

**IMPARTIAL DUE PROCESS HEARING
BEFORE THE HEARING OFFICER
APPOINTED BY THE STATE SUPERINTENDENT OF PUBLIC SCHOOLS
STATE OF NEVADA**

In the Matter of

STUDENT¹, by and through Parents
Petitioners,

v.

SCHOOL DISTRICT
Respondent

**FINDINGS OF FACT AND
DECISION**

Hearing Officer: Audrey Beeson

INTRODUCTION AND PROCEDURAL HISTORY

On May 5, 2022, School District (hereinafter “District” or “Respondent”) received *Petitioners’ Due Process Complaint* (hereinafter “Complaint”). HO-1 This Hearing Officer was appointed on or about May 6, 2022. HO-2 On May 9, 2022 a *Notice of Status Conference* for May 24, 2022, was issued enclosing the following: *Agenda, Preliminary Order, Appendix A, Hearing Process Guidelines, and Rights of Parties*. HO-3 Due to scheduling conflicts, counsel for the parties agreed to move the status conference to May 27, 2022.

During the status conference, the Hearing Officer was informed that resolution meeting was held on May 27, 2022, and the parties needed the full 30-day resolution period. Respondent requested a continuance to file a response to the Complaint until May 27, 2022 and Petitioner had no objection. Respondent was given until the close of business on May 27, 2022, to file a response. A second status conference was scheduled for June 15, 2022. A *Status Conference Report and Order and Notice of Second Status Conference* was issued on May 27, 2022. HO-4 Respondent’s *Notice and Response to Due Process Complaint* was filed on May 27, 2022. HO-5

On June 14, 2022, the Hearing Officer received a joint email from counsel requesting to continue the second status conference and the decision date due to the parties’ continued efforts to reach a resolution. HO-6 After clarifying that the parties were requesting a thirty (30) day

¹ Personally identifiable information is attached as Appendix A to this Order and must be removed prior to public distribution.

continuance of the decision date, HO-7, the Hearing Officer issued an *Order on Motion for Continuance of Decision Date & Notice of Second Status Conference*, continuing the decision date from July 19, 2022, to August 18, 2022, and rescheduling the second status conference for July 12, 2022. HO-8

On July 12, 2022, during the second status conference, the Hearing Officer was informed that continued efforts to reach a resolution were being made and Respondent was working on getting a program and related training at Student's School, therefore a third status conference was scheduled for August 5, 2022, to determine whether a resolution was reached. A *Second Status Conference Report and Order & Notice of Third Status Conference* was issued on July 12, 2022. HO-9

On August 5, 2022, the parties participated in a third status conference at which time the Hearing Officer was informed that continued efforts to reach a resolution were being made and Respondent was waiting for formal approval from a higher level of administration to get the program in place at Student's School. A fourth status conference was scheduled for August 12, 2022, to check on the status of a resolution. A *Third Status Conference Report and Order & Notice of Fourth Status Conference* was issued on August 5, 2022. HO-10

On August 14, 2022, the parties participated in a fourth status conference at which time the Hearing Officer was informed that respondent received formal approval from their administration on August 11, 2022, to get the program in place at Student's School, but discussions with the School, handling payment and setting up training still needed to be worked out. Counsel for Petitioner made an oral motion to continue the decision date from August 18, 2022 to August 29, 2022. The Hearing Officer, finding good cause, granted Petitioner's motion to continue the decision date to August 29, 2022, and scheduled the fifth status conference for August 22, 2022. A *Fourth Status Conference Report and Order & Notice of Fifth Status Conference* was issued on August 12, 2022. HO-11

On August 22, 2022, the parties participated in the fifth status conference and informed the Hearing Officer that continued efforts to reach a resolution were being made, however the handling of payment and setting up the training had not been finalized. Counsel for the parties made a joint oral motion to continue the decision date from August 29, 2022 to October 17, 2022. Due to the continued efforts of the parties to finalize a resolution, this Hearing Officer found good cause to grant the joint motion and extended the decision deadline to October 17, 2022. A pre-hearing

conference was scheduled for September 23, 2022 and the matter was set for hearing on October 4, 2022 and October 5, 2022. A *Fifth Status Conference Report and Order and Notice of Pre-Hearing Conference* was issued on August 22, 2022. HO-12

On September 8, 2022, counsel for both parties requested that a status conference be scheduled in the matter and advised the Hearing Officer of their availability. A *Notice of Sixth Status Conference* for September 14, 2022, was issued on September 8, 2022. HO-13

On September 14, 2022, during the sixth status conference, this Hearing Officer was informed that continued efforts to reach a final resolution were still being made, and that Petitioner's Counsel received an updated proposed settlement agreement on September 9, 2022 which counsel intended to discuss with Petitioner later that day. Petitioner's Counsel wanted to address the timeline/deadlines associated with requesting subpoenas, if necessary and proposed stipulated facts to submit prior to the hearing. A seventh status conference was scheduled for September 19, 2022. A *Sixth Status Conference Report and Order and Notice of Seventh Status Conference* was issued on September 14, 2022. HO-14

On September 19, 2022, during the seventh status conference, this Hearing Officer was informed that Petitioner's Counsel exchanged the list of proposed witnesses with Respondent, that Respondent was double checking the list to determine whether there were any proposed witnesses that are no longer employed by Respondent, and would confirm the same with Petitioner. No requests for subpoenas were made during the status conference. A *Seventh Status Conference Report and Order* was issued on September 19, 2022. HO-15

On September 20, 2022, Petitioner submitted a *List of Witnesses for Subpoena*. On September 21, 2022, this Hearing Officer asked Respondent if there was any objection to the same and asked for a response by close of business that day. Respondent notified this Hearing Officer that three individuals were no longer employed by Respondent. This Hearing Officer made follow up inquiries about what efforts, if any, were made by Petitioner to secure the Doctor's testimony without a subpoena, whether Respondent objected to the Doctor's testimony and whether the final witness listed was available to testify without a subpoena. Respondent had no objection to the Doctor testifying and was able to secure the testimony of the final witness. HO-16 After Petitioner's Counsel informed this Hearing Officer of the efforts made to obtain the testimony of the Doctor, without success, this Hearing Officer issued a *Determination on Petitioner's Request for Subpoena* and granted the request. HO-17

On September 23, 2022, the parties participated in a pre-hearing conference during which time this Hearing Officer asked that Petitioner clarify the issues by providing the issues in the format of a question and specifying the precise issues to be determined by this Hearing Officer; while discussing the issues to be determined at hearing, a continuance was requested by the parties so that they could brief a contested issue of law and have a decision from this Hearing Officer before the matter proceeded to hearing. The contested issue was whether state statutes regarding dyslexia expand a Free Appropriate Public Education (hereinafter “FAPE”), and if so, whether state law extends the responsibility of the state to provide specialized instruction for dyslexia, whether it delineates how that instruction should be provided, and how it should consider instructional methods. This Hearing Officer issued a briefing schedule setting a due date of November 4, 2022, for Petitioner’s Brief, November 23, 2022, for Respondent’s Brief with a decision to be issued no later than December 9, 2022. The hearing dates were continued to January 19, 2023, and January 20, 2023 due to the unavailability of witnesses over the winter break. The disclosure deadline was set for January 10, 2023. A *Pre-Hearing Report and Order* was issued on October 6, 2022. HO-19

On September 27, 2022, Petitioner’s Counsel reached out with concerns following the pre-hearing conference that took place on September 23, 2022. Respondent addressed some of Petitioner’s concerns on September 27, 2022, and followed up on October 3, 2022 to request a status conference. All counsel set forth their availability, and an eighth status conference was scheduled for October 13, 2022. HO-18

On October 6, 2022, a *Notice of Eighth Status Conference* for October 13, 2022, was issued. Within the *Notice of Eighth Status Conference*, this Hearing Officer listed topics to be addressed at the eighth status conference, including the statute of limitations, narrowing of the issues for hearing and placing the parties on notice that this Hearing Officer was not making a predetermination based on the topics to be addressed at the eighth status conference. HO-19

Between October 11, 2022 and October 25, 2022 counsel for the parties exchanged emails in an attempt to agree on language reframing the issues to be determined by this Hearing Officer. HO-20

On October 26, 2022, the parties participated in an eighth status conference wherein the parties: confirmed the school years at issue; confirmed that Petitioner’s Complaint is limited to the two-year statute of limitations; confirmed that no sufficiency objection was filed by Respondent;

attempted to further narrow and reframe the issues to be determined at hearing; discussed the briefing schedule; were reminded that this Hearing Officer does not have jurisdiction over the issue of attorney's fees; scheduled a ninth status conference for November 1, 2022, and a second pre-hearing conference for December 27, 2022; confirmed the document disclosure date of January 10, 2023; confirmed the hearing dates of January 19, 2023 and January 20, 2023, and the decision date of February 3, 2023. An *Eighth Status Conference Report and Order* was issued on October 26, 2022. HO-21

On November 1, 2022, the parties participated in a ninth status conference at which time this Hearing Officer was informed that a revised settlement offer was sent to Petitioner on October 31, 2022 and the parties scheduled a conference call for November 4, 2022, to discuss the same. The parties stated that they would continue to attempt to reframe and/or narrow the issues to be determined at hearing. A *Ninth Status Conference Report and Order* was issued on November 1, 2022. HO-22

On November 4, 2022, Petitioner filed *Petitioner's Brief on Contested Issues of Law*. HO-23 On December 12, 2022 Respondent requested to reschedule the second pre-hearing conference from December 27, 2022 to December 28, 2022, and Petitioner verified that the new date and time would work on December 28, 2022. HO-24 On November 22, 2022, *Respondent's Opposition to Petitioner's Brief on Contested Issues of Law* was filed. HO-25 Due to unforeseen circumstances, this Hearing Officer's *Decision on Contested Issues of Law* was issued on December 16, 2022, as opposed to December 9, 2022. HO-26

On December 28, 2022, during the second pre-hearing conference, the issues in the Complaint were reframed and consolidated. Respondent raised the issue of the statute of limitations with regard to the testimony of witnesses to be called at hearing and the production of document disclosures. This Hearing Officer informed the parties that while any claims related to alleged actions or failure to act prior to the two-year statute of limitations would not be considered at the time of hearing as they are barred. However, to the extent that Petitioner intends to introduce evidence that existed prior to the statute of limitations that is relevant to its claims during the period within the statute of limitations, it is within the Hearing Officer's discretion to admit such evidence and to determine what weight, if any, to give such evidence. Petitioner was informed to provide this Hearing Officer with a request for a subpoena to secure the Doctor's testimony no later than

January 3, 2023, so that a determination could be made and timely provided to the Department of Education.

On December 28, 2022, after the second pre-hearing conference, this Hearing Officer sent the parties an email with the draft language for the three issues to be determined at hearing, the relief requested by Petitioner, and the Respondent's position, and requested that the parties inform the Hearing Officer if they had any corrections to the same before the completion of the Second Pre-Hearing Report and Order. On December 29, 2022, Petitioner's Counsel responded and requested clarification of the relief requested for the third issue. On December 30, 2022, Respondent's Counsel responded with an objection to any change in the language of the relief requested by Petitioner that did not mirror the Complaint, advised that the Respondent's position on the second issue did not summarize the arguments set forth in their legal brief, and requested a correction to the first issue.

On January 4, 2023, this Hearing Officer sent the parties a revised draft of the issues to be determined, the relief requested by Petitioner, and Respondent's position regarding the issues with the corrections noted by the parties in their emails dated December 29, 2022 and December 30, 2022. HO-28 On January 5, 2023, this Hearing Officer memorialized the issues, relief requested and Respondent's position that were set forth in the January 4, 2023 email in the *Second Pre-Hearing Report and Order*. The *Second Pre-Hearing Report and Order* was issued via email to the parties and in the body of the email, the Hearing Officer reminded the parties that they would be "held to the matters agreed upon, ordered, or otherwise set forth in this Order. If either party believes this Hearing Officer has overlooked or misstated any item, the party is directed to advise this Hearing Officer of the omission or misstatement within three (3) business days of the date of this Order (and provide a copy to opposing counsel). The Hearing Officer will address the party's concern promptly." HO-29 The same notice is also in the *Second Pre-Hearing Report and Order*, but this Hearing Officer wanted to make sure that the parties took note of the same as neither party responded to the email sent by this Hearing Officer on January 4, 2023. Neither party notified the Hearing Officer of any objection or misstatement within three business days of the issuance of the *Second Pre-Hearing Report and Order*.

On January 10, 2023, Respondent provided its List of Witnesses, Respondent's Exhibits, Table of Contents and Correspondence, HO-30 and Petitioner provided its List of Witnesses and Exhibits. HO-31

A hearing was virtually held on January 19, 2023, January 20, 2023. It was a closed hearing. Petitioner was represented by Gillian Barjon, Esq. Respondent was represented by their attorneys, Yasmin Rodriguez-Zaman, Esq, and Daniel Ebihara, Esq.

After the opening statement by the Hearing Officer, counsel confirmed that this Hearing Officer was not missing any pre-hearing correspondence that should be admitted as a hearing officer exhibit, and each counsel made an opening statement.

The following witnesses testified: Assistant Principal; Special Education Instructional Facilitator (hereinafter “SEIF”); Special Education Teacher 1; Coordinator for Psychological Services (hereinafter “Coordinator”); Special Education Teacher 2; Doctor; Parent; Special Education Teacher 3 (and previous Specialized Programs Teacher Assistant); and Dyslexia Expert.

The following exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits 1-31; Respondent’s Exhibit 1, 3 through 15, 17, and 19; Petitioner’s Exhibit 16. The following exhibits were admitted into evidence during the hearing: Respondent’s Exhibit 2, 16 and 18; Petitioner’s Exhibit 3, 4 pages 65-66; 67-71; 75-77; 83-84; 87-97, Exhibit 5 (Draft); 6 and 7, 8 pages 129; 130-131; 132-135; 136-138; 139-140; 141-143, 10 – right side only, with the left to be redacted; 11 through 13.

The record was closed on January 20, 2023. A decision is due February 3, 2023.

JURISDICTION

The due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Act (hereinafter “IDEA”), 20 U.S.C. § 1400 *et. seq.*, and its implementing regulations, 34 C.F.R. § 300 *et. seq.*, the Nevada Revised Statutes 388, and the Nevada Administrative Code 388.

ISSUES

The issues to be determined and the parties’ basic position concerning each are as follows:

Issue One

Whether District failed to identify Student’s eligibility for Specific Learning Disability (hereinafter “SLD”) from May 5, 2020 to the present resulting in a denial of FAPE?

Relief Requested:

- a. District to add SLD as an additional eligibility category and will mark that Student has SLD and Dyslexia.

- b. District to fund an IEE to determine the scope of educational needs.

Respondent's Position:

- a. Upon information and belief, Student was evaluated on August 24, 2020 to determine the Student's eligibility for services and parental concerns/deficits as well as strengths. Based on the results of this evaluation, the Student's Individualized Education Program (hereinafter "IEP") team developed an IEP for the Student, dated August 26, 2020; August 26, 2021; April 6, 2022; May 11, 2022 and September 6, 2022, which were reviewed and approved by Petitioner and provided the Student with FAPE.
- b. District reviewed the Student's educational records, the IEPs for the Student developed on August 26, 2019, August 24, 2020, August 26, 2021, April 6, 2022, May 11, 2022 and September 6, 2022 and the Behavior Intervention Plans (hereinafter "BIP") developed for the Student on August 26, 2021 and May 11, 2022.
- c. Student was found eligible for services under the category of SLD from 2015 to 2016 when it was determined that Student's academic progress was negatively impacted by Student's behaviors and changed Student's category eligibility to emotional disturbance (hereinafter "ED") with Petitioner's agreement.
- d. Student was reevaluated for a specific learning disability in March 2022 at Petitioner's request, but it was once again determined that Student was not eligible for services under SLD because his behaviors are what impact and negatively affect his learning and academic progress.
- e. With a primary eligibility for services of ED Student is precluded from being concurrently eligible for services under SLD.

Issue Two

Whether District failed to include appropriate reading goals and related services and whether the IEP team failed to consider the instructional approaches listed under NRS 388.443 when it developed Student's IEPs, namely the 3/6/2020, 3/10/2021, and 3/25/2022 IEPs, and thus failed to address Student's reading deficits and learning disability, resulting in a denial of FAPE and IEPs that were not reasonably calculated to enable Student to make appropriate progress?

Relief Requested:

- a. Student will receive a Dyslexia Intervention program as a related service using a comprehensive phonics-based reading program delivered with fidelity of program,

including recommended student-teacher ratio, teacher certification/training, and instructional materials and minutes.

- b. District will provide monthly progress monitoring data to parents based on Student's performance in the Dyslexia Intervention program.
- c. District to conduct a complete language evaluation to determine if phonological or language deficits may be impacting reading or academic achievement.
- d. District to conduct an occupational therapy evaluation to determine if Student can benefit from services to aid with executive functioning and emotional regulation skills.
- e. District to conduct an assistive technology evaluation to determine how to help Student with speech-to-text and text-to speech functions so Student can keep up in class while being taught to read.
- f. District to provide training in IDEA responsibilities and state Dyslexia law to all special education and administrative personnel at Student's School.

Respondent's Position:

- a. Upon Information and belief, the IEP team provided the Student with an IEP, agreed to by Petitioner, which provided the Student with a FAPE in the least restrictive environment (hereinafter "LRE").
- b. Upon information and belief, Student was evaluated on August 24, 2020 to determine the Student's eligibility for services and parental concerns/deficits as well as strengths. Based on the results of this evaluation, the Student's IEP team developed an IEP for the Student, dated August 26, 2020; August 26, 2021; April 6, 2022; May 11, 2022 and September 6, 2022, which were reviewed and approved by Petitioner and provided the Student with FAPE.
- c. District reviewed the Student's educational records, the IEPs for the Student developed on August 26, 2019, August 24, 2020, August 26, 2021, April 6, 2022, May 11, 2022 and September 6, 2022 and the BIPs developed for the Student on August 26, 2021 and May 11, 2022.
- d. Student was provided with the level of services and the measure of progress determined by the federal standard.
- e. Student's reading proficiency and comprehension has improved without the need for dyslexia screenings, but with the instructional minutes and supplementary aids and services

provided to Student in the area of reading under the IEPs, and therefore Student has made progress in the area of reading appropriate in light of Student's circumstances.

Issue Three

Whether District failed to consider the recommendations and results of the 2019 Independent Educational Evaluation (hereinafter "IEE") performed by Student's Doctor in Student's 3/6/2020 IEP, in violation of IDEA and resulting in a denial of FAPE from May 5, 2020 to the present?

Relief Requested:

- a. District to provide compensatory education for two years in reading in the form of 160 hours of Lindamood-Bell reading Instruction.
- b. District to add SLD as an additional eligibility category and will mark that Student has SLD and Dyslexia.
- c. Student will receive a Dyslexia Intervention program as a related service using a comprehensive phonics-based reading program delivered with fidelity of program, including recommended student-teacher ratio, teacher certification/training, and instructional materials and minutes.
- d. District will provide monthly progress monitoring data to parents based on Student's performance in the Dyslexia Intervention program.
- e. District to conduct a complete language evaluation to determine if phonological or language deficits may be impacting reading or academic achievement.
- g. District to conduct an occupational therapy evaluation to determine if Student can benefit from services to aid with executive functioning and emotional regulation skills.
- h. District to conduct an assistive technology evaluation to determine how to help Student with speech-to-text and text-to speech functions so Student can keep up in class while being taught to read.

Respondent's Position:

- a. Upon information and belief, Student was evaluated on August 24, 2020 to determine the Student's eligibility for services and parental concerns/deficits as well as strengths. Based on the results of this evaluation, the Student's IEP team developed an IEP for the Student, dated August 26, 2020; August 26, 2021; April 6, 2022; May 11, 2022 and September 6, 2022, which were reviewed and approved by Petitioner and provided the Student with FAPE.

- b. District reviewed the Student's educational records, the IEPs for the Student developed on August 26, 2019, August 24, 2020, August 26, 2021, April 6, 2022, May 11, 2022 and September 6, 2022 and the Behavior Intervention Plans developed for the Student on August 26, 2021 and May 11, 2022.

FINDINGS OF FACT

After considering all the evidence, as well as arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

Background

1. Student was enrolled in the sixth and seventh grade at School for the 2020-2021 and 2021-2022 school years. Student's eligibility category in the 3/6/2020, 3/10/2021 and 3/25/2022 IEPs is listed as ED. (R's Ex 9, 11, 12)
2. Student's 2019 Multidisciplinary Team (hereinafter "MDT") dated 4/11/2019 and 5/3/2019 was a three-year re-evaluation. On April 11, 2019, the MDT team was provided with Student's 4/11/2019 IEE, with Parent's consent to conduct additional social-emotional behavioral assessments and the team tabled the discussion regarding eligibility to allow for review of the IEE results. The MDT team was subsequently provided the 4/11/2019 IEE. Parent reported a belief that Student's educational eligibility for special education services should reflect a learning disability over an emotional disturbance. Based upon the referral information, the suspected disability category continued to be serious emotional disturbance (hereinafter "SED") with an additional suspicion of disability for the category of SLD. Student's educational history noted that although Student attended 6 different schools over the past 5 years, Student had a satisfactory attendance history and Student was eligible for special education since 1/7/2015 when Student's eligibility category was Speech and Language Impairment (hereinafter "SLI") in the areas of articulation and phonology. Student's eligibility category was revised on 3/3/2015 to SLD in the area of basic reading skills. Speech and language services were recommended as a related service. Student was referred for an early re-evaluation due to concerns with long and extensive behavioral difficulties in the classroom and on school campus. The re-evaluation was completed 4/20/2016 and Student's eligibility category was changed to SED due to Student exhibiting an inability to build or maintain satisfactory interpersonal

relationships within the school environment and inappropriate behaviors under normal circumstances. Under social/emotional behavior summary, the teacher noted daily behaviors including learning problems, interpersonal difficulties, inappropriate behavior, unhappiness/depression and fears. Parent reported weekly behaviors including learning problems, interpersonal difficulties, inappropriate behavior, and unhappiness/depression. Student's disciplinary chronology report noted 8 referrals from 1/7/2019 through 2/4/2019. (R's Ex 6)

3. Student was moved from school to school by District because it did not have the programs needed to meet Student's educational needs. Student's abilities in speech, reading and writing did not progress because of the moves. Parent expressed concerns about Student not making progress year after year and sought out the help of a legal aid center in 2018 because Parent did not feel that District was providing for Student's needs. At one of the schools that Student was moved to, Student's arm was pulled out of the socket by a teacher. (Parent's testimony; R's Ex 7, pg. 5)
4. Doctor completed an IEE on Student in March through April of 2019. The IEE was requested by Parent and approved by District based on Student's educational records (including an MDT report and an IEP), and ongoing parent concerns regarding Student's educational and learning needs. Student's academic achievement appeared to be significantly below grade-expected levels despite the presence of an IEP. The IEE was requested to assist with identifying or clarifying any clinical/medical diagnoses Student might have to assist with determining the most effective special education services. (R's Ex 7)
5. Doctor has been contracted by District to conduct IEEs since 2017, and currently completes 2-3 a year, depending on demand. While Doctor is given a significant amount of leeway for the evaluation, Doctor generally looks at the letter provided by a school and whether a question has been asked pertaining to a student. Doctor conducts a careful review of educational records, a clinical interview of parents, brings the student to the office, has current teachers or educators complete questionnaires, performs testing, whether structured or unstructured and interacts with student. Doctor is an expert in the field of child psychology. (Doctor's testimony; P's Ex 12)

6. During the IEE, when given clear and consistent directions in a calm tone, Student was able to comply with directions. Student did very well when knowing exactly how long a task would last and what was expected. Student's overall presentation was that of a child with significant anxiety or fear who is unsure of what to expect or what might happen. Student appeared especially nervous about academic tests. Student engaged in significant question asking and task avoidance. Student's true skill levels were clearly not at, or close to, grade-expected levels. Student's scores in letter and word recognition as well as spelling fell below the first percentile. Student's scores in phonological awareness and alternate phonological awareness fell below the first percentile. Student's phonological memory and rapid symbolic naming fell in the second percentile. Overall findings indicated that Student was a highly motivated and sensitive child who demonstrates relative strengths in visual-spatial reasoning, non-verbal or fluid reasoning, visual memory and new learning, aspects of simple attention and social emotional awareness. Student demonstrated normative and relative weaknesses in speech articulation, phonological awareness and processing, aspects of expressive language, and aspects of self-regulation (including inhibition, planning, and emotional and behavioral regulation particularly related to fear and worry). The weaknesses underlie Student's difficulties with academic learning and performance, particularly regarding reading and writing and emotional regulation. Appropriate treatment or intervention for Student needed to prioritize addressing Student's academic weaknesses, followed by anxiety management, with adults responding to the anxiety-related behaviors effectively. (R's Ex 7; Doctor's testimony)
7. There is no single test that will give an accurate diagnosis; it's about putting all data together in different ways. If a student has academic underachievement, it is Doctor's task to rule out anything else that would explain the underachievement, such as an intellectual disability, significant disruptive behavior, or a hearing or visual problem so severe that it affects academic performance, and if those things are ruled out, then Doctor digs a little deeper to determine whether there is another abnormality. Doctor's clinical/medical diagnostic impressions for Student included Specific Learning Disorder with Impairment in Reading (Dyslexia) - moderate and Specific Learning Disorder with Impairment in Written Expression (Dysgraphia) - moderate. Student's behaviors met diagnostic criteria for Generalized Anxiety Disorder (hereinafter "GAD"). Student's previous diagnosis of

Attention-Deficit/Hyperactivity Disorder (hereinafter “ADHD) was noted. Doctor has not evaluated Student since 2019, therefore Student would likely need reevaluated at this time with the 2019 IEE serving as a baseline. While District attempted to call certain portions of Doctor’s evaluation into question through Coordinator’s review of the IEE, Doctor’s credibility and evaluation methods are sound. This Hearing Officer gave little weight to Coordinator’s concerns about the 2019 IEE based on the following: Coordinator did not oversee School in 2019, and was therefore not consulted by the 2019 MDT team and did not assist in the 2019 evaluation; the 2022-2023 school year is the first year that Coordinator is supervising School; Coordinator is aware of Student’s case, but has not met Student. (R’s Ex 7; Doctor’s testimony; Coordinator’s testimony)

8. A diagnosis in an IEE does not always translate to a similar eligibility because the medical or psychiatric diagnoses through the Diagnostic and Statistical Manual of Mental Disorders (hereinafter “DSM”) or International Classification of Diseases (hereinafter “ICD”) are very different than the NAC guidelines that District uses and are not always compatible. (Coordinator’s testimony)
9. Doctor’s recommendations included: (1) Daily or weekly communication and coordination among home, school & providers²; (2) Extended School Year (hereinafter “ESY”) Services³; (3) curb-to-curb transportation; (4) speech-language therapy at school⁴; (5) reading and writing instruction⁵; (6) monitor motivation and effort⁶; (7) general education

² Frequent communication between teachers, parents and any behavioral health providers is important so Student’s successes and progress can be monitored and reinforced, and so difficulties can be identified and addressed as soon as possible. A communication notebook, email or other method of scheduled communication is recommended to help the educational team work collaboratively across settings.

³ Based on diagnosis and demonstrated deficits, Student is likely to have difficulty maintaining educational and behavioral gains over breaks and would benefit from ESY.

⁴ Student requires speech-language therapy and a trained and certified speech-language pathologist should be part of the educational team.

⁵ Student requires high-quality, intensive, evidence-based instruction in reading and writing. Research indicates that the most effective reading (and writing) interventions feature reading instruction that a) is provided by a trained specialist; b) focuses on increasing phonological awareness and phonological processing skills and c) focuses on increasing fluency. If for some reason, the school does not currently employ a specialist who is able to provide high-quality, intensive, evidence-based intervention in reading and writing, Student’s educational team is encouraged to find an alternative way to ensure that Student has access to such services. *It is crucial to note that at present, Student’s behavioral concerns are closely related to academic challenges. Addressing academic skill deficits in a planned, gradual, and supportive manner must be a priority.*

⁶ Student’s motivation and effort level must be carefully considered and monitored when developing educational and behavioral plans. Educational plans, behavioral plans, teachers, tutors, specialists and parents must all provide appropriate support to rebuild, maintain, and maximize motivation, and to minimize the negative effects of

placement⁷; (8) positive behavior plan⁸; (9) adaptive coping strategies;⁹ (10) functional behavior analysis¹⁰; (11) visual and verbal prompts¹¹; (12) access to topics or subjects of interest¹²; (13) verify understanding¹³; (14) break down tasks¹⁴; (15) think, speak, write¹⁵;

prolonged effort. The educational team is strongly encouraged to consider the role of motivation and effort in all interventions and accommodations.

⁷ Student will benefit from specialized reading instruction at school. However, it is crucial that education continue to take place in the LRE and that Student spend as much time as possible in general education settings. Specialized instruction should be provided on a “push-in” basis as much as possible, with “pull-out” services minimized.

⁸ Student will benefit from a consistent and coordinated positive behavior plan at school and home. The plan should focus on supporting and praising (reinforcing or rewarding) targeted behaviors such as staying focused, asking for help appropriately, being persistent when work is hard, completing tasks efficiently, correcting errors, etc. Student should earn rewards for demonstrating these targeted behaviors. Rewards should be given in the setting where the behaviors are demonstrated if possible. Dividing the day into morning and afternoon for earning rewards will help build and maintain a sense of success and motivation, this reinforcing effort. When “free time” is a reward, this can also help to reduce the student’s cognitive load, and this increase motivation. It will be important for all adults to reinforce Student’s positive behaviors, while ignoring undesired behaviors whenever possible. If undesired behaviors arise, it will be best to address these in private and not in front of the class. It will also be helpful for adults to use a private signal to prompt Student when attention begins to wander.

⁹ Because Student becomes overwhelmed and frustrated while at school, the educational team is strongly encouraged to develop a plan to identify and minimize potentially triggering events, and help Student develop more adaptive coping strategies. Possible options include regular check-ins with the teacher of record or equivalent, communicating level of baseline frustration with teachers, and creating a system for Student to leave the classroom when overwhelmed. Another suggestion is using cognitive-behaviorally based techniques.

¹⁰ Implement regular use of functional behavioral analysis to identify and address triggers of disruptive behaviors. It will be important to consider both the antecedents and consequences of target behaviors. *It is crucial to note that at present, Student’s behavioral occurrences are closely related to academic challenges. Addressing Student’s academic skill deficits in a planned, gradual, and supportive manner must be a priority.*

¹¹ It may be very helpful for those working with Student to utilize visual supports. Student will also benefit from verbal and visual warnings about upcoming transitions. These techniques can help Student to anticipate upcoming events and transition more easily between activities.

¹² Many children with neurodevelopmental disorders demonstrate interest and even higher skill levels in specific academic subject areas. The educational team is encouraged to ensure Student has access to these subject areas in order to assist with learning and maintaining motivation. Student appears very interested in animals. The educational team is strongly encouraged to support this interest.

¹³ In all tasks, ensure that Student understands the instructions and how to complete each task.

¹⁴ In all tasks, ensure that Student understands and remembers task instructions. Student may benefit from repeated instruction and written or visual reminders for each step. Functional interventions that break down school tasks and homework into small “do-able” parts will be very helpful and will minimize Student’s feelings of being overwhelmed and frustrated.

¹⁵ Student has an impressive wealth of knowledge and strong reasoning skills but struggles to get the knowledge and ideas written down. Having Student begin classwork, homework, and long-term projects by first thinking about the entire assignment, then speaking with an identified parent or teacher about the info to include in the assignment (the adult could even write down the ideas while Student speaks), and then finally writing the assignment can be a useful way to approach written assignments.

(16) extended time and quiet setting¹⁶; (17) read questions and content aloud¹⁷; (18) alternative methods for demonstrating/assessing knowledge¹⁸; (19) revise/re-take¹⁹; (20) limit copying from the board²⁰; (21) regular breaks²¹; (22) homework accommodations²²; (23) standard high school diploma²³; (24) organizing, planning and monitoring homework and other assignments²⁴; and (25) private educational services and support²⁵. (R's Ex 7)

10. The 2019 MDT team determined that while Student continued to have difficulty learning, and retaining introduced concepts, they suspected that Student's behavior was the primary reason for performance underachievement and that Student's strengths and needs were not

¹⁶ Student will likely need extended time and a quiet setting for all tests/exams given the anxiety and deficits in fluency, etc. Student will benefit from explicit reminders prior to beginning the test about how much time is permitted, and how long the test is expected to take. Student will also benefit from prompts about the amount of remaining time during the test. It will be important for Student to learn to utilize the extra time efficiently and beneficially.

¹⁷ Student is an inquisitive child with a wealth of knowledge. Unfortunately, Student's specific deficits in reading and writing can make it difficult to demonstrate the knowledge in multiple subject areas. Student's educational team is encouraged to make accommodations such as reading directions and test questions aloud to ensure that Student knows and understands what is being asked (when the subject is not reading comprehension).

¹⁸ Student often struggles to demonstrate the extent of Student's knowledge and mastery of skills when given written tasks. Allowing Student to demonstrate mastery of concepts by providing verbal responses or demonstrating ability to work a mathematic problem in a low-pressure or one-on-one setting is strongly recommended.

¹⁹ Student should be permitted to revise and resubmit assignments or re-take quizzes and exams on which Student learned a C or lower for additional credit. Student's difficulties with anxiety, fluency, and aspects of self-monitoring may negatively impact performance on assignments even when Student understands the content.

²⁰ Student may have difficulty correctly copying assignments and notes from the board due to difficulties with attention. It is best to limit the need for such copying. When Student is required to copy such information, a teacher or aide should check Student's notes to ensure that Student copied the information correctly and completely.

²¹ Allow for short movement breaks after a lengthy work period to help with inattention and fidgetiness. Allow for scheduled longer breaks throughout the day.

²² Student spends significantly more time on homework than expected for Student's classes and demonstrated level of academic skills and cognitive ability. This lengthened time leads to frustration, exhaustion, and decreased motivation. The educational team is encouraged to consider alternative assignments, time limits and/or other modifications to reduce the amount of time Student spends on homework each day. Student is likely to demonstrate mastery of a subject more easily if the workload is limited to an amount or length that Student perceives as something that can be accomplished. Over time, as Student completes homework assignments more rapidly, the educational team can review and modify homework accommodations if appropriate. Additionally, if the educational team decides to enroll Student in an intensive reading intervention program during the afterschool hours, it would be helpful for time spent in the intervention program to count as homework time.

²³ Although Student struggles with specific learning difficulties, there is no reason to doubt Student's ability to complete school and earn a standard diploma, provided Student is provided with access to accommodations and high-quality intervention. Student's educational team is strongly encouraged to ensure that Student is enrolled and supported in the academic courses needed to complete to remain on track to graduate high school.

²⁴ Student requires support and supervision to organize and accomplish academic and other tasks. Parents and teachers can help by providing explicit instruction and ongoing support in this area.

²⁵ Some parents of children with Dyslexia opt to enlist private and/or afterschool instruction to help remediate the learning disorder. Student continues to display a number of academic skill deficits, particularly in the areas of reading and writing. Given Student's history and pattern of difficulties, a structured, evidence-based remediation program (as opposed to a less formal private tutor) is strongly recommended. The Barton reading & Spelling System is also supported by research, and a number of local teachers may be available for private tutoring.

consistent with the SLD criteria. The criteria established by NAC 388.415 for SED under which Student fell included: an inability to build or maintain satisfactory interpersonal relationships within the school environment, including: withdrawal and isolation of the pupil from others and efforts by the pupil to obtain negative attention from others through punishment, ostracism or excessive approval; inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason; and a pervasive mood of unhappiness or depression which were evidenced for at least three months. When a student meets this criteria it stops learning where a student is at because the student is using their emotional brain and not their logical brain. The MDT team further found that the characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to the pupil's age within the educational environment, despite the provision of intervention strategies; special education support is required to alleviate these adverse effects; the pupil is not eligible solely because of sensory, intellectual, or health factors, maladjustment or conduct disorders; the controlling factor for the student's eligibility is not the lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; the controlling factor for Student's eligibility is not limited English proficiency; and by reason of the pupil's SED, the pupil needs special education and related services. Regarding the condition of SLD, Student's underachievement in mathematical calculation, mathematical problem solving, written expression, basic reading skills, reading fluency skills and reading comprehension were significantly low, however at that time, were primarily the result of emotional disturbance, and that's considered exclusionary criteria for SLD under the NAC. Eligibility is not supposed to drive services. An IEP is developed based on the present levels of a student's skill deficit areas including the academic and behavioral needs of a student. (R's Ex 6; R's Ex 8; Coordinator's testimony)

11. Parent participated in all of Student's meetings related to the 2019 MDT and the development of the IEP. During the first 2019 MDT meeting, Parent asked that a specific program be used for Student to concentrate on reading and writing. Parent expressed concerns about Student's speech but did not express a concern about Student's behaviors because Parent was not seeing the same behaviors at home that were reported by District.

At the second 2019 MDT meeting, Parent believed that these concerns were dismissed, as District was more focused on Student's behaviors. However, Student's 2019 statement of eligibility for SED was signed and agreed to by Parent. (Parent's testimony; R's Ex 8, pg. 4)

Student's School

12. Assistant Principal has known Student since elementary school and has worked with Student and Student's teachers throughout the years. Assistant Principal works with staff and teachers to make sure that they are prepared to help students; helps the teachers with teaching lessons; and is present during Student's pass times or lunch times. (Assistant Principal's testimony)
13. Student's IEP team decided that the LRE for Student would be a special school environment, which differs from a comprehensive campus in that it has all special education teachers that help build on education for the students throughout the day and offers trauma-based instruction to meet students' emotional needs. Student was enrolled at School on November 21, 2019. (Assistant Principal's testimony; R's Ex 3)
14. School is a special school for students with IEPs. A typical day at School starts with a check in/check out system, and staff try to get a read on the students, determine if there is anxiety or tension in their voice and may decide that students need more than their classroom. If a student enters their classroom, it starts with the same check in/check out process and students then have goal setting. School uses the Review360 program²⁶ to track points. Every day's schedule stays the same as far as academics are concerned and for each change of activity students are well informed what is expected of them for the next 30 minutes and earn points based on behavior. Before the period ends, each student reviews their behavior with the teacher and takes responsibility for their behavior. This process happens repeatedly throughout the school day. (Assistant Principal's testimony)
15. School works on a phase system where students are engaged in different levels of access, privileges, reinforcement, and feedback. Phases range from phase 1 to phase 5. Each phase

²⁶ Review 360 is a daily check-in/check-out system with a high rate of positive behavioral coaching throughout the day and a daily point sheet to measure progress. At School, Review 360 is paired with both a level system in which a student's level is determined by the number of points they receive on their point sheet and a reinforcement system where students can earn activities and tangibles based on student interests. As the student consistently shows responsibility as measured by the point sheet, their privileges and responsibilities expand.

- contains 40 days. If a student maintains progress in phase 5, then School begins looking at transitioning a student back to a comprehensive campus. (Assistant Principal's testimony)
16. Student is more than three-quarters through phase 4, with only one more level to go. Once Student reaches phase 5, School will begin pulling back on some of the structures that are not duplicated on a comprehensive campus. At the beginning of the 2022-2023 school year, School spoke with Student and Parent about the possibility of transitioning to a comprehensive campus, then there were a few behavioral incidents that occurred in October 2022 which stalled things for a bit. Once Student reaches level 5, School will structure, coach, and help Student through that phase, without the very specific and timely feedback given after each period in lower phases. School will set up meetings, find a receiving school, reach out to that team, meet with that team, discuss Student's successes and will stay in touch for a while after Student transitions. (Assistant Principal's testimony)
 17. Student needs structure and is often apprehensive to start things. It is very important that procedures are in place for Student to feel safe. Currently Student is doing a great job, due to the different levels of support that Student is receiving. (Assistant Principal's testimony)
 18. School's Special Education Instructional Facilitator (hereinafter "SEIF") has worked at School for 5 years, and was a substitute teacher for 1 ½- 2 years prior to that. SEIF holds a bachelor's degree in fine arts and a master's degree in special education. SEIF's responsibilities include: work with teachers, students inside the classroom on behavior and education; working with teachers on IEPs, writing IEPs, IEP compliance, as well as holding and being part of IEP meetings. SEIF has been in the last few IEP meetings with Student and has seen Student in class a few times. SEIF has interacted with Parent in Student's IEP meetings. (SEIF's testimony)

Fifth Grade

19. Special Education Teacher 2 (hereinafter "SPED 2") had Student in class for about a month in the fifth grade before the COVID shut down. During the month that SPED 2 had Student in the fifth grade, Student's deficits were at an early first grade level. Student had difficulty with word families, like the "op" family (hop, bop, cop,); and this was one of the early skills and drills that they worked on. (SPED 2's testimony)
20. Student's 3/6/2020 IEP was held in person and attended by Parent, Education Legal Advocate (hereinafter "Advocate"), the Local Education Agency (hereinafter "LEA")

representative, a special education teacher, a regular education teacher and a speech/language therapist/pathologist/specialist. Assessments conducted included the MDT dated 5/3/2019; and Wide Range Achievement Test (hereinafter “WRAT-5”). Parent’s educational concern listed: “Parent is concerned with Student’s reading. Parent notices Student’s behavior changes at home as well and appreciates phone calls. Parent would like for Student’s behaviors to not interrupt learning (reading). Parent would like Student to be at grade level.” During the meeting Parent mentioned wanting to discuss Student’s dyslexia, and the IEP team informed Parent that they were unaware that Student was dyslexic. Parent brought a copy of the IEE to the meeting but was told that a copy of the IEE would be given to the psychologist and another meeting would be scheduled. The second meeting was not scheduled because the state went into lockdown due to COVID-19. Parent agreed with the 3/6/2020 IEP and signed the same. (R’s Ex 9; SEIF’s testimony; Parent’s testimony)

21. Student’s eligibility in the 3/6/2020 IEP is ED. The 3/6/2020 IEP reading goal states, “when provided with a word list, Student will increase reading ability by correctly decoding/labeling Fry’s first 100 sight words, and single-syllable words containing an r-controlled vowel, digraph, or consonant blend with 80% accuracy, as measured by teacher collected data, as implemented by teaching staff.” Student’s 3/6/2020 IEP included specially designed instruction of 200 minutes of self-contained reading. Although Student’s WRAT score for reading comprehension was in the extremely low range, there is no reading comprehension goal listed. SEIF explained this discrepancy by stating that just because Student couldn’t read the sentences does not mean Student has a comprehension deficit; Student may have been able to comprehend if the materials were spoken to Student. Student’s written expression goal includes: with the use of graphic organizers, sentence frames and high frequency word lists, Student will increase written language skills by writing a 3 sentence composition in which Student expresses an opinion/main idea of a text and provides two supporting sentences, while maintaining proper beginning of sentence capitalization and end of sentence punctuation, in 4 out of 5 trials, as measured by teacher collected data and work samples, as implemented by teaching staff. (R’s Ex 9; SEIF’s testimony)

22. Student's 3/6/2020 IEP accommodations included: staff will utilize point system to include external reinforcers such as treasure box, school store items, food and drink items; student will have the opportunity to attend adaptive recreational activities with nondisabled peers; read math and word problems for assignments and tests to student; model positive interactions and give positive reinforcements for compliance and appropriate interactions with peers and adults; student has behavior plan; read questions to student for all assignments and tests; Student will be allowed the use of a multiplication and hundreds chart for assignments and tests not assessing mastery of targeted skills; extra time to be provided when completing assignments and tests; cool down area to be provided for use by student; visual aids and manipulatives/realia for new concepts; chunk assignments when new concepts are introduced; close adult proximity and keep in line of sight; special seating using consideration to seat student where most successful for that certain situation; staff will check for understanding (repeat, rephrase, reteach as needed); warnings will be provided when there are changes in schedule, routines, aides and teachers (if able); text to speech for progress monitoring or district wide assessments (not when assessing reading ability); text to speech (embedded for math stimuli and items, not for reading passages); use more than one multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding, and sign word reading skills; use alternative methods to demonstrate understanding or explain information; communication with parent daily; and student will be provided with a break card to use when student is frustrated/upset. Chunking means breaking up an assignment in chunks so they can complete one part of an assignment at a time with a break in between. Parent agreed with the components of the IEP. (R's Ex 9; SEIF's testimony)
23. The 3/6/2020 IEP includes Student's behavior/social/emotional skills and review of recent restraints on 12/10/2019, 12/17/2019, 1/09/2020, 2/10/2020 and 2/10/2020 as well as Review 360 behavioral data. The 3/6/2020 IEP includes the following justifications for placement involving removal from regular education environments: Student's inability to manage behaviors and emotions, along with work refusal, and outbursts disrupt the flow of the educational environment, causing interruptions in learning and the learning of others; Student has behavioral needs that require a behavior intervention plan; Student exhibits delays in behavioral control and social skills, which impeded ability to derive non-

academic benefit within the general education setting and impedes ability to fully access grade level curriculum. (R's Ex 9)

24. At the time that Student was in the latter part of the fifth grade, the 3/6/2020 IEP was in place. SPED 2 did not write the IEP, based on the name of the special education teacher listed on the same. Student's present levels based on the WRAT scores fell below first percentile. Below the first percentile means that there are significant deficits. Based on Student's present levels, Student's deficits were significant and consistent with dyslexia. The 3/6/2020 IEP did not have a fluency goal or spelling goal. It did have a blanket decoding and reading goal, and within that goal, it targets r-controlled vowels and diagraph or consonant blends, so it targets sight words which are a key component in reading fluency. Student was struggling with CVC words. SPED 2 was not using any materials from Voyager or Language! during that time. SPED 2 was not doing specific pull-out intervention at that time but did utilize multi-sensory activities. Once distance education began, Student had issues with the Chromebook and with the mousepad. From the time they went to distance learning to the start of the summer a lot of SPED 2's work with Student was one-to-one for reading. They were starting to make progress however SPED 2 did not have Student for the sixth-grade year, so there was no ability to maintain that student-teacher relationship. (SPED 2's testimony)
25. While Student's 3/6/2020 IEP references the 2019 MDT, it does not reference the IEE. However, the 2019 MDT report contains the diagnostic impressions that resulted from the IEE, including Specific Learning Disorder with Impairment in Reading and Specific Learning Disorder with Impairment in Written Expression. Student's status records produced by District do not contain any information prior to 8/12/2020. (R's Ex 9; R's Ex 6; R's Ex 13)

Sixth-Grade

26. Special Education Teacher 1 (hereinafter "SPED 1") had Student in class virtually for the 2020-2021 sixth-grade school year. SPED 1's is no longer employed by District and is now an Executive Functioning Specialist and does special education tutoring. SPED 1 went to school to become an English teacher, went through Nevada Teachers of Tomorrow alternative certification program, which is an online, self-paced program, no direct instruction, received a provisional licensure through the State of Nevada, to teach K-12

generalist special education. SPED 1 has been working on and is currently two classes short of a master's degree in special education with a concentration in behavior disorders. (SPED 1's testimony)

27. During the 2020-2021 school year teaching was done online through Google Meets. Daily, students were expected to log in by 8am. SPED 1 then went over procedures and expectations for behavior; what the day would look like; ask if there were any issues at home; if students wanted to speak privately with a counselor, would let them do that; set goals for the day to help them identify what they were struggling with; and the students also had specials. Student logged on for instruction when Student had access to a computer or internet connection, which was not consistent. (SPED 1's testimony)
28. At the beginning of the sixth-grade school year, SPED 1 could only access the part of Student's file that was available on-line. SPED 1 was provided background information about Student from the instruction aide and speaking with Parent. Although Student's IEP provided specially designed instruction of 200 minutes of self-contained reading, the level for the tier of intervention needed was far more than SPED 1 could provide. While there were some opportunities to pull Student out, it varied from 100-200 minutes averaging approximately 130 minutes per week, far less than the minutes Student was entitled to receive. (SPED 1's testimony)
29. Student expressed that Student liked certain things and was more engaged with certain concepts, so SPED 1 tried to build the instruction around those concepts. It was a challenge for Student, having to be vulnerable in a group setting. Student expressed frustration of seeing words but not knowing what they mean. However, Student was able to listen, research, watch videos and talk about so many things; but when it came to the actual reading, the inability to do so chipped away at Student every day. (SPED 1's testimony)
30. Initially when the 2020-2021 school year started, SPED 1 did not have access to the reports identifying Student as a student with dyslexia. However, it was very apparent to SPED 1 that there was a challenge in Student's reading, so SPED 1 repeatedly asked how the staff could best support Student. SPED 1 did not have the expertise to support a student four years behind at that time and was not trained in dyslexia or intensive reading instruction. (SPED 1's testimony)

31. School provided Student the opportunity to work with someone on reading. Student attended a few times but did not feel comfortable, and said it was too difficult to understand. SPED 1 did not have an opportunity to collaborate with that person. SPED 1 learned that the instruction was spoken word, which did not meet Student's specific needs, nor was it evidence based. It was way above Student's reading level and therefore Student did not feel successful. When Student does not feel successful, Student shuts down and can become volatile. During COVID students had their own level of trauma going on; it was challenging for them to feel safe; there was an increase in vulnerability because people were showing the inside of their homes; the older students would make fun of the new students in the school; it could lead to escalated vulgarity and threats; there were times when Student was asked to work on the missed time, but depending on how Student felt that day Student might log off the computer and take the afternoon off; on the days when Student felt well, and everyone was calm, then Student could go on for hours. (SPED 1's testimony)
32. Student's 10/1/2020 IEP revision increased Student's minutes of instruction from 200 minutes in reading to 320 minutes (200 minutes per week in asynchronous reading and 120 minutes per week in synchronous reading). The teacher observations in the 10/1/2020 IEP include the following: Student was agreeable when asked to read aloud and practice sight words working with staff 1:1. During live instruction with other students, Student was reluctant to read. On the spelling subtest, Student scored a standard score of 65, which falls in the extremely low range. Student is able to verbally communicate complex thoughts and responses regarding the text but struggles independently writing due to deficits in spelling. (R's Ex 10, pg. 3; 10-11; SEIF's testimony)
33. Student's 12/18/2020 progress report stated that Student could read 23 out of 100 sight words which was an increase from the 10/09/2020 progress report wherein Student could only read 16 of 100 sight words fluently. However, in January of 2020 Student was at 24 words, so essentially Student was back to where Student was a year prior. (R's Ex 10, pg. 1-2; SEIF's testimony; SPED 1's testimony)
34. Student's annual IEP meeting was held on 3/03/2021 and reconvened on 3/10/2021. Parent, Advocate, SEIF, SPED 1 and a regular education teacher participated in the meeting. The

school was in lockdown during that time, therefore all participants appeared virtually via Google Meets. (R's Ex 11; R's Ex 13; SEIF's testimony)

35. At the 3/03/2021 meeting, SEIF and SPED 1 learned from Advocate that Student was previously diagnosed with dyslexia and SLD and were provided a copy of Student's 2019 IEE. The first draft of the IEP did not contain information from the 2019 IEE but did mirror the 2019 MDT information contained in the 3/6/2020 IEP. Neither SEIF nor SPED 1 were able to access the 2019 IEE because the physical copy was located on campus. Therefore, they did not have access to Student's 2019 MDT either which referenced the IEE in detail. As a result, SPED 1 sent an email on March 3, 2021, attaching the 2019 IEE and noting that Student was diagnosed with dyslexia and SLD, however the previous IEP did not reflect that information. The email further noted the Parent and Advocate's requests that the IEP be revised to include "additional specialized supports, additional goals aligned with the diagnoses, and specific information on how the learning disabilities will be addressed online and in-person by school staff and specialists." (SEIF's testimony; SPED 1's testimony; P's Ex 5 (draft); P's Ex 6; P's Ex 4, pg. 65; R's Ex 13)
36. At the 3/10/2021 meeting, Parent and Advocate brought up concerns regarding Student's eligibility category and speech services. Parent and Advocate requested a consideration for a change of eligibility from ED to SLD. The Response to Intervention (hereinafter "RTI") process was explained to Parent and Parent agreed to the same. RTI is provided when a student is struggling in a certain area and the school wants to respond to that by implementing certain strategies to see how they progress and using what strategies. Parent and Advocate also requested speech services be considered because they were recommended in the 2019 IEE. The school psychologist was made aware of Parent and Advocate's request for a change of eligibility and the speech pathologist was made aware of the request for speech services. (SEIF's testimony; R's Ex 13)
37. Student's eligibility in the 3/10/2021 IEP is ED. The 3/10/2021 IEP states that the assessments conducted included the MDT dated 5/3/2019; IEE dated 4/1/2019; WRAT-5 of 1/17/2020²⁷; MAP of 9/23/2020²⁸; and MobyMax Foundational Reading Assessment.

²⁷ This IEP was written during lockdown. WRAT testing has to be done in-person, so the information contained in the IEP could not be updated for Student's WRAT score. (SEIF's testimony)

²⁸ MAP testing was given virtually during the lockdown, so if Student participated, this score could have been updated. (SEIF's testimony)

The October 2020 MobyMax Assessment placed Student at a 1.3 grade level while the March 2021 assessment placed Student at a 1.5 grade level. The 9/23/2020 MAP LEXILE score placed Student at a reading grade level of 0.3 to 0.9 which is a kindergarten level. Teacher observations included that: Student was able to read 48 of 100 words on Fry's first 100 sight words; Student does not recognize or is unable to sound out words; Student has a deficit in CVC words; Student has been provided access to reading instruction which focuses on decoding phonological and phonemic awareness, and sound symbol recognition; on the spelling subtest, Student scored a standard score of 65 which falls in the extremely low range. Student is able to correctly write the capital letters requested and spell the words cat, run and cut, but unable to correctly spell the words boy, will and arm. Parent's educational concern listed: "Parent expressed concerns including the amount of specialized reading instruction Student is receiving." (R's Ex 11; SEIF's testimony)

38. There is no spelling goal for Student. Student's reading comprehension goal states, "By annual review date, Student will read a third-grade non-fiction passage, with audio book support,²⁹ and be able to identify the main idea and three supporting details with 90% accuracy as measured by observation, documentation, and student work samples, as implemented by special education teacher." Student's reading decoding goal states, "By annual review date, when given a list of 40 decodable single and multisyllabic words at a second-grade level, Student will accurately decode 30/40 words correctly, as measured by observation, documentation, and student work samples, as implemented by special education teacher." Student's written expression goal states: "By annual review date, when asked to produce a written response that demonstrates understanding of sixth grade leveled text read with teacher or audio support, Student will compose three or more sentences by hand or by computer that demonstrates understanding of text in four of five trials, as measured by observation, documentation and student work sample, as implemented by special education teacher." Student's behavior goal states: "By annual review date, Student will decrease inappropriate verbal comments to 1 time per week or less by responding appropriately when frustrated or irritated and seeking attention in appropriate ways in 4 out of 5 trials as implemented by special education teacher." (R's Ex 11; SEIF's testimony)

²⁹ The use of an audio book means that Student is not reading the words, but that they are being read aloud to Student. (SEIF's testimony)

39. Student's specially designed instruction included: (distance education) 120 minutes per week of reading synchronous and 300 minutes per week of reading asynchronous; (hybrid) 180 minutes per week reading in person and 270 minutes per week in reading asynchronous; (full in person) 300 minutes per week in reading. Student's modifications, accommodations or support included: staff will check for understanding (repeat, rephrase, reteach as needed); read math and word problems for assignments and tests to student; text to speech for progress monitoring or district wide assessments (not when assessing reading ability); special seating using consideration to seat student where most successful for that certain situation; communication with parent daily; staff will utilize point system to include external reinforcers such as treasure box, school store items, food and drink items; read questions to student for all assignments and tests; model positive interactions and give positive reinforcements for compliance and appropriate interactions with peers and adults; student has behavior plan; read questions to student for all assignments and tests; Student will be allowed the use of a multiplication and hundreds chart for assignments and tests not assessing mastery of targeted skills; extra time to be provided when completing assignments and tests; chunk assignments for all assignments; offer student two options of alternative assignments to complete classwork and projects; reminders and warnings will be provided when there are changes in schedule, routines, aides and teachers (if able); use more than one multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding, and sign word reading skills; text to speech (embedded for math stimuli and items and ELA stimuli and items, not for reading passages); use alternative methods to demonstrate understanding or explain information; student will be provided with a break card to use when student is frustrated/upset; and only ask student to read aloud when they are comfortable and have volunteered to read. Parent agreed with the components of the IEP. (R's Ex 11)
40. Everyone was working very hard to help Student, but objectively Student's needs were not being met and SPED 1 was frustrated because SPED 1 could not help Student the way that Student needed help. When you have a child with an emotional disorder, there are behavior goals, but when you have a student with 4-5 years of reading deficit, you have to look at something else. SPED 1 was livid about the services that could have been provided to Student before middle school and that SPED 1 was unaware of the road map laid out in the

2019 IEE. SPED 1 didn't want to continue to do the same things and get the same results for Student. While this Hearing Officer found SPED 1's testimony credible regarding the frustration, concern, and desire to help Student, this Hearing Officer found SPED 1's credibility lacking surrounding the belief that access to the 2019 IEE would have provided a road map that SPED 1 could have followed because the 2020 IEP accommodations were so similar to the recommendations set forth in the 2019 IEE. (SPED 1's testimony)

41. SPED 1 was brainstorming ways to find more support for Student and started to look at other options. SPED 1 was aware of a group of anonymous business owners in the community that pool resources so if students need items or families need items and something needs to get done, then one of the resources is offered to that family. Through that resource, Parent was provided three names of educators specifically trained in dyslexia. Parent jumped right on it, coordinated directly with the Tutor, and made Student accountable for attending those sessions. School was informed that Student was receiving outside support. The Tutor implemented the Barton system with Student. (SPED 1's testimony; P's Ex 4, pg. 67-71)
42. Student was under the impression that Student would receive instruction that would meet Student's needs, knew that a group setting didn't work, and the spoken word program in the fall didn't work. For students with emotional disturbances and disorders, the more frustration you create for them, the more behaviors increase, so SPED 1 wanted to find a way to allow Student to shine and succeed. Student continually asked when Student would get the reading time that Student needed. SPED 1 told Student that School was working on getting the support that was needed, but if there was not a definitive answer, then Student would just log off. As a result of Student's requests for another teacher that specializes in reading, SPED 1 asked School if the level of instruction Student needed was going to be provided. SPED 1 felt underqualified, as this was not SPED 1's wheelhouse and SPED 1 wanted clarification. SPED 1 was worried that Student's needs were not being met, that things were not being implemented with fidelity, and that Student was not making progress and reached out to School staff, including SEIF. SEIF reached out to Assistant Principal and the region coordinator and informed SPED 1 that as a special education teacher, SPED 1 was qualified to address Student's deficits in reading and meet Student's needs. (SPED 1's testimony; P's Ex 4, pg. 75-77)

43. After the 3/10/2021 IEP meeting there was a plan to get Student a RTI, however SEIF informed SPED 1 that it would take 10-18 weeks (which would take them to the end of the school year), but they had to start data collection for the RTI process, so SPED 1 moved forward with easyCBM which is a simple program that has reading passages that measures reading fluency that starts with kindergarten and tracks a student's progress. There was a meeting with the RTI at the end of the school year, wherein SPED 1 asked if there was a program that was research based and can be provided by any staff member so that Student could receive continuity of services. The only program in place at the end of the school year was MobyMax, which was the program for all students but it was not working for Student. School was still working on getting a program for Student. (SPED 1's testimony; P's Ex 4, pg. 83-84)
44. SPED 1 found that the methods that specifically worked for Student were multisensory instruction, including visual, sensory, listening and teamwork and team building within the class. One approach that worked well was finding a topic that Student really enjoys and knows a lot about, to give Student a sense of ownership. The topics were so engaging that the other students would want to hear what Student was saying. They also paired Student with another student that was having a good day, understanding that it was a safe space, and if one student didn't know a word, then the other student would jump in, and this helped Student become more fluent. Student is a wonderful person with a brilliant mind and has a lot to share. Over the 2020-2021 school year Student increased the amount of words from 24 to 48, so Student did make progress. (SPED 1's testimony)
45. The Specialized Programs Teacher Assistant's (hereinafter "SPTA") interactions with Student during the sixth-grade year were virtual, with independent exercises to do decoding or sight words in pullout, or 1:1, sessions. A lot of times Student was resistant working in 1:1 sessions, whether with SPTA or SPED 1. As soon as there was a word Student didn't know, Student would log out, or have internet issues, and then wait until that session was over to log back in. Behaviorally Student was very defiant, a lot of times it was, "Oh I can't do that," "I don't want to do that," "I don't care to do that, so why do I need to learn about it?" The only time they could really grasp Student's attention was during science, so they tried to tailor a lot of things around science. During the majority of time for a non-preferred

activity Student gave a lot of pushback or would sign off. Student was very low performing in all areas academically and struggled to read in the sixth grade. (SPED 3's testimony)

Seventh Grade

46. SPED 2 who had Student in class for about a month in the fifth grade before the COVID shut down, had Student for the entirety of the seventh-grade year. In the fall of 2021, SPED 2 was already familiar with Student's deficits and had an understanding that Student had dyslexia. SPED 2 did not use a set curriculum, but the practice being used by SPED 2 has evidence-based support. SPED 2 was creating a lot of the materials. SPED 2 had an in-service training of a couple of hours of dyslexia training. SPED believes that 200 minutes per week of reading is highly instructive. If a student has reading deficits and SPED 2 goes over the 200 minutes, there's nothing wrong with that. Student was not the only student that had targeted IEP goals and needs and SPED 2 tried to be respectful of Student's wishes in not wanting to miss an earned break time or whole group instruction. SPED 2 was trying to meet Student halfway and if SPED 2 pulled Student from an activity that Student really wants to do, then Student may have been less willing to work. (SPED 2's testimony)
47. Initially Student had some behavior challenges, but after developing a relationship with SPED 2, there was rapid improvement. There was a significant difference in Student's behaviors when SPED 2 was around versus not around. Student had challenges in unstructured time, and significant challenges during specials. By November or December of 2021, Student and SPED 2 had a rather strong working relationship and there was more academic willingness from Student. From that point forward, Student was one of the most, if not the most engaged student in academics with only occasional behavioral challenges. Most of Student's behavioral issues surrounded Student's comments or inappropriate language and were more towards the beginning of the school year before SPED 2 was able to implement Student's accommodations. SPED 2's classroom environment is a safe learning environment. SPED 2 does not allow targeting or ridiculing of students. SPED 2 could not recall Student being the target of that behavior during the school year. (SPED 2's testimony)
48. SPTA's interactions with Student during the seventh-grade year were in person and, as a result, there was more of an opportunity to get to know Student. Student had a lot of escalations in the beginning of the school year and had trust issues. SPTA had to learn

Student's triggers and spent a lot of time building that relationship. SPTA would share the 1:1 sessions with SPED 2. Behaviorally, Student was still a little defiant, still not confident in reading, and if asked to read in class would usually say something along the lines of "forget this, I don't care." Student's academics were still quite low, but being back in person, Student was more willing to be engaged in an activity. (SPED 3's testimony)

49. SPED 2 was aware of Student's IEP prior to having Student in class. Upon review of Student's 3/10/2021 IEP reading comprehension and reading decoding goals SPED 2 believes that Student met both goals. The reading decoding goal was a very targeted and specific decoding goal that would be appropriate for a student struggling to read or with indicators or characteristics of dyslexia. Students with dyslexia often have struggles with writing and the written expression goal is appropriate as well with levels of teacher and audio support. (SPED 2's testimony)
50. The accommodations listed in Student's 3/10/2021 IEP that are appropriate for a student struggling to read or with indicators or characteristics of dyslexia include: text to speech; read questions to student for assignments and tests; extra time to be provided; use more than one multi-sensory technique to facilitate acquisition of phonics knowledge, decoding, and sight word reading skills; another text to speech; and only ask the student to read aloud when they are comfortable and have volunteered to read. (SPED 2's testimony)
51. The accommodation of not forcing Student to read was very important. Student is very smart, very aware of social cues, and also very aware that Student had significant reading deficits. Student was very apprehensive when Student first came into class to read anything aloud or even 1:1 where other students might be able to hear Student. Any potential comment from another student would put Student back into a shell. They had to do a lot of work to get Student comfortable to do reading lessons when other people were around. The multi-sensory technique is also important because studies have shown that trying to incorporate as many of a student's senses as possible when working on a decoding skill helps students with retention and acquisition of new content and new reading skills. SPED 2 was able to implement the accommodations for Student into the classroom and there were additional accommodations that were not in Student's IEP that were also implemented. (SPED 2's testimony)

52. Student's 12/17/2021 progress report for reading comprehension notes, "Student demonstrates an excellent comprehension with appropriate reading and has met this goal/objective." For reading decoding, it notes, "Student is making satisfactory progress. Last assessments containing long vs. short vowel sounds was recorded at 70% benchmark. Student scored over 75% on the last r-controlled vowel assessment. Student has shown to be more proficient in these skills when reading word lists as opposed to random sentences out of context. When reading in context, Student often utilizes background knowledge to assist in decoding. (R's Ex 11; SPED 2's testimony)
53. Parent informed School Psychologist on March 11, 2022, that Parent only wanted Student evaluated under learning disability and not under emotional disturbance. School Psychologist responded to Parent explaining that Nevada law allows for two different methods to qualify a student for a learning disability, and District uses the response to intervention method. School Psychologist also informed Parent that the ultimate eligibility determination is made by the team as a whole, with each team member having one vote. (R's Ex 8, pg. 130; R's Ex 13, pg. 2; Parent's testimony)
54. An MDT was conducted on 3/18/2022 (hereinafter "2022 MDT") based on a referral by SEIF for a reevaluation of Student. The 2022 MDT team was comprised of School Psychologist, SEIF, SPED 2, the general education teacher, and Parent. Current concerns/deficits noted included: using appropriate language and subject matter during unstructured activities and using coping strategies to promote safe behavior; Student struggles with reading, math and written expression; based on the referral information, some members of the MDT team suspect eligibility under SED while other members of the team feel that SLD is more appropriate. Student's medical history notes diagnoses of oppositional defiant disorder (ODD), anxiety, asthma, dyslexia, and dysgraphia. The team determined that Student's health does not appear to adversely affect Student's learning. (P's Ex 11)
55. The 2022 MDT includes the following results from achievement tests: Student received a WRAT standard score of 61 on the word reading subtest the sentence comprehension test and the spelling subtest, which fall in the extremely low range. A score of 61 means that Student has deficits in reading comprehension and spelling. Student's scores were an improvement from the last test, but still fell in the extremely low range. Student's CORE

Phonics tests show that Student has minimal deficits in the CVC words, consonant blends, words/pseudo words containing diagraphs, r-controlled vowels, and long vowel spellings, which place Student at a first to second grade level. Most of the words were single syllable words. Regarding multisyllabic words, Student was deficient, reading only 8 of 24 words. When given a first grade level reading, Student read at 71 correct words per minute with over 90% accuracy; and at a second grade level was able to read an average of 55 correct words per minute. Student received a standard score of 78 on the math computation subtest of the WRAT, which falls in the very low range. Classroom progress monitoring in core phonics increased from 2019 to 2022. Student's spelling and word reading increased from 2019 to 2020, with an additional increase in word reading between 2020 and 2022. (P's Ex 11; R's Ex 12; SEIF's testimony)

56. The 2022 MDT team determined that Student's overall cognitive abilities are in the below average range; that Student is participating in math and reading instruction, including the essential components of reading instruction appropriate to address the reading and math goals in the IEP, and that in consideration of current and prior instruction, the lack of appropriate academic instruction did not appear to be a controlling factor within Student's eligibility profile. Nine behaviors³⁰ interpreted as significant behavior problems were noted, including aggression, attempted staff assault, fighting/choking another student, threats, as well as punching and shoving another student.³¹ Observations of Student and teacher reports indicated that Student needs significantly more support than typical peers in general education. Student's behaviors include fighting, bullying, assaulting staff, and threatening others; many of which began in elementary school. Student struggles with exhibiting behaviors that are both safe and compatible with instruction. The function of Student's behavior problems is not related to academic difficulties because most students who use behavior to compensate for poor academic performance exhibit behaviors that result in work avoidance and are rarely violent or threatening in nature. When questioned

³⁰ One of the behavioral incidents included Student becoming upset with a staff member for attempting to redirect Student by placing a hand on Student's shoulder to try and talk to Student; Student began shouting don't touch me over and over. This part of the incident that occurred that day was likely due to Student having an arm pulled out of the socket by another staff member during elementary school.

³¹ Students that exhibit these type of behaviors are typically hyper vigilant and tend to "downshift" into the limbic system (emotional part of the brain) when limits are put on them by adults or provoked by other students.

about the behaviors, Student could not give any reason why Student acts that way.³² The team determined that SLD was not the best and most probable explanation for Student's underachievement among reasonable alternative explanations. Instead, the team determined that the evidence shows that Student exhibits an inability to build or maintain satisfactory interpersonal relationships within the school environment and inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason.³³ If a student has an SLD eligibility as well as an ED eligibility, so long as the ED is not impacting their ability to learn, the Student can be found primarily eligible under SLD and a secondary eligibility of ED. (R's Ex 8; P's Ex 11; Coordinator's testimony; SEIF's testimony)

57. The criteria established by NAC 388.415 for SED under which Student fell included: an inability to build or maintain satisfactory interpersonal relationships within the school environment including withdrawal and isolation of the pupil from others and efforts by pupil to obtain negative attention from others through punishment, ostracism or excessive approval; inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outburst of anger, crying or head banging, without apparent cause of reason; that these characteristics have been evident for at least 3 months; that special education is required to alleviate these adverse effects; the controlling factor for the student's eligibility is not the lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; the controlling factor for Student's eligibility is not limited English proficiency; and by reason of the pupil's SED, the pupil needs special education and related services. Four of the five team members agreed that the category of SED was most appropriate, with Parent disagreeing. (R's Ex 8; P's Ex 11; Coordinator's testimony; Parent's testimony)
58. Parent participated in all of Student's meetings related to the 2022 MDT and the development of the IEP. Parent consistently expressed concerns about Student's reading and writing and inquired how the recommendations of the 2019 IEE were implemented.

³² Most students that are eligible under emotional disturbance are not aware of the downshifting brain process that contributes to their emotional behavior.

³³ Under the two qualifying conditions of eligibility, it states, "Academic and behavioral data provide evidence that Student's emotional condition adversely affects ability to meet age-level education standards. Behavioral signs and/or data have been consistent for well over three months, helping the MDT to rule out signs of social maladjustment or conduct disorder."

Parent brought up Student's diagnosis of dyslexia at every meeting and asked what District was doing for Student's dyslexia. Parent believed that these concerns were dismissed, as District was more focused on Student's behaviors. (Parent's testimony)

59. There were two IEP team meetings, the first on 3/18/2022 and the second on 3/25/2022. At the second meeting Parent and Advocate requested a change of eligibility from ED to SLD. The IEP team agreed to collect RTI data until the end of the school year and discuss the results by the end of the school year. There was discussion regarding bringing in someone that was specialized to give Student different or more instruction during the school day that was not a School employee, but a District employee, however SEIF explained that District does not have a specialist like that. SPED 2 agreed with the eligibility determination and agreed that the primary cause of Student's educational deficits was due to emotional issues because once the behaviors were removed, they saw rapid progress. School did not have any specific programs to offer Student at that time but the Voyager Language! program was subsequently bought specifically for Student. (R's Ex 13; SEIF's testimony; Parent's testimony; SPED 2's testimony)
60. SPED 2 wrote Student's 3/25/2022 IEP. There is no spelling goal or phonological processing goal. Student's reading (decoding) goal is "By annual review date, when given a list of 20 single and multisyllabic words containing a long vowel produced by a silent e, vowel teams, or digraphs, Student will increase decoding skills by correctly decoding words with 80% accuracy, as measured by teacher observation, documentation, and student work samples, as implemented by special education teacher." Student's reading (sight words) goal is: "By annual review date, when given a list of Fry's first 200 sight words, Student will increase sight words recall by correctly identifying Fry's first 200 sight words with 80% accuracy³⁴, as measured by teacher observation, documentation, and student work samples, as implemented by special education teacher." Student's writing expression goal is: "By annual review date, when asked to summarize or produce an opinion on a given subject matter in written form, Student will increase writing skills by composing a 5 sentence paragraph consisting of a main idea, 3-4 student supporting details, and a closing sentence in 4 out of 5 trials, as measured by teacher observation, documentation, and

³⁴ If Student read an entire passage at a first-grade level reading and missed 20% of words, Student would probably get the idea but not understand the entire content. (SEIF's testimony)

student work samples, as implemented by special education teacher.” All three goals are appropriate for a student struggling to read or with indicators or characteristics of dyslexia. (R’s Ex 12; R’s Ex 13, pg. 2; SEIF’s testimony; SPED 2’s testimony)

61. The 3/25/2022 IEP lists the following modifications, accommodations or support: staff will check for understanding (repeat, rephrase, reteach as needed); text to speech for progress monitoring or district wide assessments (not when assessing reading ability); special seating using consideration to seat student where most successful for that certain situation; communication with parent daily; staff will utilize point system to include external reinforcers such as treasure box, school store items, food and drink items; read math and word problems for assignments and tests to student; model positive interactions and give positive reinforcements for compliance and appropriate interactions with peers and adults; student has behavior plan; read questions to student for all assignments and tests; Student will be allowed the use of a multiplication and hundreds chart for assignments and tests not assessing mastery of targeted skills; extra time to be provided when completing assignments and tests; chunk assignments for all assignments; offer student two options of alternative assignments to complete classwork and projects; reminders and warnings will be provided when there are changes in schedule, routines, aides and teachers (if able); use more than one multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding, and sign word reading skills; text to speech (ELA stimuli, items and ELA and reading passages); use alternative methods to demonstrate understanding or explain information; student will be provided with a break card to use when student is frustrated/upset; only ask student to read aloud when they are comfortable and have volunteered to read; and access to trusted adult. Parent agreed with the components of the IEP. (R’s Ex 12)
62. The accommodations listed in Student’s 3/25/2022 IEP that are appropriate for a student struggling to read or with indicators or characteristics of dyslexia include: multi-sensory techniques, text to speech, chunking of assignments, and ensuring that Student is comfortable when reading aloud. The goals and accommodations for Student were implemented in class. Student was making steady and satisfactory progress towards Student’s goals. The accommodations listed in the 3/10/2022 IEP are very similar to the

year prior and are listed on the Dyslexia Resource Guide. (R's Ex 12; R's Ex 17; SEIF's testimony; SPED 2's testimony)

63. In March 2022, Special Education Teacher 2 added interventions directly related to Student's IEP. While the reading interventions were similar, the focus was different in taking that next step towards the reading goals. SPED 2 emphasized the multi-sensory approach more. While Student had a lot of behavioral patterns that needed broken, Student desperately wanted to be a fluent reader. Student associated being a good reader with knowing words automatically, having them memorized and not decoding. In March 2022 SPED 2 had a conversation with Student and started tightening up on certain pieces and went back to the basics. (SPED 2's testimony)
64. Student's academic progress in the seventh-grade school year was progressive. Student is very intelligent, likes to argue, and make points and a lot of time Student's points are valid. Eventually Student settled in, was willing to be a part of the lessons and by the end of the year, Student was probably the hardest working and most willing student in the class. Student's grades improved significantly. Although Student struggled with consonants and consonant blending with decoding mightily at the beginning of the school year, Student's reading skills improved across the board throughout the year. Student became more comfortable reading in front of people, began not to get so angry, and started trying to read words that Student didn't know. (SPED 2's testimony; SPED 3's testimony)

Eighth Grade

65. Now that Student is in the eighth grade, SPED 2 pops into Student's classroom quite a bit and helps support Special Education Teacher 3 (hereinafter "SPED 3") in providing reading instruction and pulls Student out several times per week for reading intervention, using a kind of a hybrid instruction. SPED 2 tries to meet with Student three times per week, and uses the curriculum approved for dyslexia called Language! (SPED 2's testimony)
66. SPED 3 has known Student for the last three academic school years, as an SPTA for Student's sixth and seventh-grade school years and now as Student's teacher. The role of an SPTA is to support the teacher in any way necessary, by helping deescalate the student, helping with independent or small group instruction and basically being with the student throughout the day as needed. (SPED 3's testimony)

67. Now as Student's eighth-grade teacher, the trust with Student has been established. SPED 3 knew the words that Student trips up on at the beginning of the year. SPED 3 would pull Student aside to work on certain words or really big words to decode them so that afterwards Student felt safe reading in class. Student now asks to continue readings in class and Student's confidence level has really improved. Behaviorally, Student is doing relatively well. During the month of October 2022, Student had a lot of escalations, but after talking and going over coping strategies, began to do well. The escalations in behavior in October were due to the addition of a new student and the shift in dynamics of the classroom. There were still some verbal altercations with other students that were not handled so well. Student now notices when beginning to escalate and asks to take a break outside and will get permission first instead of eloping. Student also uses the coping mechanism of drawing and will use that coping skill to calm down before discussing situations. Student is a great artist and even brings work in from the weekend to show SPED 3. Academically Student is doing really well, is very engaged in all of the lessons; Student's comprehension is spot on, raises a hand and is able to answer questions correctly. (SPED 3's testimony)

Dyslexia Expert

68. Parent hired Dyslexia Expert to review Student's file and testify at this hearing. Dyslexia Expert is the co-founder of the Dyslexia Training Institute, has a B.A. in Psychology, an M.S. in Education, an M.A. in Linguistics, and an Ed.D. in Literacy. Dyslexia Expert has been trained in the Orton-Gillingham Approach, Lindamood-Bell, and RAVE-O. Dyslexia Expert has worked with adults and trained tutors to work with adult learners struggling to read. Dyslexia Expert has written three books, given thousands of presentations, has been hired by school districts to talk to staff, was hired by the Nevada Department of Education to provide trainings in Reno and Las Vegas, providing simulations about what it feels like to have dyslexia, what is or is not appropriate regarding instruction, appropriate interventions, and gave attendees the ability to practice some of those strategies. Dyslexia Expert has taught children at a community college, but not in the K-12 setting. (P's Ex 13; Dyslexia Expert's testimony)

69. The adults that Dyslexia Expert works with cannot define dyslexia but can remember the trauma they suffered like it was yesterday, and how isolated they felt. They discuss the

immense shame that comes with not being able to read, knowing that they cannot read like their peers. Many of the adults that did not have early identification and interventions ended up making bad decisions due to their feelings of isolation and not having a voice. When their own children are struggling, many adults don't trust their child's school, because their school failed them as children. (Dyslexia Expert's testimony)

70. Red flags that may signal dyslexia include: coming to a word and not knowing how to decode it; or maybe they can decode it, but when they come to the same word a little later they cannot decode it – this impedes the ability to be fluent and comprehend; they have trouble remembering the rules for sounds; they have problems with spelling; sometimes they have problems with memory; comprehension may or may not be present; if they have the capacity to learn and can understand when something is read to them or after they watch something they can tell you what they have learned, then that means that they can learn in different ways that do not include the written word. (Dyslexia Expert's testimony)
71. Best practices for teaching an individual with dyslexia is using a program that is multi-sensory explicit, systematic and cumulative in nature. You have to teach them the easiest syllable first and they have to master that concept first, they have to be taught in a very explicit way, they have to be engaged in that, and once they master the CVC in both one syllable and multi syllabic words, then they can move on to the next step. They need to understand one syllable type deeply before moving onto the next syllable type, otherwise they will get confused, will not know what is going on and will lose trust in the system. (Dyslexia Expert's testimony)
72. The structured word inquiry (hereinafter "SWI") is a structured literacy approach where you show the student the morphophonemic nature of the language and instead of looking at the syllables, you look at the morphemes. A word like action has two morphemes, the base has "act" and the suffix is "ion" and then you have a conversation about how that "t" changed the phonology because you added the suffix. It's a very explicit teaching of the language that a child with dyslexia needs, so it is not just the teaching, but the rationale behind the language. SWI has a multisensory approach, there is a structure to every lesson, there is a cumulative effect, building on different syllable types. Systematic and structure are kind of interchangeable, just making sure you are doing the same thing so that they understand what to expect. SWI is an approach, not a program. The approach is only half

of the equation. The person implementing it needs to be adequately trained. An appropriate training includes going through a heavy dose of courses and a practicum. The practicum is very important because they get mentored through the practicum and they are getting coaching and being supervised before they are allowed to go and work with someone who is really struggling. (Dyslexia Expert's testimony)

73. An 80% goal is not appropriate for a reading goal, because if you were to look at a paragraph and read 80% of it, you would not understand it. Fry list sight words are at the first and second grade level. Student still cannot do consonant blends or closed syllable decoding. Appropriate goals for Student would include Student will be able to decode 50 closed syllable words presented in single syllable and multi syllabic words with 90% accuracy (like upset, fantastic). At this level, Student needs speech to text; text to speech; books on audio; should never have to read out loud in class; should never be required to read in front of peers unless raising a hand, even in a small group setting; typing; keyboarding; and an assessment for dysgraphia. (Dyslexia Expert's testimony)
74. Student's goals and benchmarks are kind of all over the place, not structured and there is no system. Student's present levels from the 2019 IEE compared to 2021 and 2022 still indicate dyslexia. Considering Student's present levels, Student needs the accommodation of reading things at Student's grade level, that are decodable texts, the ability to practice the skill of decodable text and then create a comprehension goal in line with that decodable text. Student's behaviors and frustration are common in individuals with dyslexia. Student is now in sixth grade, and can't read, so when being told that Student can, that is incorrect and very frustrating. Student had a strength in the Peabody test which shows that Student understands vocabulary and can name things pretty easily. All of Student's scores were low in the Comprehensive Test of Phonological Testing (hereinafter "CTOPP") and rapid naming scores for numbers was average which is very interesting because numbers is not language. When you remove the language, Student has the ability to do things and that's what dyslexia is – a weakness in a sea of strengths. Student should have mastered sight words at this point with proper teaching and interventions. Student is functionally illiterate. Student's level of growth from the 2020 to the 2022 IEPs is very minimal, is not consistent and is all over the place – there are no gains in one specific area. On the spectrum of dyslexia, Student's level of need is on the profound side because Student also has a rapid

naming deficit. Student needs very explicit, every day, 1:1 instruction with someone highly trained in the structured literacy approach. Student's ideal environment would allow Student to feel safe, where people understand what Student is struggling with so Student doesn't feel so isolated and doesn't feel so much shame, an environment where the teacher is highly trained and understands Student's needs and how to teach Student, and Student's peers understand what is going on so Student feels safe enough to take risks when trying to learn to read and spell. Student would need the same type of instruction no matter where Student attends school. (Dyslexia Expert's testimony)

75. For this hearing, Dyslexia Expert reviewed Student's school records, state laws, regulations and exhibits provided to her, including Student's IEPs, 2019 IEE, progress reports, and behavior chronology. The Dyslexia Expert is not qualified to diagnose dyslexia or emotional disturbance, did not speak with any of Student's teachers, did not meet with or evaluate Student, did not work with or supervise Student in the classroom, and has never written an IEP in Nevada. Therefore, this Hearing Officer gave less weight to the testimony provided by the Dyslexia Expert regarding Student's IEP's. (Dyslexia Expert's testimony)

CONCLUSIONS OF LAW AND DISCUSSION

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

I.

Whether District failed to identify Student's eligibility for Specific Learning Disability from May 5, 2020 to the present resulting in a denial of FAPE?

An eligible student, or "child with a disability" is a student who, having been evaluated in accordance with the requirements of 34 C.F.R. §§300.304 through 300.311, is determined to have one or more qualifying disabilities and who, by reason of the same, needs special education and related services.³⁵ In conducting an evaluation, a school district must use a variety of tools and strategies to determine whether a student is eligible.³⁶ That evaluation must be sufficiently

³⁵ 34 C.F.R. §300.8

³⁶ 34 C.F.R. §304(b)(1); NAC 388.340(1)

comprehensive and assess the student in all areas related to the suspected disability.³⁷ Nevada law further requires that prior to placing a student in a special program for pupils with disabilities, a consultation must be held with the child’s parents or guardians and an examination must be conducted in accordance with standards prescribed by the State Board of Education.³⁸ The NAC sets out the standards prescribed for considering a student’s eligibility for special education programs by disability categories.³⁹ A disability is suspected and must, therefore, be assessed when the school district “has notice that the [student] has displayed symptoms of the disability.”⁴⁰ The IDEA and NAC further require that school districts reevaluate students at least once every three years, unless the parent and district agree that a reevaluation is not necessary.⁴¹ Prior to determining that a student is no longer a student with a disability, school districts must evaluate that student pursuant to NAC 388.330 to NAC 388.440.⁴²

This due process hearing raises issues related to eligibility determinations made under the eligibility categories of SLD and ED. Definitions and eligibility criteria for each of these relevant categories are as follows:

Specific Learning Disability (SLD)

“Specific learning disability” is defined as a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which is not primarily the result of a visual, hearing or motor impairment, an intellectual disability, an emotional disturbance, or an environmental, cultural or economic disadvantage. The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. The disorder includes, without limitation, such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.⁴³

To find a student eligible for special education services under the disability category of SLD, an eligibility team is required to conclude that: (a) the student has a specific learning disability and, by reason thereof, needs special education and related services; (b) the student does not achieve adequately for the pupil’s age or to meet the state-approved grade level standards when

³⁷ 34 C.F.R. §300.304(c)(4) and (6); NAC 388.340(4)(b)

³⁸ NRS 388.433

³⁹ NAC 388.387-425

⁴⁰ *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016)

⁴¹ 34 C.F.R. §300.304; NAC 388.440

⁴² NAC 388.340(9)

⁴³ NAC 388.117; NRS 388.417

provided with learning experiences and instruction appropriate for the age of the pupil in one or more of the following areas: oral expression; listening comprehension; written expression; basic reading skills; reading fluency skills; reading comprehension; mathematics calculation; or mathematics problem solving; (c) the student does not make sufficient progress to meet the age appropriate standards or the state-approved grade level standards in one or more of the academic areas when using a process based on the pupil's response to scientific, research-based intervention or exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, that is determined by the eligibility team to be relevant to the identification of a specific learning disability using appropriate assessments; (d) the findings of the team are *not primarily the result of*: a visual, hearing or motor disability; an intellectual disability; *an emotional disturbance*; cultural factors; environmental or economic disadvantage; or limited English proficiency; (e) interventions implemented in general education classrooms have not remedied any identified underachievement; and (f) any identified underachievement or severe discrepancy between achievement and intellectual ability is not correctable without special education and related services.⁴⁴ (*emphasis added*)

Emotional Disturbance (ED)

“Emotional disturbance” is defined as a severe emotional disorder that: (1) is exhibited by a person for at least 3 months; (2) adversely affects academic performance; and (3) includes one or more of the following: (a) an inability to learn which is not caused by an intellectual, sensory or health factor; (b) an inability to engage in or to maintain interpersonal relationships with peers and teachers; (c) inappropriate behavior or feelings; (d) a general and pervasive mood of unhappiness or depression; (e) a physical symptom associated with a personal or academic problem; or (f) the expression of fears regarding personal or academic problems.⁴⁵

To find a student eligible for special education services under the disability category of ED, an eligibility team is required to conclude that: (a) the student has an emotional disturbance and, by reason thereof, needs special education and related services; (b) the student exhibits one or more of the characteristics enumerated; (c) the characteristics have been evident for at least 3 months; (d) the characteristics adversely affect the ability of the pupil to perform developmental

⁴⁴ NAC 388.420(1)(a)-(f)

⁴⁵ NAC 388.0417

tasks appropriate to the student's age within the educational environment, despite the provision of intervention strategies; and (e) special education support is required to alleviate these adverse effects.⁴⁶

The requirements of paragraph (b) of subsection 1 are met by the consistent manifestation of any of the following characteristics: (a) an inability of the student to build or maintain satisfactory interpersonal relationships within the school environment, (including withdrawal and isolation of the pupil from others or efforts to obtain negative attention from others through punishment, ostracism or excessive approval); (b) inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason; (c) a pervasive mood of unhappiness or depression; or (d) fears or a tendency to develop physical symptoms associated with personal or school problems.⁴⁷

Appropriateness of Determination Regarding Eligibility

The appropriateness of a school district's determination regarding a student's eligibility is assessed in terms of the appropriateness at the time the student is evaluated and not "from the perspective of a later time with the benefit of hindsight."⁴⁸ In reviewing the appropriateness of a school district's eligibility determination, reviewing courts apply a "snapshot" rule that looks at the appropriateness of the determination on the basis of the information reasonably available at the time of the IEP meeting where the determination was reached.⁴⁹

2019 MDT Eligibility Determination

While not before this Hearing Officer, it is important to note that Student's 2019 MDT team determined that while Student continued to have difficulty learning, and retaining introduced concepts, Student's behavior was the primary reason for performance underachievement and Student's strengths and needs were not consistent with the SLD criteria. The criteria established by NAC 388.415 for SED under which Student fell included: an inability to build or maintain satisfactory interpersonal relationships within the school environment, including: withdrawal and isolation of the pupil from others and efforts by the pupil to obtain negative attention from others through punishment, ostracism or excessive approval; inappropriate behavior or feelings under

⁴⁶ NAC 388.415(1)

⁴⁷ NAC 388.415(2)

⁴⁸ *L.J. v. Pittsburgh Unified Sch. Dist.*, 850 F.3d 996 (9th Cir. 1999)

⁴⁹ *Id.*

normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason; and a pervasive mood of unhappiness or depression which were evidenced for at least three months. The MDT team further found that the characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to the pupil's age within the educational environment, despite the provision of intervention strategies; special education support is required to alleviate these adverse effects; the pupil is not eligible solely because of sensory, intellectual, or health factors, maladjustment or conduct disorders; the controlling factor for the student's eligibility is not the lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; the controlling factor for Student's eligibility is not limited English proficiency; and by reason of the pupil's SED, the pupil needs special education and related services. Regarding the condition of SLD, Student's underachievement in mathematical calculation, mathematical problem solving, written expression, basic reading skills, reading fluency skills and reading comprehension were significantly low, however at that time, were primarily the result of emotional disturbance, and that's considered exclusionary criteria for SLD under the NAC. (FOF 10)

2022 MDT Eligibility Determination

Pursuant to NAC 388.0417, Student's 2022 MDT team determined that Student has an ED under subsection (3)(b) because Student exhibits an inability to build or maintain satisfactory interpersonal relationships within the school environment and under subsection (3)(c) because Student demonstrates inappropriate behavior under normal circumstances. (FOF 57)

Further, Student's 2022 MDT team concluded under the eligibility criteria in NAC 388.415, that: Student (a) has an emotional disturbance pursuant to NRS, and by reason thereof, needs special education and related services; Student (b) exhibits one or more of the characteristics enumerated, *specifically* an inability to build or maintain satisfactory interpersonal relationships within the school environment including withdrawal and isolation of the pupil from others and efforts by pupil to obtain negative attention from others through punishment, ostracism or excessive approval; inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outburst of anger, crying or head banging, without apparent cause or reason; that (c) the characteristics have been evident for at least 3 months; that (d) the characteristics set forth under subsection (b) adversely affect Student's ability to perform

developmental tasks appropriate to Student's age within the educational environment, despite the provision of intervention strategies; and that (e) special education support is required to alleviate these adverse effects. (*emphasis added*) (FOF 57)

Because the evaluation found that Student's underachievement is primarily the result of Student's SED, it does not meet the criteria of an unexpected and unexplainable underachievement, therefore SLD is believed not to be the best and most probable explanation for Student's underachievement among reasonable alternative explanations. The controlling factor for the student's eligibility is not the lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; the controlling factor for Student's eligibility is not limited English proficiency; and by reason of the pupil's SED, the pupil needs special education and related services. Observations of Student and teacher reports indicated that Student needs significantly more support than typical peers in general education. Student's behaviors include fighting, bullying, assaulting staff, and threatening others; many of which began in elementary school. The function of Student's behavior problems is not related to academic difficulties because most students who use behavior to compensate for poor academic performance exhibit behaviors that result in work avoidance and are rarely violent or threatening in nature. When questioned about the behaviors, Student could not give any reason why Student acts that way. Four of the five team members agreed that the category of SED was most appropriate. (FOF 56; FOF 57)

Therefore, District properly decided, based on all data, evaluations and information that Student's eligibility for ED was more appropriate than SLD and therefore District did not fail to identify Student's eligibility for SLD from May 5, 2020 to the present resulting in a denial of FAPE.

II.

Whether District failed to include appropriate reading goals and related services and whether the IEP team failed to consider the instructional approaches listed under NRS 388.443 when it developed Student's IEPs, namely the 3/6/2020, 3/10/2021, and 3/25/2022 IEPs, and thus failed to address Student's reading deficits and learning disability, resulting in a denial of FAPE and IEPs that were not reasonably calculated to enable Student to make appropriate progress?

Nevada Dyslexia Laws

When developing, reviewing and revising an IEP, Nevada law requires (1) that the Department of Education shall: (a) prescribe a form that contains the basic information necessary for the uniform development, review and revision of an individualized education program for a pupil with a disability in accordance with 20 U.S.C. § 1414(d); and (b) make the form available on a computer disc for use by school districts and, upon request, in any other manner deemed reasonable by the Department; (2) except as otherwise provided in this subsection, each school district shall ensure that the form prescribed by the Department is used for the development, review and revision of an individualized education program for each pupil with a disability who receives special education in the school district. A school district may use an expanded form that contains additions to the form prescribed by the Department if the basic information contained in the expanded form complies with the form prescribed by the Department; (3) the State Board: (a) shall prescribe minimum standards for the special education of pupils with disabilities; and (b) may prescribe minimum standards for the provision of early intervening services; (4) the minimum standards prescribed by the State Board must include standards for programs of instruction or special services maintained for the purpose of serving pupils with: (a) hearing impairments, including, but not limited to, deafness; (b) visual impairments, including, but not limited to, blindness; (c) orthopedic impairments; (d) speech and language impairments; (e) intellectual disabilities; (f) multiple impairments; (g) emotional disturbances; (h) Other health impairments; (i) specific learning disabilities; (j) autism spectrum disorders; (k) traumatic brain injuries; and (l) developmental delays.⁵⁰

The minimum standards prescribed by the State Board for pupils with dyslexia pursuant to specific learning disabilities include, without limitation, standards for instruction on: (a) phonemic awareness to enable a pupil to detect, segment, blend and manipulate sounds in spoken language; (b) graphonomic knowledge for teaching the sounds associated with letters in the English language; (c) the structure of the English language, including, without limitation, morphology, semantics, syntax and pragmatics; (d) linguistic instruction directed toward proficiency and fluency with the patterns of language so that words and sentences are carriers of

⁵⁰ NRS 388.419 (1)-(4)

meaning; and (e) strategies that a pupil may use for decoding, encoding, word recognition, fluency and comprehension.⁵¹

Additionally, when developing an individualized education program for a pupil with dyslexia the pupil's individualized education program team *shall consider*, without limitation, the following instructional approaches: (1) explicit, direct instruction that is systematic, sequential and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil; (2) individualized instruction to meet the specific needs of the pupil in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize pupil engagement; (3) meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition; *and* (4) multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice. (*emphasis added*)⁵²

3/6/2020 IEP in Effect 5/5/2020 – 03/10/2021

Student's 3/6/2020 IEP, which was in effect from 5/5/2020 through 3/10/2021, meets the statutory requirement of NRS 388.443(1) explicit, direct instruction that is systematic, sequential and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil because the reading goal states, "when provided with a word list, Student will increase reading ability by correctly decoding/labeling Fry's first 100 sight words, and single-syllable words containing an r-controlled vowel, diagraph, or consonant blend with 80% accuracy, as measured by teacher collected data, as implemented by teaching staff." Student's 3/6/2020 IEP included specially designed instruction of 200 minutes of self-contained reading. (FOF 21)

Student's 3/6/2020 IEP, which was in effect from 5/5/2020 through 3/10/2021, does not meet the statutory requirements of NRS 388.443 (2) individualized instruction to meet the specific needs of the pupil in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize pupil engagement because although Student was receiving special education, which is individualized instruction, Student was not receiving intensive, highly-concentrated instruction methods and materials that maximize engagement from 5/5/2020 until 3/10/2021. Although School provided Student the opportunity to work with someone on reading

⁵¹ NRS 388.419 (6)

⁵² NRS 388.443

in the fall of 2020, the instruction provided did not meet Student's needs, nor was it evidence based. (FOF 31)

Student's 3/6/2020 IEP, which was in effect from 5/5/2020 through 3/10/2021, does not meet the statutory requirement of NRS 388.443(3) meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition because although it includes a written expression goal, even though Student's WRAT score for reading comprehension was in the extremely low range, there is no reading comprehension goal listed. (FOF 21)

Student's 3/6/2020 IEP, which was in effect from 5/5/2020 through 3/10/2021, meets the statutory requirement of NRS 388.433(4) requiring a multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice because it includes the following accommodations: (a) read questions to student for all assignments and tests; visual aids and manipulatives/realia for new concepts; (b) staff will check for understanding (repeat, rephrase, reteach as needed); (c) text to speech for progress monitoring or district wide assessments (not when assessing reading ability); (d) use more than one multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding, and sign word reading skills; and (e) use alternative methods to demonstrate understanding or explain information. (FOF 22)

3/10/2021 IEP

Student's 3/10/2021 IEP does not meet the statutory requirement of NRS 388.443(1) because it does not include an explicit, direct instruction that is systematic, sequential and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil, nor does it include a spelling goal. (FOF 38)

Student's 3/10/2021 IEP does not meet the statutory requirement of NRS 388.443(2) individualized instruction to meet the specific needs of the pupil in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize pupil engagement because although Student was receiving special education, which is individualized instruction, intensive, highly-concentrated instruction methods and materials that maximize engagement was not being used – School was using MobyMax, which was the program for all students, but was not working for Student. (FOF 43) Student was instead receiving intensive, highly-concentrated instruction methods and materials that maximize engagement from the Tutor, that was using the

Barton system. (FOF 41) At the beginning of the 2021-2022 school year, although the practices being used by SPED 2 has evidence-based support, SPED 2 was creating a lot of the materials and there was no set curriculum. (FOF 46)

Student's 3/10/2021 IEP meets the statutory requirement of NRS 388.443(3) meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition because it contains a reading decoding goal that states, "By annual review date, when given a list of 40 decodable single and multisyllabic words at a second-grade level, Student will accurately decode 30/40 words correctly, as measured by observation, documentation, and student work samples, as implemented by special education teacher." It also contains a reading comprehension goal that states, "By annual review date, Student will read a third-grade non-fiction passage, with audio book support,⁵³ and be able to identify the main idea and three supporting details with 90% accuracy as measured by observation, documentation, and student work samples, as implemented by special education teacher." And it also includes a written expression goal that states: "By annual review date, when asked to produce a written response that demonstrates understanding of sixth grade leveled text read with teacher or audio support, Student will compose three or more sentences by hand or by computer that demonstrates understanding of text in four of five trials, as measured by observation, documentation and student work sample, as implemented by special education teacher." (FOF 38)

Student's 3/10/2021 IEP meets the statutory requirement of NRS 388.433(4) requiring a multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice because it includes the following accommodations: (a) staff will check for understanding (repeat, rephrase, reteach as needed); (b) read math and word problems for assignments and tests to student; (c) text to speech for progress monitoring or district wide assessments (not when assessing reading ability); (d) offer student two options of alternative assignments to complete classwork and projects; (e) use more than one multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding, and sign word reading skills; and (f) use alternative methods to demonstrate understanding or explain information. (FOF 39)

⁵³ The use of an audio book means that Student is not reading the words, but that they are being read aloud to Student. (SEIF's testimony)

3/25/2022 IEP

Student's 3/25/2022 IEP does not meet the statutory requirement of NRS 388.443(1) because it does not include an explicit, direct instruction that is systematic, sequential and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil, nor does it does not contain a spelling goal or phonological processing goal. (FOF 60)

Student's 3/25/2022 IEP does not meet the statutory requirement of NRS 388.443(2) individualized instruction to meet the specific needs of the pupil in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize pupil engagement because Student was receiving special education, which is individualized instruction, School did not have any specific programs to offer Student at that time, as the Voyager Language! program was bought specifically for Student at the beginning of the 2022-2023 school year. (FOF 59)

Student's 3/25/2022 IEP meets the statutory requirement of NRS 388.443(3) meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition because it although it includes the following reading (decoding) goal, "By annual review date, when given a list of 20 single and multisyllabic words containing a long vowel produced by a silent e, vowel teams, or digraphs, Student will increase decoding skills by correctly decoding words with 80% accuracy, as measured by teacher observation, documentation, and student work samples, as implemented by special education teacher."; reading (sight words) goal, "By annual review date, when given a list of Fry's first 200 sight words, Student will increase sight words recall by correctly identifying Fry's first 200 sight words with 80% accuracy⁵⁴, as measured by teacher observation, documentation, and student work samples, as implemented by special education teacher."; and a writing expression goal, "By annual review date, when asked to summarize or produce an opinion on a given subject matter in written form, Student will increase writing skills by composing a 5 sentence paragraph consisting of a main idea, 3-4 student supporting details, and a closing sentence in 4 out of 5 trials, as measured by teacher observation, documentation, and student work samples, as implemented by special education teacher." (FOF 60)

⁵⁴ If Student read an entire passage at a first-grade level reading and missed 20% of words, Student would probably get the idea but not understand the entire content. (SEIF's testimony)

Student's 3/25/2022 IEP meets the statutory requirement of NRS 388.433(4) requiring a multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice because it contains the following accommodations: (a) staff will check for understanding (repeat, rephrase, reteach as needed); (b) text to speech for progress monitoring or district wide assessments (not when assessing reading ability); (c) read math and word problems for assignments and tests to student; (d) read questions to student for all assignments and tests; (e) offer student two options of alternative assignments to complete classwork and projects; (f) use more than one multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding, and sign word reading skills; (g) text to speech (ELA stimuli, items and ELA and reading passages); and (h) use alternative methods to demonstrate understanding or explain information. (FOF 61)

Reasonably Calculated Standard

The 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. The Act contemplates that this fact-intensive exercise will be informed not lonely by the expertise of school officials, but also by the input of the child's parent. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.⁵⁵

The progress contemplated by the IEP must be appropriate in light of the child's circumstances. The instruction offered must be specifically designed to meet a child's unique needs. An IEP is constructed only after careful consideration of the child's present levels of achievement, disability and potential for growth. The instruction and services must be provided with an eye toward progress in the general education curriculum. The educational program must be appropriately ambitious in light of the student's circumstances. Every child should have the chance to meet challenging objectives.⁵⁶

A student offered an educational program providing "merely more than de minimis" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims "so low would be tantamount to sitting idly...awaiting the time when they were old enough to drop out." The IDEA demands more. It

⁵⁵ *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386 (2017)

⁵⁶ *Id.*

requires an educational program reasonably calculated to enable a child to make progress in light of the child's circumstances.⁵⁷

Here, Student's true skill levels were clearly not at, or close to, grade-expected levels before May 5, 2020. (FOF 6) Student's deficits in reading, reading comprehension and written expression were in the extremely low range in 2020 and are still in the same "extremely low range" as of March 25, 2022. (FOF 21; FOF 55) While Student has shown "satisfactory" progress on the goals from year to year, this Hearing Officer finds that the progress is merely more than de minimis and that the IDEA demands more. (FOF 52) This Hearing Officer does not find that District was required to provide Student with the ideal level of instruction or environment set forth by Dyslexia Expert. However, while Student's 3/6/2020, 3/10/2021 and 3/25/2022 IEPs attempted to address Student's reading deficits, the instruction and services provided were not appropriately ambitious in light of Student's circumstances.

Therefore, District failed to include appropriate reading goals and related services and the IEP team failed to consider the instructional approaches listed under NRS 388.443 when it developed Student's IEPs, namely the 3/6/2020 in place on 5/5/2020, and the 3/10/2021 and 3/25/2022 IEPs and thus failed to address Student's reading deficits and learning disability, resulting in a denial of FAPE as well as IEPs that were not reasonably calculated to enable Student to make appropriate progress.

III.

Whether District failed to consider the recommendations and results of the 2019 IEE performed by Student's Doctor in Student's 3/6/2020 IEP, in violation of IDEA and resulting in a denial of FAPE from May 5, 2020 to the present?

As part of any evaluation or reevaluation, an IEP team and other qualified professionals, as appropriate, must review data, including (i) evaluations and information provided by the parents of the child; (ii) current classroom-based, local, or state assessments and classroom-based observations; and (iii) observations by teachers and related service providers.⁵⁸

When formulating an IEP, a school district must comply both procedurally and substantively with the IDEA, so that the process will be informed not only by the expertise of

⁵⁷ *Id.*

⁵⁸ 34 CFR 300.305(a)(1)

school officials, but also by the input of the child's parents or guardians.⁵⁹ A court must determine first whether the State complied with the procedures set forth in the Act and, second, whether the individualized educational program developed through the Act's procedures was reasonably calculated to enable the child to receive educational benefits.⁶⁰ If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.⁶¹

Procedural compliance is essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parent participation are particularly important.⁶² Violation of the procedural requirements may constitute the denial of a FAPE, but mere technical procedural violations "will not render an IEP invalid."⁶³ However, "procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, or that caused a deprivation of educational benefits, clearly result in the denial of a FAPE."⁶⁴

Substantively, "in order for a child to have received a FAPE, the IEP must have (1) addressed their unique needs, (2) provided adequate support services so that they can take advantage of the educational opportunities, and (3) been in accord with the individualized education program."⁶⁵

Among the procedural obligations required by the IDEA is the requirement that the IEP team "review existing evaluation data on the child, including evaluations and information provided by the parents of the child."⁶⁶ Another procedural obligation in developing the IEP is the requirement that the IEP team "consider the concerns of the parents for enhancing the education of their child."⁶⁷

Parent informed the 3/6/2020 IEP team that Student had dyslexia. Parent brought the IEE to the meeting; however, the team had not reviewed the same and was going to schedule another meeting after the school psychologist had an opportunity to review the IEE. Unfortunately, the

⁵⁹ *M.C.*, 858 F.3d at 1194.

⁶⁰ *Amanda J.*, 267 F.3d at 890 (quoting *Board of Education v. Rowley*, 458 U.S. 176, 206-07 (1982)).

⁶¹ *Id.*

⁶² 20 U.S.C. § 1415.

⁶³ *Id.* at 892 (internal quotations and citation omitted).

⁶⁴ *Id.* (internal quotations and citations omitted).

⁶⁵ *M.C.*, 858 F.3d at 1200 (internal quotations and citations omitted).

⁶⁶ 20 U.S.C.A. § 1414(c)(1)(A)(i).

⁶⁷ *Id.* at § (d)(3)(A)(ii).

state went into lockdown due to the COVID-19 pandemic before that second meeting could occur. Therefore, the IEP as drafted and adopted on 3/6/2020 remained in place. The 3/6/2020 IEP reflects that the 2019 MDT was reviewed, which includes the 2019 IEE’s diagnostic impressions of SLD with impairment in reading and SLD with impairment in written expression. (FOF 20) Student’s 3/6/2020 IEP contained: both a reading and a written expression goal; specially designed instruction of 200 minutes per week in a self-contained classroom in reading and 100 minutes per week in a self- contained classroom in written expression (FOF 21); and accommodations that were similar to those contained in the 2019 IEE as demonstrated by the following table (FOF 22; FOF 9):

IEP modification, accommodation, or support listed in 3/6/2020 IEP	Matching recommendation in IEE
Staff will utilize point system to include external reinforcers such as treasure box, school store items, food and drink items, etc.	Positive behavior plan
Read math and word problems for assignments and tests	Break down tasks & Read questions and content aloud
Model positive interactions and give positive reinforcements for compliance and appropriate interactions with peers and adults	Monitor motivation and effort
Behavior plan	Positive behavior plan
Read questions to student for all assignments and tests	Break down tasks & Read questions and content aloud
Extra time to be provided when completing assignments and tests	Extended time
Visual aids and manipulatives/realia for new concepts	Visual prompts
Chunk assignments when new concepts are introduced	Break down tasks
Staff will check for understanding (repeat, rephrase, reteach as needed)	Verify understanding & Read questions and content aloud
Warnings will be provided when there are changes in schedule, routines, aides and teachers (if able)	Visual and verbal prompts
Use more than only multi-sensory technique (visual, auditory, kinesthetic, or tactile) to facilitate acquisition of phonics knowledge, decoding and sight-reading skills	Visual prompts & Alternative methods for demonstrating/accessing knowledge
Use alternative methods to demonstrate understanding or explain information	Access to topics or subjects of interest & Alternative methods for demonstrating/accessing knowledge
Communication with parent daily	Daily or weekly communication and coordination among home, school and providers

Student will be provided with a break card to use when student is frustrated/upset	Regular breaks & Adaptive coping strategies
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While the IEP team did not have a second meeting after the school psychologist reviewed the IEE, the 3/6/2020 IEP reflects that the recommendations and results contained in the 2019 IEE were in fact considered. The 3/6/2020 (1) addressed Student’s unique needs, (2) provided adequate support services so that Student could take advantage of the educational opportunities, and (3) was in accord with the individualized education program, therefore providing Student with FAPE. ***Therefore, District did not fail to consider the recommendations and results of the 2019 IEE performed by Student’s Doctor in Student’s 3/6/2020 IEP, in violation of IDEA and resulting in a denial of FAPE from May 5, 2020 to the present.***

ORDER

Based upon the above Findings of Fact and Conclusions of Law, **it is hereby ordered:** that District is to fund an IEE to determine the appropriate scope of Student’s current educational needs. The IEE evaluator is to receive a copy of the 2019 IEE as a baseline. The IEE shall be initiated within 30 days of this Order.

It is further ordered that District conduct a complete language evaluation to determine if phonological or language deficits may be impacting reading or academic achievement. The evaluation shall be completed within 30 days of this Order.

It is further ordered that District conduct an assistive technology evaluation to determine how best to support Student with speech-to-text and text-to-speech functions so Student can keep up in class while being taught to read. The evaluation shall be completed within 30 days of this Order.

It is further ordered that Student’s IEP team shall convene within 14 days after receipt of the IEE, language and assistive technology evaluations, unless otherwise agreed upon by Parent and School.

It is further ordered that District continue to provide Student with the Voyager Language! program (a research based, structured literacy program) through the remainder of the 2022-2023 school year, and for the 2023-2024 school year due to the length of time it took for District to obtain the program and begin working with Student, that Student continue to receive 1:1 instruction, and that all teachers utilizing the program receive face-to face sessions for initial or

advanced training provided by Language! Live within 30 days of this Order, or for Student’s future teachers no later than 21 days after Student is placed in teacher’s class.

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by this Decision has the right to appeal it by filing with the Superintendent a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within thirty (30) days after receiving the decision. A party to the hearing may file a cross-appeal by filing a notice of cross appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within ten (10) days after receiving notice of the initial appeal. If an appeal is filed, a state review officer appointed by the Superintendent from a list of officers maintained by the Department shall conduct an impartial review of the hearing pursuant to NAC 388.315(1).

Dated: February 3, 2023

/s/ Audrey J. Beeson
Hearing Officer

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