective August 29, 2024.

Petitioner argues that [REDACTED] could have given more information about Student at the ARC because she had been recently teaching him. However, that is not the purpose for which the regulation requires a regular education teacher at the ARC. 707 KAR 1:320, Section 3 (b) requires a regular education teacher attend the ARC "to provide information about the general curriculum for same-aged peers." There's nothing to indicate [REDACTED] was unable to perform that task. Per the fact-findings, Parent knew [REDACTED] was not attending. Parent had the discretion under paragraph (f) of the regulation to invite [REDACTED] to attend as well but did not do so.

**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.**

Per the factfindings, an ARC had previously been scheduled for September 4 but was moved to August 30 at the request of Parent. This made formal 7-day written notice impossible. Since the change was at the request of the parent, the hearing officer finds Parent in effect waived 7-day written notice.



Regardless, Parent knew who was being invited to the meeting that had been rescheduled at her request. The ARC was able to agree on an evaluation and accomplished other work at the meeting. No substantive harm resulted from the lack of a formal 7-day written notice.

**c. Petitioner did not prove Respondent did not consider communicated parental concerns and opinions about behaviors and evaluations or should have convened an ARC to discuss them.**

Per the factfindings, Parent communicated concerns about behaviors at home and School reported they weren't seeing those behaviors in school. School had no obligation to convene an ARC to discuss Student's behaviors at home. Regarding evaluations, Parent requested an evaluation by email on October 10, 2022, then 45 minutes later instructed School *not* to evaluate. Per other findings hereinabove, School was not obligated to convene an ARC to discuss Student behaviors at home.

**d. Petitioner did not prove predetermination of the 8/30/24 ARC decision moving student from resources to general education.**

This issue was not argued in Petitioner's briefs. The ARC did not change Student's placement, which had been in general education, but simply changed the location of delivery of speech services from the resource room to the classroom. Regardless, it was not shown that ARC's decision to follow the speech therapist's recommendation that speech services be delivered in general education rather than in the resources room to promote generalization and carryover of speech sounds was predetermined.

## **FINAL ORDER**

The hearing officer finds Respondent did not violate any provision of IDEA and

Petitioner is not entitled to any relief.

### NOTICE

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 at Office of Legal Services, 300 Sower Blvd., 5<sup>th</sup> floor, Frankfort KY 40601. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal within thirty (30) calendar days of date of the hearing officer's decision.

Dated July 5, 2025.

*/s/ Mike Wilson*

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MIKE WILSON, HEARING OFFICER

### CERTIFICATION:

A copy of the foregoing was served by email on July 5, 2025, to the following:

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██████████████████

██████████  
██████████████████

KDE  
[KDElegal@education.ky.gov](mailto:KDElegal@education.ky.gov)

*/s/ Mike Wilson*

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MIKE WILSON, HEARING OFFICER