

**STATE OF NEVADA
DEPARTMENT OF EDUCATION**

<p>In the matter of</p> <p>STUDENT by and through PARENT,¹</p> <p style="text-align:center">Appellants,</p> <p>v.</p> <p>DOUGLAS COUNTY SCHOOL DISTRICT,</p> <p style="text-align:center">Appellee.</p>	<p>State Review Officer: Deusdedi Merced</p> <p>Representatives:</p> <p>Michelle Bumgarner, Esq., for Appellants Paul J. Anderson, Esq., for Appellee</p>
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REVIEW OFFICER DECISION

I. PROCEDURAL BACKGROUND

Student is 15 years old and eligible to receive special education services under the eligibility category of Health Impairment pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, the Nevada Revised Statutes (NRS), Chapter 388, and the Nevada Administrative Code (NAC), Chapter 388. By letter dated July 9, 2018, and amended on August 17, 2018, Student, by and through Parent, filed a due process complaint against Douglas County School District (DCSD) raising various issues pertaining the Student’s eligibility under the IDEA and the appropriateness of Student’s Individualized Education Program (IEP) dated January 19, 2018. (HO 7, 17.)² Pursuant to NAC 388.306(10), on July 17, 2018, the Nevada Department of Education (NDE) appointed Victoria T. Oldenburg as the due process hearing officer. (HO 7.) The due process hearing was held over a seven-day period on October 18, 19, 2018, November 13, 14, 15, 2018, and December 4, 14, 2018. A decision was rendered on

¹ Personally identifiable information is attached as Appendix A to this decision.

² The record below is cited to in this review officer decision as follows: to the transcript, “Tr.” followed by the volume number (“Vol.”) and page/line number(s); to the exhibits, as designated by the parties in their exhibit books (i.e., “DCSD” for school district exhibits, “P” for parent exhibits, “Joint” for joint exhibits) followed by the exhibit/page number; to hearing officer exhibits, “HO” followed by exhibit number; to the decision of the hearing officer, “Decision” followed by page number; and, to any other document included in the record but not specifically assigned an exhibit number (e.g., Stipulated Facts of the parties dated October 2018), by its name. Exhibits of the review officer are designated as “RO” followed by the exhibit number.

January 14, 2018. Hearing Officer Oldenburg found for DCSD on all four issues raised by Parent and denied all relief to Parent. This appeal ensued.

On February 13, 2019, the NDE received an appeal of Hearing Officer Oldenburg's decision. (See SRO 4.) This review officer was appointed on the same day the appeal was filed. (SRO 1.) A telephonic status conference was conducted with the parties on February 21, 2019. (SRO 6, 7.) The status conference was recorded.³ Additional evidence per 34 C.F.R. § 300.514(b)(2)(iii) and NAC 388.315(1)(c) was determined unnecessary by this review officer. (SRO 7.) An extension of the 30-day timeline was also determined not necessary. (*Id.*) Memoranda on the issues on appeal were received on February 27, 2019 and March 4, 2019. (SRO 8, 9.)

This decision is due and filed on March 15, 2019.

II. PROCEDURE AND STANDARD OF REVIEW

Pursuant to NAC 388.315(b), the review officer must ensure that the procedures of the hearing officer below were consistent with the requirements of due process. Neither party on appeal challenged the procedures of the hearing officer below, nor did this review officer find any inconsistencies.

With respect to the standard of review, the review officer is required to make an independent decision, reviewing the entire record of the hearing below. (20 U.S.C. § 1415 (g); NAC 388.315 (f).) This review officer has done so here, having reviewed the decision of the hearing officer, seven volumes of the transcript (1940 pages), the exhibits (approximately 500 pages), and memoranda submitted by the parties on the issues on appeal.⁴

³ A written summary of the status conference was provided to the parties the day after the conference. A copy of the written summary and recording is hereby made part of this record. (SRO 6, 7.)

⁴ The record below is unnecessarily voluminous. For example, on the issue of whether the statute of limitations applied, the hearing officer allowed for two full days of hearing on what should have been a limited hearing on the narrow issues of what is the date the parent knew or should have known about the alleged action that forms the basis of the due process complaint and whether an exception to the timeline described in 34 C.F.R. § 300.511(f) applied. Testimony went well beyond these narrow issues. Further, the hearing officer gave the parties carte blanche to solicit irrelevant, immaterial, unreliable and/or unduly repetitious testimony. (See, e.g., Tr., Vol. II, p. 543:10-16 ("Okay, I don't think that's relevant But I am not the kind of hearing officer who excludes witnesses that have been named So that – that evidence will be taken for its weight."); *id.* at 641:8-11 ("Objection is noted for the record. And to the extent I didn't get an opportunity to state that as to previous objections, those were noted for the record. And going forward I won't be saying that all objections will be noted for the record ... and that way I will not disrupt your flow."); *id.* at 649:24-25 – 650:1-3 ("And again, I won't – I don't want to interrupt your questioning or try to squeeze in my 'noted for the record', [sic] so as I stated earlier, all the objections are noted for the record.");

Though not expressly adopted by the Ninth Circuit, this review officer finds persuasive the standard of review language articulated in *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 23 IDELR 293 (3d Cir. 1995), *cert. denied*, 517 U.S. 1135, 109 LRP 34841 (1996). The Court there noted that in two-tier systems under the IDEA, the review officer must exercise “plenary review” to make the independent decision the IDEA requires. However, in doing so, it held a review officer should defer to the hearing officer’s credibility determinations, unless the non-testimonial, extrinsic evidence in the record will justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion. Accordingly, this is the standard of review that this review officer uses in rendering this decision.⁵

III. ISSUES ON APPEAL

The statement of issues on appeal were agreed to by the parties, with one exception, as explained and determined in footnote 6, *infra*. See RO 7. Accordingly, this review is limited to the following four issues:

- A. Whether the hearing officer erred in finding that DCSD assessed Student in all areas related to the suspected disability in May 2016.
- B. Whether the hearing officer erred in finding that DCSD met its child find requirements between July 9, 2016, the date the hearing officer determined the statute of limitations started to run, and January 19, 2018, when the student was determined eligible for special education services under the IDEA.
- C. Whether the hearing officer erred in finding that DCSD was not required to issue prior written notice (PWN) pursuant to § 300.503 of the IDEA after an October 19, 2016 Section 504 meeting where, as the parent alleges, the Section 504 team “voted” on Student’s eligibility under the IDEA.
- D. Whether the January 19, 2018 IEP denies Student free, appropriate public education (FAPE) because (1) the IEP did not include the Live Scribe Pen recommended in the Psychological/Neuropsychological Report dated November 3, 2017, (2) the annual goal and objectives were inappropriate

Tr., Vol. 6, p. 1695:10-11 (in addressing an objection on the grounds of speculation, the hearing officer answered, “That’s all right. You can answer.”.) The record is also replete with examples of individuals speaking over others, the use of “Uh-huh” to presumably express assent, and unclear questions. The hearing officer is reminded that, ultimately, she must maintain a clear record of the hearing to ensure an accurate, verbatim record and must only permit relevant testimony. To do otherwise, as here, wastes administrative resources, both at the hearing stage and on appeal, not to mention the unnecessary stressors placed on meeting the IDEA’s compressed timelines.

⁵ See also *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 103 LRP 33278 (9th Cir. 2001) (impliedly approving the Third Circuit’s approach in *Carlisle*).

because the “onus” was on Student to initiate the tasks required therein rather than on the teachers both initiating and facilitating the tasks, and (3) the IEP did not address Student’s communication difficulties because it required Student to communicate “face-to-face” with teachers rather than electronically.⁶

IV. FORMAT FOR THIS DECISION

After a complete review of the record below, the appeal must be dismissed. This review officer confirms the findings, decision, and order of the hearing officer and also finds in favor of DCSD on all four issues listed above. The preponderance of the evidence supports the hearing officer’s determinations.

Familiarity with the record below is presumed.

V. FINDINGS OF FACT

1. The hearing officer’s Findings of Fact as stated in the Decision (*see* Decision at 6 – 23) are incorporated by reference as though fully set forth herein and supplemented as follows.

⁶ This issue was broadly written as an overall challenge to the IEP developed in spring 2018. (*See* Decision at 6, 31.) There were four (4) IEPs developed between January 2018 and May 2018 (*see* Joint 11 (Jan. 2018 IEP), 14 (Feb. 2018 IEP); DCSD 35 (March 2018 IEP); and, Joint 19 (May 2018 IEP)), which the parties and the hearing officer “lumped” together as the spring 2018 IEP (*see* Decision at 31-33; RO 8 at 7-9; RO 9 at 9-10). In addressing during the status conference what were the specific concerns raised by the parent at the hearing regarding the January 2018 IEP, and the three subsequent renditions of it, the parties did not agree on what was actually litigated before the hearing officer other than the lack of inclusion of the Live Scribe Pen in the IEP (sub-issue 1) and the challenge to the annual goal and objectives (sub-issue 2). As such, this review officer determined during the February 21, 2019 status conference that the hearing officer’s findings with respect to sub-issues 1 and 2 would be reviewed in this appeal. (*See* RO 6, 7.) The hearing officer’s decision, however, does not address whether the January 2018 IEP denied FAPE because it required Student to communicate face-to-face with teachers (sub-issue 3). This omission, however, is not dispositive as to whether the parent challenged below the appropriateness of the January 2018 IEP requiring Student to communicate face-to-face with teachers rather than electronically. As such, this review officer informed the parties that, if after this review officer examined the entire hearing record and found that sub-issue 3 was “tried by the parties” but omitted from the hearing officer’s decision, it would be addressed in this appeal. (*See M.C. v. Antelope Valley Union Sch. Dist.*, 858 F.3d 1189, 1196 (9th Cir. 2017).) Having reviewed the entire record below, it is decided that sub-issue 3 was, in fact, “tried by the parties” and, therefore, will be heard. However, the extent of this review will not go beyond the three specific sub-issues identified by the parent’s attorney during the status conference.

2. Student was first enrolled as a student in the DCSD on August 17, 2015, for the 2015-16 school year (SY). (Stipulated Facts, dated October 2018.)

3. Parent completed the School Questionnaire on July 23, 2015. Parent reported that Student had “medical conditions” of “ADD/ADHD, mood disorder, and anxiety”; Student had “academic problems” in the area of “finishing assignments”; Student was not a behavior problem in school; and, Student had a “504 plan” in her previous school district. (DCSD 1; Tr., Vol. 1, p. 38:2-5. *See also* DCSD 3 at 4; Joint 1; Tr., Vol. 1, p. 245:6-9.)

4. In the DCSD Registration Form completed on July 23, 2015, Parent also reported that Student never received special education services or had an individualized education program (IEP) at the time of registration.⁷ (DCSD 3 at 10.) Student had received speech and language services at an earlier age. (*See* DCSD 1, 3 at 4.)

5. DCSD made a records request of Student’s previous school district. Any special education IEPs were requested of the previous school district. (DCSD 3 at 12.) The hearing record below does not include any IEP from the previous school district. (*See, generally*, Hearing Record.)

6. DCSD has requested numerous times of Parent pertinent educational information and/or medical documentation of Student during SY 2015-16. (*See* DCSD 4, 9, 10, 11, 12.)

7. Parent has communicated on a regular basis with DCSD her concerns regarding Student throughout SY 2015-16 and 2016-17. (*See, e.g.*, DCSD 5, 7, 8, 11, 13, 16, 22, 25 at 63, 34, 36; P 6, 17 at 71 – 72, 18 at 83, 18 at 116 – 118.) DCSD has acknowledged, and responded to, these communications. (*See, e.g.*, DCSD 5, 8, 13, 22, 25 at 62, 34, 36; P 17 at 71, 18 at 83, 18 at 116 – 118, P 18 at 112, P 18 at 121 – 122.)

8. Student required breaks from the classroom and extra time for missed instruction due to anxiety. (DCSD 3 at 6.) Student also required reminders in turning in assignments. (*Id.* at 7.) Said accommodations were provided to Student through a Section 504 Accommodation Plan in October 2015. (DCSD 3.)

9. As of February 2016, after a medication change, Student’s effort in completing homework waned, but, in school, Student continued to pay attention in class, take good notes, and participate when asked. (*See* P 18 at 76 – 77, 78, 80.) In science, Student had been more distracted after the medication change, but her lower grade in the class was due to not turning in assignments because the assignments were

⁷ It is noted that the Parent testified that Student had an IEP in the previous school district. (Tr., Vol. 1, p. 33:9-12.) However, Parent concedes that the “IEP meeting” was not like what she had seen in Nevada. (*Id.* at 34:3-4.) Parent simply met with a speech language pathologist. (*Id.* at 34:11-15, 35:7-11.)

“forgotten” at home. (P 18 at 80.)

10. On March 3, 2016, Parent requested an “IEP evaluation” of Student.⁸ (DCSD 8. *See also* Joint 4.) This was Parent’s first request for an evaluation of Student for special education services. (Tr., Vol. 1, p. 63:17-23.)

11. On March 8, 2016, DCSD School Psychologist met with Parent and discussed the evaluation process and her concerns (Tr., Vol. 1, pp. 67:23-25, 137:3-6; *see also* Tr., Vol. 2, pp. 399:16-25 – 400:1-9, 400:17-19, 403:17-25, 405:7-25 – 406-1-5, 463:10-20, 617:24-25 – 618:16, 619:9-25), as well as reviewed with Parent the available evaluation information and data on Student (DCSD 9; *see also* Tr., Vol. 2, 399:16-25 – 400:1-9). Parent agreed with DCSD School Psychologist that additional information was needed to determine whether Student had a disability and in need of an IEP. (*Id.*) The evaluation of Student was not limited to a specific disability category, and the assessment areas were also not limited (*see* DCSD 9, 10; Tr., Vol. 1, p. 144:2-5; Tr., Vol. 2, pp. 407:4-12, 409:14-25 – 410:1-2, 420:12-13), though Parent agreed with DCSD School Psychologist that DCSD would assess Student’s cognitive abilities and academic and socio-emotional functioning (DCSD 9; *see also* Tr., Vol. 1, p. 68:7-11, 70:1-5).

12. Parent did not request additional assessments other than what was agreed upon. (*See* Tr., Vol. 1, pp. 75:6-9, 208:9-12; Tr., Vol. 2, pp. 406:6-8, 410:3-11.)

13. Parent does not recall approximately how long she spoke with DCSD School Psychologist or what was discussed. (Tr., Vol. 1, p. 136:19-24.) Parent did not read the information provided by DCSD School Psychologist pertaining to the assessments to be completed because she does not read documents and prefers just to scan the documents.⁹ (Tr., Vol. 1, p. 208:1-8.)

14. DCSD gathered relevant functional, developmental, and academic information about Student, including information provided by Parent and Student’s providers.

15. DCSD School Psychologist interviewed Student to obtain background information about Student’s perception of school, peers, and home. (DCSD 10, 14 at 35; Tr., Vol. 2, pp. 467:24-25, 468:16-18.)

⁸ In the hearing, Parent claimed that she had not requested an “IEP evaluation” earlier than March 3, 2016 using those specific words because she “wasn’t aware how to request it.” (Tr., Vol. 1, p. 135:21-24.) The record evidence, however, suggests that Parent had discussed obtaining an IEP for Student on February 16, 2016 when she met with Student’s pediatrician. (*See* DCSD 12 at 25.)

⁹ Parent further asserted at the hearing that she did not ask questions because she’s “just a parent.” (Tr., Vol. 1, p. 210:15-18.) Parent, however, did not ask questions because she chose to defer to the expertise of the DCSD School Psychologist – “Why would I need to when I am expecting the expertise [sic] to know what’s right?” (Tr., Vol. 1, p. 213:2-3; *see also* Tr., Vol. 2, p. 556:15-18.)

16. DCSD School Psychologist observed Student in various school environments, including the classroom and lunch area. (Tr., Vol. 2, pp. 492:25 – 493:1-4, 493:23-24.)

17. Student was able to stay focused in the classroom and work in groups. (DCSD 14 at 37; Tr., Vol. 2, p. 494:19-20, 494:25 – 495:1-2.) Student was “capable of performing in the educational classroom with very few to no modifications – accommodations.” (Tr., Vol. 2 447:10-12.)

18. Student had typical interactions with peers. (Tr., Vol. 2, p. 494:10-15.) Student did not “lack[] in any significant social skills any more than any teenager.” (*Id.* at 535:15-16.) Student had “excellent eye contact,” was “able to engage in social reciprocity,” and “had very good conversational skills.” (*Id.* at 536:12-14; *see also* Tr., Vol. 3, pp. 802:18-25 – 803:1-7.) Student had friends in school. (*See* Tr., Vol. 2, p. 632:15-20.)

19. Student was also able to engage with adults and converse one-on-one. (*See, e.g.*, Tr., Vol. 3, pp. 834:10-18; 835:3-7, 855:6-16, 885:22-25 – 886:1-4, 7-12, 994:3-25 – 994:1-9, 997:5-11.) She could be “quite chatty” with adults and “engage[] in reciprocal conversation.” (Tr., Vol. 3, p. 994:3-9.)

20. Parent was given an opportunity to provide information on Student’s social/emotional development as part of Student’s assessment and did so on March 8, 2016. (DCSD 11.) Parent noted concerns with Student’s social/emotional well-being in the areas of attention, sleep behavior, making/keeping friends, self-confidence, discipline, and family stress. (*Id.*)

21. DCSD sought (on or about March 8, 2016) and obtained (on March 22, 2016) health information from Student’s pediatrician. (DCSD 12.) Student’s pediatrician noted Student’s anxiety and mood disorder, as well as Student’s difficulty with completing homework. (*Id.* at 25.) Parent/Student reported to pediatrician that Student “[h]as friends.” (*Id.*)

22. DCSD requested information from Student’s psychiatrist, but Student’s psychiatrist did not respond to the request for information.¹⁰ (*See* DCSD 12 at 23; Tr., Vol. 2, pp. 412:13-24, 413:8-11.) Student’s psychiatrist did, however, request an IEP for Student but after the Student’s eligibility meeting. (*See* P 6 at 23). Student’s psychiatrist did not perform an assessment on Student and simply noted on a piece of paper that Student’s “mood symptoms *at home* make *home* study impossible.” (*Id.*) (Emphasis added.)

¹⁰ At the time of the request, Student has seen the psychiatrist only once. (Tr., Vol. 2, p. 472:22-25.) Parent had not shared with DCSD the name of any other psychiatrist who either worked with Student or was working with Student. (*Id.* at 473:7-10 and 23-25, 558:12-15.)

23. Student's vision was screened by the school nurse. (DCSD 14 at 40.) Student failed the vision screening (*id.*) for which she was ultimately prescribed eye glasses (DCSD 12 at 32; P 18 at 83). DCSD School Psychologist obtained vision information from Student's optometrist on March 4, 2016. (DCSD 12 at 32.)

24. Student's hearing was screened as well. (DCSD 14 at 40.) Student passed the hearing screening. (*Id.*)

25. Student's classroom teachers were consulted in furtherance of the evaluation process. (DCSD 14, at 35, 37; Tr., Vol. 2, pp. 428:5-24, 429:11-20, 430:19-20.)

26. DCSD School Psychologist's Psycho-Educational Assessment of Student was completed in May 2016 (*see* DCSD 14), and Parent was provided with a copy on May 11, 2016 (*id.* at 42).¹¹ (*See also* Stipulated Facts, dated October 2018, at 2, ¶ 5.)

27. Student's cognitive skills were assessed in May 2016 to be in the average range, with overall functioning in the 19th percentile. (DCSD 14 at 36; Tr., Vol. 2, pp. 423:9-11, 426:3-5.)

28. Student's academic achievement and socio-emotional functioning in May 2016 did not warrant additional assessments other than what had already been done by DCSD School Psychologist. (Tr., Vol. 2, pp. 430:21-25 – 431:1-3, 452:4-15, 453:11-14; Tr., Vol. 3, pp. 777:11-25 – 778:1-8, 806:24-25 – 807:1-7.)

29. Student's academic functioning in reading, math, and written language in May 2016 was assessed in the average range. (DCSD 14 at 38.)

30. Student's grades in SY 2015-16 (grade 7) were average and were not of concern to Student's teachers. (*See* DCSD 6.) In the first semester, Student passed all classes, with the lowest grade being a C in one class. (DCSD 14 at 39.) Student's grades were lower in the second semester because Student "stopped asking questions" (*id.* at 39-40; Tr., Vol. 2, p. 513:1-7), but ultimately Student passed all classes, with the lowest grade being a D (DCSD 24 at 58).

31. As of March 2016, there were no indications that Student had been "struggling big time" academically or socially as Parent had reported. (DCSD 8; Tr., Vol. 1, pp. 266:18-25 – 267:1-20. *See also* Tr., Vol. 1, pp. 281:1-6, 344:12-14.) Student had been "doing very well" in her classes. (Tr., Vol. 1, 277:4-14.) Student struggled

¹¹ In the hearing, Parent claimed that she was not provided with a copy of the report (Tr., Vol. 1, p. 78:9-12) or that she understood it when it was reviewed during the meeting (*see, e.g.*, Tr., Vol. 1, pp. 159:25, 160:1-4, 161:3-8). The record evidence supports contrary conclusions. Parent signed that the report was given to her during the meeting (DCSD 14 at 42, 15; Tr., Vol. 1, p. 215:16-19) and her testimony contradicts itself as to whether she understood the report (*see, e.g.*, Tr., Vol. 1, pp. 168:1-9 and 13-18, 218:8-22).

with completing homework assignments in the home. (DCSD 14 at 38; Tr., Vol. 2, p. 387:13-24.) Completion of homework in the home resulted in “huge fights,” with “yelling, screaming, [and] sometimes even hitting....” (Tr., Vol. 2, pp. 566:2-11, 578:7-9.)

32. Student’s SY 2015-16 grades are commensurate with Student’s cognitive skills. (Tr., Vol. 2, p. 434:14-18.)

33. Student’s academic progress in SY 2015-16 as collected by DCSD via curriculum-based assessments was in the average range, with Student having demonstrated improvement between the fall and spring semesters in reading, language, and science and maintaining same level achievement in math. (DCSD 14 at 41; *see also* Tr., Vol. 2, p. 440:2-10.) The curriculum-based assessment scores were in line with Student’s cognitive functioning. (Tr., Vol., 2, pp. 486:25 – 487:1.)

34. Student did not exhibit pronounced anxiety during SY 2015-16. (*See* Tr., Vol. 1, pp. 325:23-25 – 326:1; Tr., Vol. 2, pp. 386:24-25 – 387:1-4, 443:10-16, 562:2-9, 620:3-10; Tr., Vol. 3, pp. 776:18-20, 777:17-25 – 778:1-3.)

35. Student’s ADHD and anxiety did not adversely affect educational performance. (Tr., Vol. 2, p. 447:4-8.)

36. On May 11, 2016, DCSD determined Student not eligible for special education under the disability category of Health Impairment. (DCSD 15.) Parent was present at the meeting but did not agree with the determination. (*Id.*; Tr., Vol. 1, pp. 79:19-20, 167:21-25.) Student’s ineligibility determination in May 2016 is not in dispute. (*See* RO 6, 7.)

37. Student did not present with any changes in behavior at the start of SY 2016-17. (Tr., Vol. 3, p. 813:14-17.)

38. In September 2016, DCSD Executive Director of Special Education checked-in with Parent to “see how the year is going thus far” for Student. (DCSD 19.) Student was given access to additional support through Academic Success and credit recovery.¹² (*Id.*) Student was not mandated for credit recovery; placement in credit recovery was at the request of Parent. (*See* DCSD 6; Tr., Vol. 1, pp. 260:22-25 – 261:1-11, 261:18-25, 262:1-11.) Student was mandated for enrichment because of good grades. (Tr., Vol. 3, pp. 821:23-25 – 823:1-5.)

¹² Credit recovery was intended for students who were failing a class or more. (Tr., Vol. 1, pp. 260:22-25 – 261:1-11, 261:18-21.) Student had not been failing any classes in the prior school year or in September 2016. (*See* DCSD 6; Tr., Vol. 1, p. 261:22-25.) Student had been placed in credit recovery at the request of Parent to afford Student additional time to complete assignments and homework. (*See* Tr., Vol. 1, pp. 262:1-11, 343:17-21.)

39. Placement in credit recovery was intended to allow Student to complete homework and other assignments during school hours. (Tr., Vol. 3, p. 823:17-23; Tr., Vol. 3, pp. 824:3-21, 838:7-11.)

40. Given Parent's disagreement with DCSD evaluation of Student, DCSD was "more than willing to explore options" with Parent. (DCSD 19.) Parent was given the option to obtain an independent educational evaluation (IEE) in September 2016, but Parent was "not certain [she] wanted to have [Student] sit for additional assessments at this time." (*Id.*; Tr., Vol. 6, pp. 1675:22-25 – 1676:1-4.) Parent had the option to change her mind (*see* DCSD 19.), and Parent had an open invitation to email or call DCSD Executive Director of Special Education and/or meet again with DCSD Executive Director of Special Education (*id.*).

41. On October 19, 2016, Student's Section 504 Accommodation Plan was revised. (Stipulated Facts, dated October 2018, at 2, ¶ 6; *see also* DCSD 5.) Student continued to be eligible for services pursuant to a Section 504 Accommodation Plan. (*See id.*) The focus of Student's Section 504 Accommodation Plan was, in part, to help Student with completing homework and other assignments during school hours. (Tr., Vol. 3, pp. 823:17-23, 1004:19-25 – 1005:1-2; *see also* Tr., Vol. 3, p. 1002:6-13.)

42. The intent of the accommodations was to "stop the conflict at home over work." (Tr., Vol. 3, p. 870:8-10; *see also* Tr., Vol. 3, pp. 1025:22-24, 1027:11-17.)

43. Student's ability to use homeroom period (i.e., Prime Reading) for 1:1 with classroom teachers (*see* Joint 5 at 7 (i.e., accommodation #3); Tr., Vol. 3, pp. 825:1-6, 1002:23-25 – 1003:1-12) was also intended to help Student complete homework and other assignments during school hours. (Tr., Vol. 3, pp. 838:7-11, 839:3-7.)

44. The Section 504 team discussed whether Student required accommodations to apply already existing skills or whether Student needed to be taught new skills. (Tr., Vol. 3, p. 1008:15-25 – 1009:1-5; Tr., Vol. 6, pp. 1400:16-25 – 1401:1-6; Tr., Vol. 7, pp. 1819:25 – 1820:1-13, 1824:19-25 – 1825:1-5.) The Section 504 team did not vote on eligibility for an IEP.¹³ (*See id.*)

45. Student's Section 504 accommodations did not require classroom teachers to change or grade differently the content of Student's assignments. (P 18 at 123; *see also* Tr., Vol. 3, pp. 864:1-16, 868:3-9, 869:1-17, 870:11-14, 896:4-12.)

¹³ Classroom Teacher 1 testified that he recalled a vote but did not recall whether it was taken during the October 19, 2016 Section 504 meeting. (Tr., Vol. 3, 905:11-21.) Classroom Teacher 1's testimony is not clear as to whether the vote he recalled pertained to eligibility for an IEP. (*See* Tr., Vol. 3, 905:11-21.) Further, no other DCSD personnel who participated in the October 19, 2016 Section 504 meeting recalled there being a vote during the meeting or a discussion on eligibility for an IEP. (*See, e.g.*, Tr., Vol. 3, 935:14-19; Tr., Vol. 7, 1818:2-6.)

46. Student was encouraged to participate in after-school tutoring (*see, e.g.*, P 19 at 155; Tr., Vol. 1, p. 85:6-15), but either did not attend or was not able to attend (Tr., Vol. 1, p. 85:19-23; Tr., Vol. 3, pp. 830:13-24, 849:13-17, 850:23-25 – 851:1-3, 851:8-13, 874:4-7, 1024:21-23; *see also* DCSD 23).

47. During the October 19, 2016 Section 504 meeting, Parent was again given the option by DCSD Executive Director of Special Education to obtain an IEE of Student and was handed a letter authorizing an IEE of Student. (DCSD 20 at 50; Tr., Vol. 6, pp. 1396:2-12, 1399:5-12; Tr., Vol. 7, p. 1735:20-23; *see also* DCSD 20 at 51 – 53.) The IEE was explained to Parent.¹⁴ (Tr., Vol. 6, pp. 1434:16-18, 1435:11-17; Tr., Vol. 7, pp. 1823:18-25 – 1824:1-5.) Said letter was provided to Parent because she had disagreed with the May 2016 Psycho-Educational Assessment. (DCSD 20 at 52.)

48. Throughout SY 2016-17, classroom teachers were communicating with Parent regarding Student's missed assignments (*see, e.g.*, P 18 at 112, 121- 122; P 19 at 132, 147, 152 – 154, 155, 177) and Parent was appreciative of "all of the communication that has been happening ... (*see, e.g.*, DCSD 21 at 54)." Classroom teachers would prompt Student for missing assignments and/or Student's planner. (*see, e.g.*, P 18 at 112, 121- 122; P 19 at 132, 147, 152 – 154, 155, 177.)

49. As of November 2016, Student continued to struggle with completing homework assignments. (P 18 at 112; DCSD 21; Tr., Vol. 3, p. 912:1-12.) DCSD, however, continued to monitor Student and provided 1:1 support to Student to help Student manage completion of homework assignments. (*Id.*; Tr., Vol. 3, p. 840:14-25.) Student was afforded the opportunity to catch up on late homework assignments and to complete the homework assignments during tutoring hours. (P 18 at 112; DCSD 21; Tr., Vol. 3, pp. 915:19-25 – 916:1-5.)

50. In May 2017, Student's Section 504 Accommodation Plan was reviewed and Student was provided with accommodations to assist with completion of assignments. (*See* Joint 5 at 7.) Supplemental notes were to be provided. (*Id.*)

51. In SY 2016-17 (grade 8), Student demonstrated improvement in reading between fall 2016 and spring 2017 as measured by a curriculum-based assessment. (P 19 at 179; *see also* Tr., Vol. 3, p. 960:1-12.)

¹⁴ In the hearing, Parent testified that she "didn't understand what an IEE was," but also testified that she understood that it was an evaluation and that she spoke to DCSD Executive Director of Special Education about it. (Tr., Vol. 1, pp. 223:20-25, 224:1-24.) Parent further testified that she opted not to go through with the IEE because she did not want to put Student "through the stress of another test." (Tr., Vol. 6, pp. 1675:22-25 – 1676:1-4; Tr., Vol. 7, p. 1733:5-16.) Parent's testimony that she did not understand what an IEE entailed is not credible. (*See* Tr., Vol. 6, pp. 1434:16-18, 1435:11-17.)

52. In SY 2016-17, Student was able to show mastery of grade level content. (See, e.g., Tr., Vol. 3, pp. 895:10-18, 899:16-25 – 900:1-10, 929:13-18.)

53. In SY 2016-17, Student passed all her classes. (See DCSD 24 at 59; Tr. Vol. 3, pp. 877:19-21, 1000:4-6.) Student earned four Bs, six Cs, and two Ds. (*Id.*) Student matriculated to the DCSD high school. (Stipulated Facts, dated October 2018, at 2, ¶ 7.)

54. In SY 2016-17, Student participated in group activities with other students both in school and during school-sponsored events outside of school. (Tr., Vol., 3, pp. 834:19-25 – 835:1-2, 894:12-17, 896:17-25, 902:19-25, 910:10-14, 932:4-25 – 933:1-5, 933:12-14, 999:3-6.) Student voluntarily participated in classroom discussions without prompting. (Tr., Vol. 3, pp. 908:20-25 – 909:1-3, 918:16-17.)

55. In SY 2016-17, Student had friends in school. (Tr., Vol. 3, pp. 897:13-14, 918:4-15, 1030:6-12, 1036:3-5.) Student “seemed more comfortable, ... more outgoing, and not as shy initially.” (Tr. 998:13-16.)

56. In August 2017, Student’s Section 504 Accommodation Plan was reviewed and Student was provided with accommodations to assist with completion of assignments and to address Student’s anxiety. (See Joint 8 at 17, 18.) Supplemental notes were to be provided. (See Joint 8 at 17.)

57. Student continued not to present as needing additional assistance or instruction in classwork other than what was provided in Student’s August 2017 Section 504 Accommodation Plan. (See Tr., Vol. 4, pp. 1173:7-15, 1277:6-12.)

58. In August 2017, Parent requested of DCSD that Student be assessed to determine whether Student is on the autism spectrum. (DCSD 25 at 63. See also Joint 8 at 15.) DCSD agreed to assess Student (DCSD 25 at 62) and started the process in September 2017 (DCSD 31). Parent was provided with a copy of the assessment report. (See *id.* at 99.) Student was assessed to have cognitive skills in the average range and academic achievement was also assessed in the average range. (*Id.* at 98.) Student’s socio-emotional functioning was assessed to be in the average range “with a modest degree of anxiety, depression, and withdrawal.” (*Id.* at 99.)

59. In September 2017, Parent, per her request, was provided with a letter authorizing an IEE. (See Tr., Vol. 6, pp. 1404:12-25 – 1405:1-7.)

60. A Confidential Psychological/Neuropsychological Report was provided to DCSD on November 3, 2017 by Independent Neuropsychologist. (Stipulated Facts, dated October 2018, at 2, ¶ 9. See also P 8.)

61. Independent Neuropsychologist was not called as a witness in the hearing. (See, generally, Hearing Record.)

62. Independent Neuropsychologist observed Student to be “fidgety but not hyperactive,” “socially awkward but not overly anxious,” having “good eye contact,” and

“able to start and maintain a conversation.” (P 8 at 3 – 4.)

63. Parent reported to Independent Neuropsychologist that Student “has a few friends ... [and] does keep them.” (P 8 at 29.) Parent further reported that Student is not “lonely.” (*Id.*)

64. Student was assessed in September 2017 to be in the high average overall range in cognitive skills. (P 8 at 32.) Student’s intelligence scores were better than the previous testing in 2016. (*Id.*)

65. Student’s academic achievement was assessed in September 2017 to be in the average range, except that Student fell in the lower end of the average range in reading comprehension and had weakness in math and reading fluency. (P 8 at 32 – 33.) Student’s September 2017 scores are commensurate with previous testing in 2016. (*Compare* DCSD 14 at 38 *with* P 8 at 32.)

66. Student’s ability to recall is in the average range with repetition. (P 8 at 33.)

67. Student’s executive functioning was assessed in September 2017 to be in the average range. (P 8 at 35.) Student, however, demonstrates “mild issues transitioning between information,” which can make Student “easily overwhelmed.” (*Id.* at 43).

68. Student’s behavior, personality, and adaptive characteristics present differently in the classroom setting than in Student’s home, with Parent and Student’s grandmother seeing elevated levels in these areas at home but Student’s classroom teachers rating Student in the insignificant range.¹⁵ (*See* P 8 at 38 – 39). Student “can be very difficult to manage at home.” (*Id.* at 46.)

69. Student exhibits inattention, but it is “very mild.” (P 8 at 43.)

70. Student exhibits anxiety, though it can be mild. (P 8 at 43.)

71. Student is not learning disabled. (P 8 at 33.)

72. Though Parent rates Student in the “very likely range” of an autism disorder (*see* P 8 at 40), Student does not have an autism disorder (*id.* at 44). Student does have “*some* social skill issues.” (*Id.*) (Emphasis added.)

73. Independent Neuropsychologist recommended three options that “could” assist Student with taking notes. (P 8 at 45; *see also* Tr., Vol. 6, 1377:9-13.) One of these options is the Live Scribe Pen. (P 8 at 45.)

¹⁵ The same was true in May 2016 when Student was in seventh grade and initially evaluated for special education. (*See* Tr., Vol. 2, pp. 429:6-25 – 430:1-20.)

74. In January 2018, Student was determined eligible for special education under the disability category of Health Impairment. (DCSD 32; *see also* Stipulated Facts, dated October 2018, at 2, ¶ 11.) Student’s eligibility is not in dispute. (*See* RO 6, 7.)

75. An IEP was developed for Student on January 19, 2018. (Stipulated Facts, dated October 2018, at 3, ¶ 13.) Difficulty in completing homework and other assignments at home was the primary reason for the services and accommodations listed in the IEP. (Tr., Vol. 4, pp. 1224:6-24, 1225:4 and 13-20, 1226:11-17; *see also* Tr., Vol. 6, pp. 1443:14-21, 1461:17-21, 1676:13-20.) The IEP team had “hoped” to get “workload management under wraps at school.” (Tr., Vol. 4, p. 1224:6-24.)

76. The January 2018 IEP included one annual goal and three short-term objectives that read as follows:

[Student] will improve ... workload management and executive functioning toward an independent 9th grade level as compared to ... same aged peers, as measured by teacher observation, work completion, and work prioritization.

#1 [Student] will identify and prioritize ... school work by due date/relevance completing those of highest priority in 4/5 opportunities i.e. projects, study for tests and quizzes, missing assignments and homework deadlines.

#2 [Student] will utilize ... method of planning to record upcoming due dates/tasks/project dates/important dates for all ... classes, and checked in Communication Class (study skills) 4/5 times.

#3 [Student] will set appropriate goals for each class, access ... grades and complete ... goals in 4/5 times.

(Joint 11 at 33 – 34.)

77. The annual goal does not place the burden solely on Student to initiate what is required therein – Student was to work *towards an independent level* in one calendar year. Classroom teachers shared in the responsibility to get Student to an independent level. (*See* Tr., Vol. 3, pp. 1078:5-8, 1080:9-14.)

78. A Live Scribe Pen is not included in the January 2018 IEP.¹⁶ (*See* Joint 11.) When notetaking was required, the January 2018 IEP tasked Student with attempting to take notes. (*See* Joint 11 at 34.) Classroom teachers had the discretion to provide Student with a copy of classroom notes and/or any PowerPoints used. (*Id.*) Student was provided with PowerPoint presentations. (*See, e.g.*, Tr., Vol. 3, pp. 1067:21-25 –

¹⁶ A Live Scribe Pen is a pen that also allows Student to record lectures. (P 8 at 45.)

1068:1-7.)

79. Student was able to independently take notes in class. (*See, e.g.*, Tr., Vol. 3, pp. 1067:21-25 – 1068:1-7; Tr., Vol. 4, p. 1144:6-20.)

80. Student was accommodated with a planner. (*See* Joint 11 at 34; Tr., Vol. 3, p. 1081:18-22.) Student was tasked with writing in the planner classroom work to be completed as homework and any other homework and to provide planner to classroom teacher to initial. (*Id.*)

81. Student was able to independently write Student's assignments in the planner and to directly interact with classroom teachers to have the entries initialed by them. (*See, e.g.*, Joint 11 at 28; Joint 14 at 47. Tr., Vol. 3, p. 1047:8-15.)

82. There were incidences in which Student had not been "honest" with writing in the planner work that needed to be completed. (Joint 14 at 47.) Student would write in the planner "No Homework" though homework was due. (*Id.*)

83. As of January 2018, Student was passing all her classes, with then current grades reflecting four Bs, one C, and two Ds. (Joint 11 at 27 – 28.)

84. Post the January 2018 IEP team meeting, Parent requested, and DCSD scheduled, a second IEP team meeting for February 2018. (DCSD 34; Joint 13; Tr., Vol. 4, p. 1147:8-10. *See also* Stipulated Facts, dated October 2018, at 3, ¶ 15.)

85. An IEP team meeting was held on February 12, 2018 and the January 2018 IEP was revised. (*See* Joint 14; Tr., Vol. 4, pp. 1149:7-10, 1150:1-14; Stipulated Facts, dated October 2018, at 3, ¶¶ 15, 16.)

86. The February 2018 IEP included the same annual goal and short-term objectives as in the January 2018 IEP. (Joint 14 at 53 – 54.)

87. A Live Scribe Pen is not included in the February 2018 IEP. (*See* Joint 14.) Classroom teachers were to provide Student with a copy of classroom notes and/or any PowerPoints used, when notetaking was to occur. (*Id.* at 54.)

88. Student continued to be accommodated with a planner. (Joint 14 at 55.) Student was tasked with writing in the planner classroom work to be completed as homework and any other homework and to provide planner to classroom teacher to initial. (*Id.*) Entries were to be done in ink to avoid Student later deleting what was due. (*Id.* at 47; *see also* Tr., Vol. 6, p. 1517:9-11.)

89. As of February 2018, Student continued to pass all her classes, with then current grades reflecting four Bs, one C, and two Ds. (Joint 14 at 48 – 49.)

90. Post the February 2018 IEP team meeting, Parent requested, and DCSD scheduled, a third IEP team meeting for March 2018. (DCSD 36; Tr., Vol. 4, p. 1153:14-

16.)

91. An IEP team meeting was held on March 20, 2018 and the February 2018 IEP was revised. (See DCSD 35.)

92. The March 2018 IEP included the same annual goal and short-term objectives as in the January 2018 IEP. (DCSD 35 at 114 – 115.)

93. A Live Scribe Pen is not included in the March 2018 IEP. (See DCSD 35.) Classroom teachers were to provide Student with a copy of classroom notes and/or any PowerPoints used, when notetaking was to occur. (*Id.* at 115.)

94. As of March, Student continued to be able to independently take notes in class. (See, *e.g.*, Tr., Vol. 4, pp. 1157:8-23, 1159:3-12, 1159:18-21.)

95. Student continued to be accommodated with a planner. (DCSD 35 at 116.) Student was tasked with writing in the planner classroom work to be completed as homework and any other homework and to provide planner to classroom teacher to initial. (*Id.*) The planner was established on Google Docs, which permitted teachers, Parent, and Student to enter/share information simultaneously in real time. (See Tr., Vol. 4, p. 1160:4-25.)

96. As of March 2018, Student continued to pass all her classes, with then current grades reflecting four As, one B, one C, and one D. (DCSD 35 at 107.)

97. Post the March 2018 IEP team meeting, Parent requested, and DCSD scheduled, a fourth IEP team meeting for May 2018. (Joint 16, 17; Tr., Vol. 4, p. 1164:10-15; *see also* Stipulated Facts, dated October 2018, at 3, ¶ 18.)

98. An IEP team meeting was held on May 3, 2018 and the March 2018 IEP was revised. (See Joint 19; Tr., Vol. 4, p. 1168:14-20; Stipulated Facts, dated October 2018, at 3, ¶ 19.)

99. In the May 2018 IEP, Student's annual goal remained the same as in January, February, and March 2018. (*Compare* Joint 19 at 73 *with* Joint 11 at 33, Joint 14 at 53, and DCSD 35 at 114.) Student's short-term objectives were revised to include the prefatory clause, "With teacher facilitation and prompting" (*Id.* at 74; Tr., Vol. 4, 1170:5-8.) The overall goal, however, continued to be to make Student an independent learner. (See Tr., Vol. 4, 1170:11-19.)

100. Student did not require "teacher facilitation and prompting," as Student was able to self-advocate. (Tr., Vol. 4, pp. 1185:5-25 – 1186:1-3, 1248:6-11.) The language in the short-term objectives were added to "appease" Parent who had been "adamant." (Tr., Vol. 4, p. 1187:6-23.)

101. A Live Scribe Pen is not included in the May 2018 IEP. (See Joint 19.) Classroom teachers were to provide Student with a copy of classroom notes and/or any

PowerPoints used, when notetaking was to occur. (*Id.* at 75.)

102. In February, March, and May, Parent requested that the Live Scribe Pen be added to the IEP (Joint 14 at 50; DCSD 35 at 107; Joint 19 at 70), but the consensus of the other IEP team members was that Student did not need the Live Scribe Pen given the accommodations in place and Student's ability to take notes (*see, e.g.*, Tr., Vol. 3, pp. 1067:21-25 – 1068:1-7; Tr., Vol. 4, pp. 1144:6-20, 1157:8-23, 1159:3-12, 1159:18-21, 1171:1-4, 1237:13-23, 1243:9-10; 1271:20-21, 1296:2-4; Tr., Vol. 6, pp. 1412:3-12, 1413:12-21). Student was accommodated by having access to, or being provided with, a copy of classroom notes/PowerPoints.¹⁷ (Joint 14 at 54; DCSD 35 at 115; Joint 19, at 75.)

103. DCSD agreed to provide Student with the Live Scribe Pen on a trial basis post the May 2018 IEP team meeting. (Tr., Vol. 3, p. 1068:8-25; Tr., Vol. 6, pp. 1353:7-17, 1420:13-21; Tr., Vol. 7, pp. 1837:14-19, 1849:7-15.) Student sporadically used the Live Scribe Pen. (*See id.*; Tr., Vol. 4, pp. 1169:6-7 and 18-24.)

104. Student continued to be accommodated with a planner. (Joint 19 at 75.) Student was tasked with writing in the planner classroom work to be completed as homework and any other homework. (*Id.*)

105. The May 2018 IEP is not in dispute. (*See* RO 6, 7.)

106. As of May 2018, Student continued to pass all classes, with then current grades reflecting four Bs, one C, and two Ds. (Joint 19 at 677.)

107. Ultimately, in SY 2017-18 (grade 9), Student passed all classes. (*See* DCSD 24 at 59.) Student earned three As, five Bs, four Cs, and two Ds. (*Id.*) Student presented as an average ninth grader. (Tr., Vol. 4, pp. 1191:2-10, 1298:14-21.)

108. Student has consistently earned mostly Bs and Cs in seventh (10 of 15 courses), eighth (10 of 12 courses), and ninth grades (9 of 14 courses).¹⁸ (*See* DCSD 24 at 58 – 59.)

109. Teacher comments for grades seventh, eighth, and ninth suggest that Student worked hard, participated in class discussions, cooperated with other students, had shown growth, and had missing assignments. (*See* DCSD 24 at 60 – 61, 33.)

110. Though Student did struggle in self-advocating and communicating with adults *at times*, Student was able to communicate directly with classroom teachers.¹⁹

¹⁷ Parent Consultant testified that Student “wasn’t always getting notes.” (Tr., Vol. 6, p. 1570:6-13.) The record evidence does not corroborate this assertion. (*See* citations, *supra*.)

¹⁸ The other grades consisted of six As and six Ds. (*See* DCSD 24 at 58 – 59.)

¹⁹ Parent Consultant testified that Student was not able to initiate interactions with classroom teachers. (Tr., Vol. 6, p. 1531:7-9.) This statement is not corroborated

(See, e.g., DCSD 24 at 58 (B+ in public speaking), 60 – 61 (teachers noting Student participates well in class); DCSD 35 at 108 (Student “participates fully in English), 109 (in Biology, Student “participates in class and likes to be involved in the class activities”), 109 (“But ... it also led to a good conversation about time limits to the reading ... and working on her communication with adults...”); Tr., Vol. 3, p. 1082:1-7; Tr., Vol. 4, pp. 1175:11-20, 1185:5-25 – 1186:1-3, 1189:11-18, 1297:20-25.)

111. Student was able to work with other students and had friends during ninth grade.²⁰ (Tr., Vol. 3, pp. 1070:16-24, 1071:1-9; Tr., Vol. 4, pp. 1178:7-14, 1257:16-17, 1297:17-19; Tr., Vol. 6, p. 1350:6-14; see also Tr., Vol., 4, p. 1244:10-12.)

112. Student was a “different child at home than at school.” (Tr., Vol. 4, p. 1191:2-10; Tr., Vol. 7, pp. 1785:5-14, 1826:23-25 – 1827:1-7.)

VI. ANALYSIS AND CONCLUSIONS

Based upon the above Findings of Fact, this review officer confirms the hearing officer’s conclusions of law adding the following analysis and conclusions.

The hearing officer did not err in finding that DCSD assessed Student in all areas related to the suspected disability in May 2016.

An evaluation is the initial step in the provision of special education and related services to a student with a disability. The IDEA sets forth several procedures that school districts must adhere to ensure a legally compliant evaluation process. See 34 C.F.R. §§ 300.304 – 300.311. A full and individual initial evaluation, in accordance with 34 C.F.R. §§ 300.305 and 306, is required before the initial provision of special education and related services to a student with a disability. 34 C.F.R. § 300.301(a). The purpose of the evaluation is to detect the existence of the student’s disability (or disabilities) and the nature and extent of the special education and related services that the student needs. 34 C.F.R. § 330.15.

An evaluation means procedures used in accordance with §§ 300.304 through 300.311. 34 C.F.R. § 300.15. In conducting the evaluation, the school district must use a variety of tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, to determine whether the student is eligible and, if so, the content of the student’s IEP. 34 C.F.R. § 300.304(b)(1); NAC 388.340(1).

by any classroom teacher and the record evidence supports the opposite conclusion. (See citations, *infra*.)

²⁰ Parent Consultant testified that Student had “two friends” but that these two friends were “not like substantial friends.” (Tr., Vol. 6, p. 1578:8-11.) Parent Consultant further testified that in high school, Student had “made no friends.” (*Id.* at 1579:16-17.) These assertions are not supported by the overwhelming testimony to the contrary. (See, e.g., citations, *infra*.)

The evaluation must be sufficiently comprehensive (34 C.F.R. § 300.304(c)(6)) and assess the student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 C.F.R. § 300.304(c)(4); NAC 388.340(4)(b)). The school district cannot use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student. 34 C.F.R. § 300.304(b)(2); NAC 388.340(2).²¹ See also *Avila v. Spokane Sch. Dist.* 81, 686 F. App'x 384, 69 IDELR 204 (9th Cir. 2017) (unpublished) (finding that a school district's broad assessment of a student intended to detect specific disabilities or behaviors associated with such disabilities can meet the requirements of 34 C.F.R. § 300.304(c)(4)). The evaluation must identify all of the student's special education and related services needs, whether or not commonly linked to the disability category. 34 C.F.R. § 300.304(c)(6). In addition, the evaluation process includes the review of existing evaluation data, including evaluations and information provided by the student's parent, as part of an initial evaluation (if appropriate²²) to identify what additional data is needed, if any, to determine eligibility and the educational needs of the student. 34 C.F.R. § 300.305(a).

A disability is suspected and, therefore, must be assessed by the school district, when the school district "has notice that the [student] has displayed symptoms of that disability." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 67 IDELR 227 (9th Cir. 2016).²³ The requirement to assess may be triggered by the informed suspicions of the parent or outside experts. See *Pasatiempo v. Aizawa*, 103 F.3d 796, 25 IDELR 64 (9th Cir. 1996); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d, 1202, 50 IDELR 241 (9th Cir. 2008).

²¹ A school district is required to use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student. 34 C.F.R. § 300.304(c)(7); NAC 388.340(4)(c).

²² In limited circumstances, a school district can conduct an initial evaluation only through review of existing data pertaining to the student. In most instances, review of existing data alone generally would be insufficient for a team to determine whether a student qualifies as a student with a disability and the nature and extent of the student's educational needs. *Letter to Copenhaver*, 108 LRP 16368 (OSEP 2007).

²³ In special education practice, most participants, even advocates and attorneys representing parents and school districts, as well as hearing officers, often cite to the "Individuals with Disabilities Education Law Report" (IDELR), some with a parallel court citation. The IDELR is published by LRP Publications. This reporter publishes practically all decisions of any significance regarding special education and Section 504 rendered by any federal or state court across the country, as well as hearing officer and state review officer decisions of significance. The reporter also includes OSEP policy letters and other documents of significance issued by OSEP and sometimes state departments of education.

Citations to the IDELR herein is for the convenience of the parties.

Here, Parent argues that the hearing officer erred in finding the DCSD assessed Student in all areas related to the suspected disability because DCSD did not complete a “speech and language and mental health assessment, along with additional assessments based on, among other things, the ... findings” in the Psycho-Educational Assessment of Student completed in May 2016. *See* SRO 8 at 2. It is noted that Parent challenges only one procedure of many that DCSD must adhere to in ensuring a legally compliant evaluation process. Yet, Parent weaves into this appeal other claims and non-related arguments in support of why the hearing officer erred in finding that Student was assessed in all areas related to the suspected disability. *See* SRO 8 at 3. This includes claims/arguments of predetermination, failure to identify educational needs, failure to explain findings to Parent, and failure of the evaluator of the Psycho-Educational Assessment to be present during the eligibility meeting to allow Parent to ask questions. *Id.* To the extent that Parent has put forth collateral claims/arguments that are without legal significance to the specific issue the parties agreed would be the subject of this appeal, said collateral claims/arguments are not directly addressed herein. This said, the record evidence would suggest that said collateral claims/arguments are without merit.

The evaluation process leading up to the eligibility meeting of May 2016 met the IDEA requirements, inclusive of the requirement that Student was evaluated in all areas related to Student’s suspected disability. DCSD, consistent with 34 C.F.R. § 300.304(b)(1), used a variety of tools and strategies to gather relevant functional, developmental, and academic information about Student, including information provided by Parent, to determine whether Student is eligible and, if so, the content of Student’s IEP. *See* FOF 11, 14, 15, 16, 20, 21, 23, 24, 25, 26, 27, 29, 33. The evaluation was sufficiently comprehensive and specifically included assessments of health, vision, hearing, social and emotional status, general intelligence, academic performance, and communicative status. *Id.* Further, DCSD did not use any single measure or assessment and relied upon a review of Student’s records (FOF 11), input from Parent and Student (FOF 11, 15, 20), observations of Student in various environments (FOF 16), health information provided by Student’s doctors and the school nurse (FOF 21, 23, 24), feedback from Student’s classroom teachers (FOF 25), formal testing (FOF 27, 29), classroom performance (FOF 30), and curriculum-based assessments (FOF 33).

Parent posits that DCSD failed to assess Student in all areas related to the suspected disability – “including [sic] but not limited to [sic] mental health, speech and language, and/or other assessments, such as Autism, related to her ‘at risk and clinically significant’ result areas of the BASC III showing clear social emotional deficits” – because, like the subjective views of school district staff in *Timothy O.*, here, DCSD School Psychologist “determined through her minimal subjective observations of a child that is heavily medicated that she saw no indicia warranting further assessment and concluded that [Student] would not qualify as [emotionally disturbed] based solely on informal observations.” SRO 8 at 3. Parent’s reliance on *Timothy O.* is misplaced. First, unlike in *Timothy O.*, DCSD was not on clear notice, or had reason to suspect, that Student had any disability that would warrant a mental health, speech and language, and/or autism assessment. On the contrary, though Parent had reported when Student first enrolled in DCSD “medical conditions” of ADD/ADHD, mood disorder, and

anxiety, Parent also reported that Student's academic problems were limited to finishing assignments and that Student did not present with any behavior problems in school. FOF 3. Further, though Student had received speech and language services at an early age, Parent reported that Student has never received special education services or had an IEP at the time of registration. FOF 4. Moreover, Student was able to stay focused in the classroom, take notes, and participate in group work with very few to no modifications/accommodations other than what was provided through the Section 504 Accommodation Plan. FOF, 8, 9, 17. Student was able to interact with peers/friends like any other teenager and engaged in social reciprocity with both peers/friends and adults. FOF 18, 19. Student has very good conversation skills and was quite chatty. *Id.* And, as to Student's anxiety, it was not pronounced and being accommodated through Student's Section 504 Accommodation Plan. *See* FOF 31, 34, 35. Student simply did not display any symptoms – other than some anxiety – that would have triggered additional assessments other than those that were completed. *See* FOF, *supra*.

It is noted that, although the record evidence includes references to Student being on Lithium (*see, e.g.*, DCSD 16), the record is void of any evidence that Student was "heavily medicated," much less that any medication whatever somehow masked symptoms that would have triggered additional assessments. It is further noted that Student, after additional testing in November 2017, was ultimately determined not to have a learning disability or an autism spectrum disorder and Student's inattention is "very mild." FOF 69, 71, 72. Finally, as to the assertion that Student's mood disorder was affecting academic progress and should have triggered additional assessments, the record is void of any indication that Student's mood disorder impacted school performance. *See supra*. On the contrary, any mood lability occurred in the home and only in the home. *See* FOF 31. In fact, Student's psychiatrist requested an IEP simply because Student's "mood symptoms at home make home study impossible." FOF 22.

For these reasons, and for the reasons set forth in the hearing officer's decision, the hearing officer did not err in finding that DCSD assessed Student in all areas related to the suspected disability in May 2016.

The hearing officer did not err in finding that DCSD met its child find requirements between July 9, 2016, the date the hearing officer determined the statute of limitations started to run, and January 19, 2018, when the student was determined eligible for special education services under the IDEA.

Each school district must have in effect policies and procedures to ensure that all children with disabilities residing in the school district – including those in private schools or who are homeless – who are in need of special education and related services are identified, located, and evaluated. *See* 34 C.F.R. § 300.111; NAC 388.215. A school district's child find obligation is triggered when it has a reason to suspect a need for evaluation of a student. *Bd. of Educ. v. L.M.*, 478 F.3d 307, 47 IDELR 122 (6th Cir. 2007) (noting that § 300.111(c)(1) extends the IDEA's child find requirements to children only suspected of having a disability). However, lack of enough reason to suspect that a student requires *special education services* even though the student is

suspected of having a disability has been found not to trigger the school district's child find requirements when the student is making good progress in the general education curriculum with the accommodations provided in the student's Section 504 plan. *See, e.g., Durbrow v. Cobb County Sch. Dist.*, 887 F.3d 1182, 72 IDELR 1 (11th Cir. 2018); *W.A. v. Hendrick Hudson Central Sch. Dist.*, 219 F. Supp. 3d 421, 69 IDELR 4 (S.D.N.Y. 2016); *R.E. v. Brewster Cent. Sch. Dist.*, 180 F. Supp. 3d 262, 67 IDELR 214 (S.D.N.Y. 2016). The fact that a student has a Section 504 plan also does not on its own trigger the child find obligation. *See Panama-Buena Vista Union Sch. Dist. v. Varela*, 71 IDELR 57 (E.D. Cal. 2017).

Here, Parent asserts that the IDEA's child find requirements were triggered post the ineligibility finding of May 2016 by Student's receipt of "modified work" through Student's Section 504 Accommodation Plan, Parent's assistance of Student in the home to prioritize work, Parent's need to communicate with Student's classroom teachers about Student's assignments, and Student's "barely passing grades during ... 8th grade year." *See* SRO 8 at 6, 7. None of these concerns individually, or collectively, would have triggered the child find requirements. The record is replete with Student's struggles with completing homework and other assignments at home. *See* FOF 8, 9, 31, 37, 39, 41, 42, 43, 49, 50, 68 and 112. Conversely, in the school setting, the record establishes that Student made progress both academically and socially with the accommodations provided in Student's Section 504 Accommodation Plan. Specifically, in SY 2015-16 (grade 7), Student passed all classes (FOF 30) and Student's performance in curriculum-based assessments throughout the same school year was in the average range, with Student having demonstrated improvement between the fall and spring semesters in reading, language, and science and maintaining same level achievement in math (FOF 33). In SY 2016-17 (grade 8), Student continued to demonstrate improvement in reading between fall 2016 and spring 2017 as measured by a curriculum-based assessment. FOF 51. Student also showed mastery of grade level content (FOF 52) and once again passed all classes (FOF 53). Student's academic success continued into SY 2017-18 (grade 9); Student passed all classes.²⁴ FOF 107.

Student started SY 2016-17 without any changes to behavior. FOF 37. Student was able to participate in group activities with other students both in school and during school-sponsored events. FOF 54. Student voluntarily participated in classroom discussions without teacher prompting. *Id.* Socially, Student continued to have friends and was more outgoing. FOF 55. The same was true in SY 2017-18 (grade 9). FOF 109, 110, 111.

²⁴ Parent's assertion that Student's "barely passing grades" were not commensurate with Student's abilities (*see* SRO 8 at 7) is not substantiated by the record. Student did better than "barely passing." In seventh, eighth, and ninth grades, Student took a total of 41 courses. FOF 108. Of the 41 courses, Student earned six As and 29 Bs, and Cs (or, stated differently, 85% of Student's grades are C or above). *See* FOF 53, 107, 108. Student's grades are commensurate with assessed abilities of average (2016) to high average (2017) intellectual skills and average academic achievement (2016 and 2017). FOF 27, 29, 32, 64, 65.

In all, DCSD lacked enough reason to suspect that Student's disabilities warranted more than the accommodations included in Student's Section 504 Accommodation Plan. Though Student's Section 504 Accommodation Plans of October 2016, May 2017, August 2017 all provided for a reduced workload (see FOF 41, 50, 56), the primary reason for this was to reduce the conflict at home between Parent and Student regarding the completion of homework and other assignments (FOF 41, 42, 43, 50, 56). Student was not in need of being taught new skills (FOF 44, 57), nor did classroom teachers need to change or grade differently the content of Student's assignments (FOF 45). The fact that Student was encouraged to participate in tutoring (FOF 46), had been placed in credit recovery (at Parent request no less) (FOF 38, 39), and allowed to use the homeroom period to meet 1:1 with classroom teachers (FOF 43), had all to do with minimizing/eliminating the amount of homework rather than Student's academic achievement and socio-emotional functioning (FOF, 38, 39, 43, 45, 46). Notably, the primary reason for the services and accommodations listed in Student's January 2018 IEP (and its subsequent iterations) was also to shift the workload from the home to the school setting. FOF 75.

And, finally, the mere fact that Parent assisted Student in the home to prioritize work and communicated with Student's classroom teachers does not itself trigger child find requirements. This is what would be expected of any loving parent who works in tandem with equally invested classroom teachers.²⁵

For these reasons, and for the reasons set forth in the hearing officer's decision, hearing officer did not err in finding that DCSD met its child find requirements between July 9, 2016, the date the hearing officer determined the statute of limitations started to run, and January 19, 2018, when the student was determined eligible for special education services under the IDEA.

The hearing officer did not err in finding that DCSD was not required to issue PWN pursuant to § 300.503 of the IDEA after an October 19, 2016 Section 504 meeting where, as Parent alleges, the Section 504 team "voted" on Student's eligibility under the IDEA.

When a school district proposes/refuses to initiate/change the identification, evaluation, placement or FAPE of a student with disability or a student suspected of having a disability, PWN must be provided to the parent which includes: a description of the action proposed/refused; an explanation of why the school district proposed/refused to take the action; a description of other options considered and why said options were rejected; a description of each evaluation procedure/test/report used by the school district as a basis for the proposed/refused action; and a description of other relevant factors to the school district's proposal/refusal. 34 C.F.R. §§ 300.503(a) and (b); NAC 388.300(8), (10). The parent must also be advised of where to get a copy of the

²⁵ It is noted that in the three school years encompassed in the record, DCSD accommodated Parent's repeated requests for meetings and feedback, as well as met regularly. See, e.g., FOF 7, 10, 11, 36, 40, 41, 47, 48, 50, 56, 58, 59, 74, 84, 90, 97, 98.

procedural safeguards and of sources to contact to obtain assistance in understanding their rights. 34 C.F.R. §§ 300.503(b)(4) and (5); NAC 388.300(10).

Here, Parent avers that during the October 19, 2016 Section 504 meeting, the Section 504 team “voted” on Student’s eligibility under the IDEA. The record does not support Parent’s recollection of events. See FOF 44. Though Classroom Teacher 1 testified that he recalled a vote, he had no recollection of whether that vote was taken during the October 19, 2016 meeting or its subject matter. *Id.* Others who participated in the meeting do not recall there being a vote, much less a discussion on Student’s IDEA eligibility. *Id.* The Section 504 team did discuss whether Student required accommodations to apply already existing skills or whether Student needed to be taught new skills. *Id.* It was also determined that Student did not require any modifications to the content of the general education curriculum. See FOF 45. Though Parent defines this discussion as a discussion about IDEA eligibility (see SRO 8 at 5), it would be better described as a discussion about Student’s continued eligibility under Section 504. FOF 41, 44, 45. It is noted that Parent was offered the opportunity to obtain an IEE of Student during the Section 504 meeting and was handed a letter authorizing her to obtain said IEE at DCSD expense. FOF 47. This fact, too, does not support Parent’s contention that Student’s IDEA eligibility was determined during the Section 504 meeting. The letter authorizing the IEE was provided because Parent had disagreed with the DCSD Psycho-Educational Assessment of May 2016. *Id.*

Accordingly, given that the focus of the October 19, 2016 meeting pertained solely to Student’s eligibility under Section 504, DCSD was under no obligation to issue PWN pursuant to the IDEA.

For these reasons, and for the reasons set forth in the hearing officer’s decision, the hearing officer did not err in finding that DCSD was not required to issue prior written notice pursuant to § 300.503 of the IDEA after an October 19, 2016 Section 504 meeting where, as the parent alleges, the Section 504 team “voted” on Student’s eligibility under the IDEA.

The hearing officer did not err in finding that the January 19, 2018 IEP did not deny Student FAPE because (1) the IEP did not include the Live Scribe Pen recommended in the Psychological/Neuropsychological Report dated November 3, 2017, (2) the annual goal and objectives placed the “onus” on Student to initiate the tasks required therein rather than on the teachers both initiating and facilitating the tasks, and (3) the IEP required Student to communicate “face-to-face” with teachers rather than electronically.

Review of FAPE denial claims under the IDEA is twofold. First, has the school district complied with the procedures set forth in the IDEA? And second, is the IEP developed through the IDEA’s procedures reasonably calculated to enable the student to receive educational benefits? *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877 (9th Cir. 2001) citing *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). In the Ninth Circuit, it is unnecessary to address the second inquiry if the procedural inadequacies that result in the loss of educational opportunity, or

seriously infringe on the parent[s]' opportunity to participate in the IEP formulation process, or that caused a deprivation of educational benefits clearly result in the denial of FAPE. *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047 (9th Cir. 2012) citing *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877 (9th Cir. 2001); *Cf. W.G. v. Bd. of Trustee of Target Range Sch. Dist. No. 23*, 960 F.2d 1479 (9th Cir. 1992); *M.L. v. Federal Way Sch. Dist.*, 387 F. 3d 1101 (9th Cir. 2004); *Van Duyn v. Baker School District*, 502 F. 3d 811 (9th Cir. 2007); 20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. 300.513(a)(2); see also 20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. 300.513(a)(2) (in matters alleging a procedural violation, IDEA instructs that a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or caused a deprivation of educational benefit).

As to the second inquiry, the United States Supreme Court, in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 69 IDELR 174 (U.S. Mar. 22, 2017), held that the educational benefit must be more than *de minimus*. *Id.* To meet its substantive obligation under the IDEA, "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* The analysis must focus on the adequacy of the school district's program. *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1314 (9th Cir. 1987). If a school district's program addresses the student's unique needs, provides educational benefit, and comports with the IEP, then the school district has offered FAPE even if the parent prefers something other than what was offered and such would likely result in greater educational benefit. *Id.* There is no requirement under the IDEA that the school district provide the best possible education for eligible students. *Dep't of Educ. v. Katherine D.*, 727 F.2d 809, 555 IDELR 276 (9th Cir. 1985), *cert. denied*, 471 U.S. 1117 (1985).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (PLAAFP), establishes measurable annual goals, including benchmarks or short-term objectives (when appropriate or required pursuant to state law, as in Nevada), designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general curriculum, and provides for the use of appropriate special education services. See 34 C.F.R. 300.320(a)(1), (2), (4); NAC 388.284. Annual goals are statements that describe what a student with a disability can reasonably be expected to accomplish within a 12-month period in the student's special education program. *Letter to Butler*, 213 IDELR 118 (OSERS 1988). Annual goals must aim to provide educational benefit and are not intended to equalize educational opportunity. *Bend-Lapine Sch. Dist. v. D.W.*, 152 F.3d 923, 28 IDELR 1300 (9th Cir. 1998) (unpublished). Once the measurable annual goals are written, the IEP team can develop strategies that will be most effective in realizing the annual goals and include either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs. *Analysis and Comments to the Regulations*, Federal Register, Vol.

64, No. 48, Page 12471 (Mar. 12, 1999). In other words, the annual goals, inclusive of the short-term objectives and benchmarks, must make clear which specific skills will be required in order to achieve the annual goals and written to allow the parent and school district to objectively measure and determine whether the student made progress. *Id.*

An IEP team must consider the communication needs of a student with a disability. 34 C.F.R. § 300.324(a)(2)(iv); NAC 388.284(2)(e). An IEP team must also consider whether a student with a disability needs assistive technology devices (ATD) and services (ATS). 34 C.F.R. § 300.324(a)(2)(v); *see* NAC 388.284(1)(d). ATD means basically any item, piece of equipment, or product system used to increase, maintain, or improve the functional capabilities of children with disabilities. 34 C.F.R. § 300.5; NAC 388.023. ATS means any service that directly assists a child with a disability in the selection, acquisition, or use of an ATD. 34 C.F.R. § 300.6; NAC 388.024. An IEP team determines what ATD/Ss are necessary to provide the student with a FAPE. 34 C.F.R. § 300.24(a)(2)(v); NAC 388.284(2)(f). If the IEP team determines that an ATD/S is not needed to provide the student with FAPE, the IEP does not need to address it. *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996).

The development of an IEP is by consensus. *Doe v. Maher*, 793 F.2d 1470, 557 IDELR 353 (9th Cir. 1986). In the absence of consensus, the IEP team must develop the IEP to the best of its ability in accordance with the information available to the team. *Id.* Similarly, an IEP team is not required to accept the findings and recommendations of an IEE. *Letter to Anonymous*, 23 IDELR 563. It must simply consider the IEE in any decision made with respect to the provision of FAPE to the student. *Id.* Consider means that the IEP team must at least review the IEE and discuss its contents. *Id.*

Here, Parent challenges three discrete components of Student's January 2018 IEP: the failure include the Live Scribe Pen; the appropriateness of the annual goal/short-term objectives because the onus is on Student to initiate the required tasks therein; and, the failure of the IEP to address Student's communication needs because the IEP required the Student to communicate directly with classroom teachers rather than electronically. Each of these concerns will be taken in turn.

With respect to the Live Scribe Pen, the IEP team determine in January, February, March, and May 2018 that Student did not need the Live Scribe Pen given the accommodations in place and Student's ability to take notes. FOF 102. Student is able to independently take classroom notes. FOF 79, 81, 94, 102, 103. Though the Live Scribe Pen was included as a recommendation in Independent Neuropsychologist's report, it was one of three options that "could" assist Student with taking notes. FOF 73. Another was the option of providing Student with copies of lectures so that Student could take notes directly on the documents. P 8 at 45. The IEP includes this second option. FOF 78, 87, 93, 101. It is noted that, although Student was provided with the Live Scribe Pen on a trial basis, Student sporadically used it. FOF 103.

Next, with respect to the appropriateness of the annual goal and short-term objectives, Parent's sole complaint is that the goal, as written in January, February, and March 2018, was inappropriate because it required Student to self-initiate what was

required therein and Student is unable to self-initiate. Parent misreads the annual goal. The annual goal tasks Student with working “towards an independent level.” FOF 76, 77. Nothing in this language precludes a classroom teacher from assisting or prompting Student. Had Student been able to manage workload and execute independently there would be no need for the annual goal. Further, given the lack of independence, it would be expected that the classroom teacher would, at least initially, need to facilitate and prompt Student.

Though Parent argued that the prefatory clause – “with teacher facilitation and prompting” – added to the short-term objectives in May 2018 proved that the earlier versions of the annual goal denied Student FAPE, it did no such thing. The annual goal’s purpose continued to be the same – to make Student an independent learner. FOF 99. It would be of no consequence, and certainly nothing that could be reasonably called a *goal* capable of being accomplished within a 12-month period, if Student was simply expected to be permanently dependent on the classroom teacher’s facilitation and prompting. The short of it is that this language was included to “appease” an “adamant” Parent who had not accepted that Student could, in fact, self-advocate. FOF 100.

Finally, as to Student’s inability to communicate directly with classroom teachers, the record evidence establishes that Student did not need the cover of an electronic planner to receive FAPE. Changing the planner to a Google Doc does not establish that DCSD denied Student FAPE, as Student was more than capable of having direct interactions with adults on a one-on-one basis. FOF 15, 19, 49, 54, 62, 100, 109, 110.

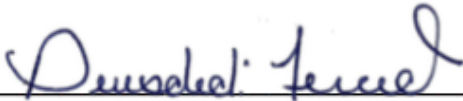
For the reasons herein, and for the reasons set forth in the hearing officer’s decision, the hearing officer did not err in finding that the January 19, 2018 IEP did not deny Student FAPE because (1) the IEP did not include the Live Scribe Pen recommended in the Psychological/Neuropsychological Report dated November 3, 2017, (2) the annual goal and objectives placed the “onus” on Student to initiate the tasks required therein rather than on the teachers both initiating and facilitating the tasks, and (3) the IEP required Student to communicate “face-to-face” with teachers rather than electronically.

VII. DECISION AND ORDER

For all the reasons stated in this decision, the hearing officer’s decision is **AFFIRMED**.

It is so ordered.

DATED: March 15, 2019



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NOTICE OF APPEAL RIGHTS

The decision of the review officer is final unless a party appeals the decision. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within 90 days after receipt of the decision. NAC § 388.315.