

**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 March 29, 2022, School District (hereinafter “District” or “Respondent”) received *Petitioners’ Due Process Complaint* (hereinafter “Complaint”). HO-1 This Hearing Officer was appointed on or about April 1, 2022. HO-2 On April 7, 2022 a *Notice of Status Conference* for April 22, 2022, was issued enclosing the following: *Agenda, Preliminary Order, Appendix A, Hearing Process Guidelines, and Rights of Parties*. HO-3

Based on availability of counsel, the status conference was rescheduled from April 22, 2022, to April 25, 2022. HO-4 During the status conference, the Hearing Officer was informed that due to scheduling conflicts the resolution meeting was scheduled for April 26, 2022, and the parties needed the full 30-day resolution period. Respondent requested a continuance to file a response to the Complaint and Petitioner had no objection. Respondent was given until the close of business on April 27, 2022, to file a response. A second status conference was scheduled for May 10, 2022. A *Status Conference Report and Order and Notice of Second Status Conference* was issued on April 25, 2022. HO-5 Respondent’s *Notice and Response to Due Process Complaint* was filed on April 27, 2022. HO-6

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

On May 10, 2022, during the second status conference, the Hearing Officer was informed that the resolution meeting took place on April 26, 2022, that Petitioner received a proposed resolution agreement on May 6, 2022, but counsel had not yet discussed the same with Petitioner, therefore a third status conference was scheduled for May 27, 2022, in order to determine whether a resolution was reached. A *Second Status Conference Report and Order & Notice of Third Status Conference* was issued on May 10, 2022. HO-7

On May 27, 2022, the parties participated in a third status conference at which time the Hearing Officer was informed that the parties resolved most of the issues but needed to work out some of the finer details. Counsel for Petitioner requested a thirty (30) day continuance of the decision date of June 12, 2022, until July 11, 2022 to allow the parties to continue negotiations. The Hearing Officer found good cause to continue the decision date for a period of thirty (30) days to allow the parties to continue negotiating the resolution agreement based on the progress of the parties and the limitations of staff due to the break for summer. A fourth status conference was scheduled for June 15, 2022. A *Third Status Conference Report and Order & Notice of Fourth Status Conference* was issued on May 27, 2022. HO-8

On June 14, 2022, the Hearing Officer received a joint email from counsel requesting to continue the fourth status conference and the decision date due to the parties' continued efforts to reach a resolution. HO-9 After clarifying that the parties were requesting a thirty (30) day continuance of the decision date, HO-10, the Hearing Officer issued an *Order on Motion for Continuance of Decision Date & Notice of Fourth Status Conference*, continuing the decision date from July 11, 2022, to August 10, 2022, and rescheduling the fourth status conference for July 12, 2022. HO-11

On July 12, 2022, the parties participated in the fourth status conference and informed the Hearing Officer that continued efforts to reach a resolution were being made, that Student was in a Residential Treatment Center (hereinafter "RTC"), and Respondent was working on a program and related training for Student's school. A fifth status conference was scheduled for August 5, 2022. A *Fourth Status Conference Report and Order and Notice of Fifth Status Conference* was issued on July 12, 2022. HO-12

On August 5, 2022, the parties participated in a fifth status conference and the Hearing Officer was advised that Student was still in an RTC with no discharge date and Respondent was waiting for higher-level approval for the program and related training at Student's school. Counsel

for Petitioner requested an additional thirty (30) day continuance of the decision date from August 10, 2022 to September 9, 2022. Respondent's Counsel had no objection. The Hearing Officer found good cause to grant Petitioner's request to continue the decision date because Student was still in an RTC with no discharge date and the parties' engagement in continued efforts to resolve the case was in Student's best interest. A sixth status conference was scheduled for August 22, 2022. A *Fifth Status Conference Report and Order & Notice of Sixth Status Conference* was issued on August 22, 2022. HO-13

On August 22, 2022, the parties participated in a sixth status conference and the Hearing Officer was informed that the parties were still engaged in efforts to resolve the case and Respondent was still working on getting a program and related training into place. Counsel for both parties asked to continue the decision date from August 9, 2022, to October 21, 2022. The Hearing Officer found good cause to grant the motion to continue the decision date based on the parties' continued efforts to resolve the matter and Respondent's efforts to get the program and related training in place. A pre-hearing conference was scheduled for September 23, 2022, and the hearing was set for October 13, 2022. A *Sixth Status Conference Report and Order & Notice of Pre-Hearing Conference* was issued on August 22, 2022. HO-14

On September 8, 2022, counsel for both parties requested a status conference be scheduled in the matter and advised the Hearing Officer of their availability. HO-15 A *Notice of Seventh Status Conference* for September 14, 2022, was issued on September 8, 2022. HO-16

On September 14, 2022, during the seventh status conference, Petitioner's Counsel made an oral motion to amend the Complaint to include a proposed resolution request regarding a Multi-Disciplinary Team Report (hereinafter "MDT") that was held on the same day the Complaint was filed. At the time that the Complaint was filed, Petitioner's Counsel was not aware of the MDT. Pursuant to NAC 388.306, Petitioner's request to amend was timely. Respondent had no objection if the timeline was re-set upon the filing of the amended complaint. An *Order Granting Petitioner's Motion to Amend the Due Process Complaint* was issued on September 14, 2022. HO-17 Petitioner's Amended Due Process Complaint (hereinafter "Amended Complaint") was due no later than close of business on September 16, 2022, Respondent's response was due no later than September 26, 2022, the last day for a sufficiency objection and to hold the resolution meeting was October 1, 2022 and the decision date was November 30, 2022. HO-17

Pursuant to the parties' joint request an eighth status conference was held on September 23, 2022 and Petitioner requested an extension of time to file the Amended Complaint, as Petitioner's Counsel was still conferring with Petitioner on the language of the Amended Complaint. Respondent had no objection. On September 23, 2022 an *Order Granting Motion to Extend the Time to Amend the Due Process Complaint* was issued. HO-18 Petitioner's Amended Complaint was due by October 7, 2022; based on the agreement of the parties Respondent's notice and response was due no later than October 25, 2022; a ninth status conference was scheduled for November 8, 2022; and the decision date was December 22, 2022. HO-18

On October 7, 2022, Petitioner filed an Amended Complaint. HO-19 This Hearing Officer was appointed on October 11, 2022. HO-11 On October 13, 2022 a *Notice of Status Conference on Amended Due Process Complaint* for October 25, 2022, was issued enclosing the following: *Agenda, Preliminary Order, Appendix A, Hearing Process Guidelines, and Rights of Parties*. HO-21 Respondent's *Notice and Response to Amended Due Process Complaint* was filed on October 18, 2022. HO-22

On October 25, 2022, during the status conference on the Amended Complaint, the Hearing Officer was informed that the resolution meeting was held on October 20, 2022, and that the parties needed the full 30-day resolution period. A second status conference was scheduled for November 8, 2022; a pre-hearing conference was scheduled for December 2, 2022; due to Petitioner's Counsel's unavailability for a period of two weeks in November, and several calendaring conflicts of both parties, good cause was found to continue the decision date from December 21, 2022 to January 30, 2023. The hearing was scheduled for January 12, 2023, and January 13, 2023. A *Status Conference Report and Order on Amended Due Process Complaint & Notice of Second Status Conference and scheduling Pre-Hearing Conference* was issued on October 25, 2022. HO-23

On November 8, 2022, during the second status conference, the parties advised the Hearing Officer that they recently engaged in a resolution meeting, but due to unforeseen circumstances involving Student, Petitioner was unavailable to discuss the same with counsel, therefore the pre-hearing conference scheduled for December 2, 2022 was converted to a third status conference and the pre-hearing conference was rescheduled to December 21, 2022. A *Second Status Conference Report and Order on Amended Due Process Complaint & Notice of Third Status Conference and re-scheduling of Pre-Hearing Conference* was issued on November 8, 2022. HO-

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On November 17, 2022, Petitioner filed *Petitioner's Brief on Contested Issues of Law*. HO-25 On December 2, 2022, during the third status conference Petitioner's Counsel informed the Hearing Officer that a discussion with Petitioner regarding the resolution meeting had not yet occurred but was scheduled for December 9, 2022; that Petitioner is seeking a physical campus for Student as opposed to Homebound Instruction; and that Respondent's boilerplate language included in its resolution agreement might preclude resolution if the same cannot be discussed and modified. Respondent stated that the appropriate attorney to discuss the language is General Counsel's Office. Respondent's Counsel was going to reach out to General Counsel to relay the information and request a phone call related to the same. This Hearing Officer requested that the discussion take place prior to December 9, 2022, to that the boilerplate language would not hinder a final resolution. Respondent was given until December 16, 2022, to file a response brief to *Petitioner's Brief on Contested Issues of Law*. A *Third Status Conference Report and Order on Amended Due Process Complaint and Notice of Pre-Hearing Conference* was issued on December 2, 2022. The *Notice of Pre-Hearing Conference* included the specific requirements for the issuance of a subpoena. HO-26

On December 16, 2022, *Respondent's Opposition to Petitioner's Brief on Contested Issues of Law* was filed. HO-27

On December 21, 2022, during the pre-hearing conference, the issues in the Amended Complaint were reframed, consolidated and restated. The Hearing Officer informed counsel that a decision on the briefs would be issued no later than December 30, 2022. Petitioner was informed that if a subpoena was needed, the Hearing Officer would accept the same no later than the morning of December 27, 2022, and this Hearing Officer informed Respondent that if it is unable to provide information for a former employee that Petitioner wants to call as a witness at the time of hearing, an Affidavit from General Counsel should be provided stating why it is unable to provide contact information for the witness, to which Respondent objected. Petitioner intended to share a list of witnesses no later than close of business on December 21, 2022. The 5-business day disclosure deadline was set for January 5, 2023. The Hearing Officer was informed that while a discussion took place between Respondent and General Counsel regarding the Respondent's boilerplate language, and that the same will not be modified, no direct communication took place between Petitioner's Counsel and General Counsel. Petitioner's Counsel reiterated that due to Respondent's position on the boilerplate language, resolution would be precluded in this case, along with any

other case involving Petitioner's Counsel. A *Pre-Hearing Report and Order* was issued on December 21, 2022. HO-28

On December 22, 2022, and December 23, 2022, counsel for the parties exchanged communications regarding Petitioner's proposed list of twenty-two witnesses. Respondent could not locate eight of the proposed witnesses in the system, and with staff being off for the holiday, could not coordinate the presence and testimony of twenty-two witnesses for a two-day hearing within a week of the hearing and requested a more concise list of witnesses. Respondent followed up with the names of the eight proposed witnesses that were not located in the system, that it was attempting to contact the remaining fourteen witnesses, but likely would not be able to until after the holiday on January 3, 2023. Due to the inability of Respondent to confirm the availability of witnesses, Petitioner could not narrow down the list at that time and attached a preliminary list of witnesses to be subpoenaed unless circumstances changed before December 27, 2022. (HO-29)

On December 27, 2022, a *Decision on Contested Issues of Law* was issued. HO-31

On December 27, 2022, *Petitioner's Witness List for Subpoena* was submitted to this Hearing Officer, HO-30, and a *Determination on Petitioner's Request for Subpoena(s)* was issued denying Petitioner's request due to the deficiency of Petitioner's request. HO-32 A second *Petitioner's List of Witnesses for Subpoena* was submitted afterward, after close of business, in an attempt to correct the deficiencies. HO-33 On December 28, 2022, Respondent objected to the second list provided by Petitioner. HO-34 A *Second Determination on Petitioner's Request for Subpoena(s)* was issued on December 28, 2022 denying Petitioner's request as untimely and for failure to clearly set forth how the testimony is relevant to the issues, that the testimony was not redundant and that the information sought cannot be obtained through other means. The parties were reminded of the deadline for the 5-business day disclosures and that unless Petitioner could demonstrate good cause as to why specific witnesses are critical to Petitioner's case, the matter is ready to go forward with hearing. HO-35

On December 28, 2022, based on Respondent's request for a second pre-hearing conference, the parties discussed at length the issues related to Petitioner's proposed list of witnesses, the relevancy of witness testimony, and the statute of limitations. Petitioner's Counsel was informed that the time for issuance of subpoenas passed based on the current hearing dates and decision date. A *Second Pre-Hearing Report and Order* was issued on December 28, 2022. HO-36 On December 29, 2022, Petitioner's Counsel responded to the *Second Pre-Hearing Report*

and Order to clarify Petitioner's position on its proposed witnesses. HO-37 *An Amended Second Pre-Hearing Report and Order* was issued on January 4, 2023, addressing the clarifications set forth by Petitioner's Counsel. HO-39

On January 3, 2023, Respondent provided an *Affidavit of Respondent's Counsel* setting forth the efforts taken by Respondent to locate Petitioner's witnesses, and the last known contact information available to Respondent. HO-38

On January 5, 2023, Respondent provided its List of Witnesses, Joint Exhibits and Respondent's Exhibits, HO-40, and Petitioner provided its List of Witnesses and Exhibits. HO-41

On January 6, 2023, Respondent objected to one of Petitioner's proposed exhibits including a video due to (1) lack of consent; (2) a violation of FERPA; and (3) relevancy. Petitioner responded to each of Respondent's objections and Respondent replied. This Hearing Officer reviewed the objection, along with Petitioner's detailed response, Respondent's reply and determined that the proposed exhibit was not relevant to the issues to be determined at the time of hearing. Petitioner responded to the Hearing Officer's determination and noted that Issue Three as interpreted does not represent Petitioner's argument and stated an objection to the exclusion of the proposed exhibit. This Hearing Officer reviewed Petitioner's response and objection and clarified that the issues as reframed in the *Pre-Hearing Report and Order* were discussed at length during the pre-hearing conference, that both counsel agreed to the issue, that the issue as reframed was repeated to both parties and then memorialized in the *Pre-Hearing Report and Order* and no objection to the same was submitted by either party within three-business days. This Hearing Officer stated that if either party disagreed with the cited relevant law on Issue Three, they will have the opportunity to provide alternative authority in closing argument or in written brief, before the hearing; that Petitioner's objection to the exclusion of the proposed exhibit was noted for the record; and that this Hearing Officer will consider all relevant evidence and law as it relates to the issues before this Hearing Officer. HO-43

A hearing was held on January 12, 2023, January 13, 2023 and February 6, 2023. It was a closed hearing. Petitioner was represented by [], Esq. Respondent was represented by their attorneys, [], Esq, and [], 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 on January 12, 2023: Principal; Nurse; Special Education Instructional Facilitator (hereinafter “SEIF”); Instructional Coordinator (hereinafter “IC”); and Psychologist. The following witnesses testified on January 13, 2023: Coordinator Psychological Services (hereinafter “Coordinator”), Assistant Principal, Physical Education Teacher (hereinafter PE Teacher”) Social/Emotional Teaching And Reinforcement Teacher (hereinafter “STAR Teacher”), Art Teacher, and Parent began testifying. Parent was testifying from a location with poor internet connectivity and in a public place. This Hearing Officer halted Parent’s testimony to address the same. After numerous attempts by Parent to re-connect and less than an hour remaining before day two of the hearing was scheduled to conclude, Counsel for Petitioner made an oral motion to continue the decision deadline to obtain Parent’s testimony as well as two additional witnesses, including Petitioner’s expert witness. Counsel for Petitioner advised this Hearing Officer that the testimony of the remaining witnesses were essential witnesses to Petitioner’s case, that Petitioner’s Counsel needed enough time to obtain direct examination, cross examination and redirect of the witnesses, that it would seriously prejudice Petitioner to not have the witnesses go forth as their testimony was critical, and Petitioner’s Counsel requested an additional day to complete the hearing. This Hearing Officer, finding good cause, granted Petitioner’s Counsel’s request to allow Petitioner to put on its entire case, including the testimony of Parent and Petitioner’s expert, which are critical to Petitioner’s case. A third day of hearing was scheduled for February 6, 2023, and the decision deadline was continued to February 17, 2023.

The following witnesses testified on February 6, 2023: Parent and Dyslexia Expert.

The following exhibits were admitted into evidence by stipulation of the parties: Joint Exhibits 1-18, Respondent’s Exhibits 1-2 and 11; Petitioners Exhibits 6, 8 bate stamp pages 000051-000053, 8a-8h, 14; and Hearing Officer’s Exhibits 1-43. The record was closed on February 6, 2023. A decision is due February 17, 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 denied the Student a FAPE by failing to appropriately address Student's reading deficits in the IEPs dated September 30, 2020; March 24, 2021; March 25, 2021²; January 7, 2022; February 22, 2022; and March 8, 2022.

Relief Sought:

- a. Compensatory education for two years of inappropriate SDI in the form of 160 hours of Lindamood-Bell Reading Instruction, or an appropriate, specialized Dyslexia instructional program as outlined in the Nevada Department of Education's Dyslexia Resource Guide.
- b. Moving forward, Student will receive specialized reading instruction using a comprehensive phonics-based reading program delivered with fidelity of program, including the recommended student-teacher ratio, teacher certification/training, and instructional minutes. The program should be appropriate for teaching pupils identified as having Dyslexia and should be mutually agreed upon between the District and parent, with deference given to programs on the State Dyslexia Resource Guide appropriate for Student's age and reading level.
- c. District to fund an Independent Education Evaluation.
- d. District to mark the Special Factors box to recognize Student's Dyslexia in all subsequent IEPs.
- e. District to conduct a complete language evaluation to determine if language deficits may be impacting reading.
- f. District to conduct Occupational Therapy evaluation to determine if Student can benefit from services to aid with executive functioning and emotional regulation skills.
- g. 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.

² The 3/25/2021 IEP Revision is also the 3/24/2021 IEP Revision, and therefore is treated as one IEP Revision. (J-10)

- h. Immediate change of placement to a new school to be mutually agreed upon by District and Parent with transportation, where Student will be taught by a highly qualified special education teacher. Immediate revision of IEP upon placement in new school to add goals and update present levels linked to basic reading skills while the IEE is pending. Immediate adherence to BIP in new school pending IEP revisions and IEE.

Respondent's Position: Upon information and belief, the Student's IEP team reviewed all potential placements and related services for the Student before determining the types of related services that would benefit the Student and the amount of time for each service.

Issue Two

Whether District failed to timely re-evaluate Student by January 29, 2022 (procedural violation) resulting in a denial of FAPE.

Relief Sought: Provide training in IDEA responsibilities to all special education and administrative personal at Student's School.

Respondent's Position: Upon information and belief, the Student was evaluated on March 29, 2022 to determine the Student's eligibility for services and parental concerns/deficits as well as strengths. The foregoing MDT and recommendations contained within were addressed by the Student's March 8, 2022 IEP which provided Student with a FAPE.

Issue Three

Whether District changed placement of Student after removing Student from school for a total of 26 days due to disciplinary action resulting in a denial of FAPE.

Relief Sought: Provide training in IDEA responsibilities to all special education and administrative personal at Student's School.

Respondent's Position: In determining the District's proposed or refused action, the District reviewed the Student's educational records, the Student's behavior reports, and the Individualized Education Programs for the Student developed on March 13, 2019; December 3, 2019; September 30, 2020; March 24, 2021; March 25, 2021; January 7, 2022; February 22, 2022; and March 8, 2022. The District further reviewed the Statement of Eligibility dated January 30, 2019 and March 29, 2022, and the Multi-Disciplinary Team Evaluation dated March 29, 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 Elementary School for the fifth grade 2020-2021 school year and at School for the sixth grade 2021-2022 school year. Student was enrolled at School for the seventh grade 2022-2023 school year but did not show and as a result was unenrolled.
2. An initial Multidisciplinary Evaluation Team (hereinafter “MDT”) Report was conducted on 1/30/2019. An MDT report is assembled by team members that evaluate a student to document formal and informal assessments that are done. Different assessments are required to be done under the Nevada Administrative Code (hereinafter “NAC”) based on the suspicions of eligibility category. At that time, Student was in the third grade. The 2019 MDT members included the school psychologist, the general education teacher, the school nurse, the special education teacher and Parent. By law, a reevaluation must occur every three years, or sooner if there are concerns related to eligibility. If a suspicion arises regarding a change in eligibility, then a review can be done at any time. An MDT should be done minimally every three years to review the data and make sure that the eligibility services are meeting the needs of a child. It is important to have a clear and appropriate eligibility for the child. An evaluation cannot be completed without parental consent. (J-4; Coordinator’s testimony)
3. Student was referred for an evaluation by the Response to Intervention (hereinafter “RTI”) team because Student’s response to appropriate instruction, including individualized instruction, did not meet performance expectations, and as a result, a Specific Learning Disability (hereinafter “SLD”) was suspected. Other disabilities were not suspected at that time. At the time of the evaluation, Student was receiving group and individual therapy as well as daily visits to the school’s social worker.³ The health assessment notes a prior diagnosis of Attention Deficit Hyperactivity Disorder (hereinafter “ADHD”). Student attended two different schools for kindergarten, three different schools for first grade, after which he was retained and completed first grade at two different schools. Student completed second grade in one school. The 2019 MDT team determined that while Student’s attendance history was not excellent, it was not the only reason for the poor rate of progress in learning. Student’s intervention plan which targeted decoding, reading

³ The MDT notes a history of unknown trauma within the family.

fluency and reading comprehension was not successful.⁴ Student had significant difficulties in reading and was at a very basic reading level. Student could name all 26 uppercase and lowercase letters, recognized 21/21 consonant and 10/10 vowel words, long vowels, variant vowels, low frequency words, and multi-syllabic words. Student's phonics, comprehension, vocabulary knowledge, and ability to read high frequency words were at kindergarten level. Student's teacher noted a change in Student's behavior beginning in October 2018, when instruction changed from reviewing lower grade concepts and information started becoming more challenging and required higher levels of reasoning. Student struggled with this change significantly, could not comprehend what was happening in the classroom and started eloping. (J-4; Coordinator's testimony)

4. Student's Woodcock-Johnson Tests of Achievement resulted in extremely low results for both broad reading and broad written language as well as extremely low for the following subtests: letter-word identification; spelling; passage comprehension; writing samples; sentence reading fluency; and sentence writing fluency. Student's broad reading levels fell in the kindergarten, third month level. Student's ability to comprehend short statements and match a written word with a picture was significantly delayed. As reading passages involved more than one or two sentences, Student struggled and was not able to respond correctly. Student struggled to find key words within a text in order to find an answer to a question and found reading short statements to determine if the concept was true or false very challenging. Student's broad written language abilities fell at less than kindergarten level. (J-4)
5. Student's Adaptive Behavior Assessment fell in the extremely low range for the following areas: conceptual domain, social domain and practical domain. Student's behaviors at home were within average range of functioning and considered age appropriate. Student's overall adaptive functioning at school was in the extremely low range. The teacher reported that Student has a short attention span, is easily distracted, has significant learning delays in reading and writing and constantly fidgets or squirms in the seat. Student has trouble initiating tasks, can act sneaky or manipulative and is often non-compliant. Student often

⁴ The intervention plan did not include encoding. Student was showing all of the other indicators of dyslexia with the exception of encoding. For a finding that a student has dyslexia under NRS 388.417, a student needs to be struggling with all of the indicators of dyslexia. (Coordinator's testimony)

makes mistakes and struggles to persevere to complete challenging tasks. Student's teacher also reported Student engages in a number of behaviors that adversely affect the learning of others in the classroom. Student is restless, overactive, cannot control impulses, is argumentative, defiant, occasionally threatens others and engages in rule-breaking behaviors frequently. Student was observed engaging in odd or strange behaviors and can sometimes disconnect from reality. Student has difficulty making friends, is sometimes unwilling to join group activities and sometimes seems alone. (J-4)

6. The 2019 MDT team determined that Student's underachievement in written expression, basic reading skills, reading fluency skills and reading comprehension was significantly low and not primarily the result of a visual, hearing or motor disability; mental retardation; emotional disturbance; other disabilities or other exclusionary factors. SLD was believed to be the best and most probable explanation for Student's underachievement among reasonable alternative explanations. The recommendations included the following: (1) that the "whole word" learning approach for reading be considered due to Student's continued difficulty with the acquisition of phonics and poor fluency; (2) noting that the personal information that has yet to be shared with the school team is sensitive, Parent was encouraged to permit the relationship between Student's school and counseling teams to commence in order to create a supportive and successful individual education plan; (3) assess prior knowledge before introducing new topics and concepts; (4) use a scaffolding approach when introducing new language and literacy activities, and once Student has achieved a step, back off from providing direct support until a new level is introduced; (5) allow extra time to process new information; (6) request quality over quantity for all work; (7) consider strategies such as audiobooks, providing subtitles or closed captioning for movies/television shows, and picture supports to increase literacy skills; and (8) the IEP team should consider what testing conditions Student is eligible for when partaking in standardized testing. Parent signed the 2019 MDT. (J-4)
7. Parent did not understand what Student's specific deficits were, nor did Parent understand what dyslexia was. Parent did not understand why Student could not read. Student was embarrassed because other students would make fun of Student when trying to read. At that time, none of Student's teachers informed Parent that Student was not putting forth the

effort or that Student was refusing to read. Student was not making progress behaviorally or academically before the pandemic. (Parent’s testimony)

8. A school cannot diagnose dyslexia but can indicate that a student is displaying indicators of dyslexia. Early indicators of dyslexia include phonological processing and that usually manifests in kindergarten, first, or second grade. They also have trouble with decoding nonwords and developing sight words. There are early screening tools used by District. The Nevada Dyslexia Resource Guide (hereinafter “Guide”) contains several dyslexia screeners (phonological and phonemic awareness; alphabet knowledge; sound symbol recognition; decoding skills; rapid naming; and encoding). The Guide also contains possible screening tools. An early literacy screening assessment is a combination from the screeners listed in the Guide to cover all areas of reading when giving assessments. Parental consent is necessary to conduct such an assessment. If a parent does not consent, then District can only provide what the general education population is doing in that grade level, so for a middle school that would be the MAPS assessment. District cannot indicate that a student has dyslexia based on their scores on a MAPS test. District cannot indicate that a student has dyslexia after only conducting a hearing and vision assessment. District received instruction on dyslexia. Last year there were two trainings offered by District. School was one of the schools that participated in the training. For students showing characteristics or early indicators of dyslexia, the instructional approaches should be appropriate and specialized. It should be systematic, multisensory and offered in an appropriate setting. For students with dyslexia, they work on the structure of the English language, encoding, decoding, word recognition, fluency and comprehension. (J-15; IC’s testimony)
9. Measurable goals for students with characteristics or early indicators of dyslexia are unique and individual based on a student’s specific deficits. District would use assessments given to a student to fill in on any gaps so that they can get the reading structure as a whole. There are a variety of accommodations for students with characteristics or early indicators of dyslexia and they are individualized for each student, but they could include speech to text, text to speech, allowing audio books, outlines and summaries, sight word lists and on page 35 of the Guide it lists some of the accommodations that can be used. (J-15; IC’s testimony)

10. Student's deficits in basic reading skills included an inability to read anything beyond a simple consonant vowel consonant (CVC) word, an inability to read words beyond simple words and an inability to spell, therefore Student cannot be fluent. At the third grade level, Student would have needed multisensory, explicit cumulative, systematic instruction by someone who understands English so that when Student comes across something Student does not understand, that instructor can explain it instead of telling Student just to memorize it. Multisensory means that Student needs to be involved in the instruction, like tapping fingers, or using lettered or colored cards and be able to tell the teacher why Student understands what Student understands. Systematic means that you need to master one level at a time; first, closed syllable words in both reading and spelling; then open syllable words; then vowel consonant e words; then vowel team words; then r-controlled, etc. This should be coupled with reading decodable texts, so when learning a specific vowel type, Student can read it in a book. Explicit means this is how you know that this will make this sound until it becomes automatic. (Dyslexia Expert's Testimony)
11. On 9/25/2019, according to psychotherapy treatment plan, Student was diagnosed with Disruptive Mood Dysregulation Disorder (hereinafter "DMDD"), Attention-Deficit/Hyperactivity Disorder (hereinafter "ADHD") – combined presentation and Post Traumatic Stress Disorder. Additional justifications or measures supporting the diagnoses included the following: (A) severe recurrent outbursts manifested verbally that are grossly out of proportion in intensity or duration to the situation or provocation; (B) the temper outbursts are inconsistent with developmental level; (C) the temper outbursts occur, on average, three or more times per week; (D) the mood between temper outbursts is persistently irritable or angry most of the day, nearly every day, and is observable by others; (E) criterion A-D have been present for 12 or more months, throughout that time, the individual has not had a period lasting 3 or more consecutive months without all of the symptoms in criteria A-D; (F) criteria A and D are present in the last two of three settings (i.e., home, at school, with peers) and are severe in at least one of these; (G) the DX should not be made for the first time before age 6 years or after 18 years; and (H) by history or observation, the age at onset of criteria A-E is before 10 years old. Some of Student's presenting concerns or problems included the following: gets easily angered over trivial matters; has a history of losing control of anger and exhibits frequent angry outbursts or

aggressive behaviors and as a result gets required parent conference (“hereinafter “RPC”) and suspended from school frequently; is aggressive towards siblings; historically has had difficulty establishing and maintaining lasting peer friendships because of poor social skills and impulsivity; is hyperactive; has difficulty sitting still during session and has to be redirected frequently back to tasks during therapy; does not appear to be listening well to topics being discussed; presents with a persistent failure to comply with the rules or expectations at home, at school and in the community; has an extended history of engaging in acting-out behavior or antisocial; history of often disrupting classroom or therapy with silly, immature, or negative attention seeking behaviors and of engaging in physical aggression or violence at school or at home when needs go unmet; anger is frequently channeled into oppositional and rebellious behaviors; decline in academic performance appears to occur in response to environmental factors or distress; history of lying, conning, and manipulating others to meet needs and avoid facing the consequences of actions; engages in impulsive thrill-seeking behaviors to achieve a sense of excitement and fun; has a history of overall academic performance that is below the expected level; has poor organizational or study skills; has a history of repeated failure to complete school or homework assignments and/or current assignments on time; frequently procrastinates or postpones doing homework in favor of playing or engaging in recreational and leisure time; and has had multiple medication trials. (J-5)

12. It took about 3 months for Parent to get Wi-Fi when the pandemic shut schools down. Parent would wake Student up to log in for school, but there would be times when it was difficult for Student to log in and Student would get frustrated and angry. Student was not able to attend therapy during the shutdown. Student was aggressive and did not want to learn or do anything because Student did not have access to therapy or in person school. Parent tried reading flash cards and helping Student during distance education, but it was very difficult because Parent has three other children and Parent worked. (Parent’s testimony)

Fifth Grade

13. Student attended Elementary School for the fifth grade, 2020-2021 school year. Student was absent 68.5 days during the school year during distance learning. Like most students,

Student's learning was likely negatively affected by the school closures related to the COVID-19 pandemic events. (J-4)

14. Student's IEP was revised without a meeting on 9/30/2020 to accommodate distance education. Student's eligibility fell under SLD. Under consideration of special factors, Student was not marked as having SLD and dyslexia. Student's placement was a self-contained program due to Student's academic and behavioral needs (SEIF's testimony)
15. The 9/30/2020 IEP references the 2019 MDT, the CORE Phonics Survey completed 11/22/2019 and the Reading-Kaufman Test of Educational Achievement (KTEA). Student was struggling with short vowel consonant blends, scoring 9 out of 15. Student scored 62 for letter and recognition, 60 for reading comprehension and 58 for reading composite. An average standard score is between 85-115. On the letter and word recognition subtest, Student's ability to recognize familiar words and blend unfamiliar words was measured in the low range. Student was able to correctly identify words such as: fifteen; front, very and put, but was not able to read the words: nothing, table, nighttime and poke. Student's reading comprehension skills were also measured in the low range on the reading comprehension test. Student was able to read a couple simple sentences and do what the words said, but struggled when the words and sentences became more difficult. Student scored a 407 on the Fall benchmark in iReady, which is well below grade level. Student was reading 12 words per minute on fluency assessments. Student can restate and recall details from a story that has been read to Student in sequential order. Student has difficulty decoding multisyllabic words. Student scored 56 for spelling, 42 for written expression and 45 for written language composite on the Writing KTEA test. An average score is between 85-115. Student scored in the low range on the spelling subtest. Student was able to spell the words run, hop, bug, and tap, but struggled with words such as she, us, play and look. Student's writing skills were measured in the very low range on the written expression subtest. Although Student was able to write the correct letters for words given to Student and spell some words correctly during the writing task, Student does not demonstrate mastery of basic writing conventions such as correct punctuation, capitalization and grammar. Student is not yet producing complex sentences independently and tends to write with fragmented sentences. The effect to Student noted in the IEP states, "Due to Student's

deficits in reading comprehension and decoding, Student will struggle with grade level material.” (J-9; STAR Teacher’s testimony)

16. Student’s 9/30/2020 IEP revision noted 13 incidents between 9/27/2019 and 11/20/2019 under social/behavioral-general education teacher and special education teacher observation reports. It was also noted that Student on average elopes from class and/or specials at least 4 out of 5 days a week; either when Student does not want to do something (mainly tasks regarding reading and writing) or when Student does not get their way. Student at times gets in physical altercations with other students and engages in name calling. Medical information from 9/25/2019 includes the following: Student participates in group therapy 3 times a week for 4 hours to practice positive and safe peer socialization skills, increase distress tolerance, and to practice sustained positive emotional regulation. Student also participates in individual therapy weekly to address symptoms of PTSD for alleged abuse. Student also participates in weekly family therapy to improve family relationships. Student has a primary diagnosis of DMDD, a secondary diagnosis of ADHD and an additional diagnosis of PTSD. Parent concerns as of 09/2020 include the following: it has been a little hard because it is very different; it is hard for Student to focus because there are 4 siblings and they lose focus easily; over spring Student never participated because there was no internet and no Chromebook; Parent is worried that Student is not taking it seriously; Student didn’t go to ESY; Student is not taking classes seriously and cannot focus; Parent’s hotspot is not enough data because there are 4 children using the internet; Student does better in a small group setting; Student needs a lot of attention and wants attention immediately; is easily offended and becomes upset when not getting what Student feels is appropriate attention from adults and peers. Consideration of special factors includes that Student’s behavior impedes student’s learning or the learning of others. It does not include Student as having an SLD with dyslexia. (J-9)
17. The 9/30/2020 IEP has a reading goal that states, “Student will increase ability to read long vowel words achieving a criteria of 80% as measured by teacher data and implemented by special education teacher and teaching staff.” Benchmarks/short term objectives including the following: (1) Student will increase ability to read short vowel consonant blend words (trap, quit, spell); (2) Student will increase ability to read short vowel diagraph & triagraph words (when, dodge, match); (3) Student will increase ability to read r-controlled vowel

words (harm, dirt, form); and (4) Student will increase ability to read long vowel words (tape, key, toe). It has a reading comprehension goal that states, “Student will increase ability to determine the theme of a story and compare and contrast two texts at reading level achieving a criteria of 4/5 trials as measured by observation and documentation as implemented by special education teacher and teaching staff.” It has a reading fluency goal that states, “Student will increase fluency in reading achieving a criteria of 60 words per minute as measured by teacher data implemented by special education teacher and teaching staff.” It has a writing goal that states, “Student will increase ability to produce a written product on a given topic including producing at least 5 sentences using correct conventions (i.e. grammar, spelling, punctuation, and paragraph structure) achieving a criteria of 80% as measured by student work samples implemented by special education teacher and teaching staff.” (J-9; SEIF’s testimony; STAR Teacher’s testimony)

18. The goals listed in the 9/30/2020 IEP that a student with characteristics or early indicators of dyslexia would benefit from include all three of the goals listed for Student. (IC’s testimony)
19. The 9/30/2020 IEP contains the following social/behavioral goals: (1) Student, when doing non-preferred tasks (reading and writing), will remain on task for 15 minutes achieving a criteria of 4 out of 5 trials as measured by observations and documentation as implemented by the special education teaching staff; and (2) Student will remain in the designated area when non-preferred demands (reading/writing) are put on Student, and/or when at or transitioning to a non-preferred location (art/music/library) for at least 30 minutes achieving a criteria of 4 out of 5 trials as measured by observations and documentation as implemented by the special education teaching staff. (J-9)
20. Student’s 9/30/2020 IEP included the following specially designed instruction (hereinafter “SDI”): 200 minutes per week in a self-contained/distance education for reading synchronous; 250 minutes per week for reading asynchronous; 50 minutes per week in written expression asynchronous; 150 minutes per week in synchronous; 150 minutes per week in behavior synchronous; 100 minutes per week in asynchronous; and 275 minutes per week in social emotional behavior asynchronous in the general education/distance education setting. The following modifications, accommodations and supports were also listed: behavior intervention plan to be implemented across all settings; the environment

will be modified so that Student does not have direct line to doors; during transitions, Student will be within close proximity to staff; Student will be seated away from doors; Student may have extra time to complete assignments and tests; Student may have assignments shortened if needed; have Student repeat directions to check for understanding; Student will be allowed to take short breaks to avoid fatigue and frustration; frequent reminders, re-direction, and prompting to complete tasks; Student may have access to sight word list, graphic organizer, and sentence starters; and Student will be seated in close proximity to the source of instruction. Parent agreed with the IEP. (J-9)

21. The modifications/accommodations that would support Student's reading, reading comprehension and fluency goals are student may have questions read aloud when not testing reading ability; extra time on assignments; shortened assignments if needed; close proximation of instruction; and Student may have access to sight word list, graphic organizer, and sentence starters. (SEIF's testimony; IC's testimony; STAR Teacher's testimony)
22. Student's Progress Report dated 10/09/2020 is marked unsatisfactory in the areas of reading, reading comprehension, reading fluency and writing. All three reading goals state, "i-ready diagnostic results say that Student reads at a kindergarten level." I-ready is a program that is used in an elementary setting to help boost students' reading scores and ability. If a student did not have their camera on, did not show up to class or did not participate it was kind of hard to help students during distance education. The teacher or assistant could have tried to work one-on-one with a student encouraging them to complete the assignments, but it was very difficult during distance education. (J-9; SEIF's testimony)
23. A Behavior Intervention Plan (hereinafter "BIP") outlines a plan that the school has to help a student who has behavior issues, to help them control their issues, to stay in class, or whatever the behaviors are for a particular student. Student required a BIP because Student's behaviors could not be managed using just regular classroom management. A Functional Behavioral Analysis (hereinafter "FBA") is completed to try and see the nature or cause of behavior, what reinforcers the student is looking for and generally parents usually fill out a form to give input for the FBA. (SEIF's testimony)
24. Student's BIP dated 11/2020 includes the following FBA Summary, "when student transitions from recess to specials (music, art, library), asked to complete schoolwork,

comply with behavior expectations in any setting, Student will elope within campus in order to escape and avoid.” Replacement behaviors include, “Student will request to go to office instead of go to resource room; Student will stay in specials starting with at least 10 minutes and working towards staying in specials for the duration of class.” (J-8)

25. Student’s behaviors impede Student’s learning. Student’s behaviors need to be addressed prior to getting to instruction. It is difficult to implement dyslexia teaching strategies and practices when Student has such poor attendance because part of the instruction requires that it be systematic and cumulative. If the instruction cannot be given to Student every day, then Student cannot retain that instruction. All of the self-contained programs, including the STAR program, have the curriculum and instruction that covers all of the foundations of reading. (IC’s testimony)
26. Student’s IEP was revised 3/24/2021 to reflect educational delivery methods used during distance education. Student’s eligibility remained under SLD. Student’s SDI was revised to add distance learning, hybrid and in person minutes. In March 2021, District was still in distance education but was starting to transition into hybrid instruction where students would attend through distance education part of the week and in person part of the week. The remainder of the IEP, including current levels, goals and accommodations, were not revised from the 9/30/2020 IEP. The Notice to Implement IEP notes that contact was made with Parent and Parent was provided with the opportunity to raise and discuss all concerns and participate in the development of the IEP revision. Parent agreed with this IEP revision. (J-10; SEIF’s testimony; STAR Teacher’s testimony)
27. Student went out of state and stayed with Parent 2 from approximately March or April of 2021 until August of 2021. Elementary School was aware that Student was attending school from Parent 2’s home. Each time that Student did not log in for school, Parent was notified. Parent would then call Parent 2 and was informed that Student was having the same anger and frustration logging in for school. (Parent’s testimony)
28. Student’s Progress Report dated 5/26/2021 notes that Student’s progress was unsatisfactory for each of the three reading goals. The report noted that Student has so much potential, but frequent absences and lack of consistent work has affected Student’s progress significantly. Student can only make progress toward the IEP goals through instruction through the classroom and data collection by the special education team because the criteria

for each goal is very specific. Student needs to be there to get the instruction and so data can be collected in order to see Student's progress. (J-10, pg. 26; SEIF's testimony)

29. Student's 2020-2021 report card contained all W's instead of grades. The report card notes that a "W" means that Student was working on achieving goals from Student's IEP. Semester 2 comments included the following in part: "Student has so much potential. However, frequent absences, behavior in class and lack of consistent work has affected Student's progress significantly. Student needs to work on focus and concentration during class time. Based on the MAP reading assessment Student's overall score was 148 which means that Student is performing below grade level. Student did test out on phonological awareness and high-frequency words on the iReady reading diagnostic. Results indicate that Student has not acquired fundamental decoding skills and needs instruction in phonics. Vocabulary is another area of focus. To accelerate continued growth, please ensure that your child is reading daily and that the books are on Student's reading level." (J-16; Parent's testimony)

Sixth Grade

30. Student attended School for the 2021-2022 school year. Student was in the Social/Emotional Teaching and Reinforcement (STAR) program which is a special education self-contained program with smaller class sizes and includes a teacher and a teacher's aide. The program is designed to help students that are working on social and emotional skill development and help them with strategies if they become upset in a less restrictive setting. The teachers in the program look at the students' IEPs, their educational needs along with the students' social emotional needs. (Principal's testimony)
31. Principal began working for District in 1998 as a second and third grade teacher for about four years, then as an assistant principal for four years, then became a principal for a total of ten years at two different elementary schools and has been the principal of School for the last seven years. Principal is familiar with Student and interacted with Student frequently throughout the 2021-2022 school year. Principal often attempted to walk Student back to class, but Student usually ran away from Principal while making rude comments. (Principal's testimony)
32. Student had 91 behavioral incidents over the 2021-2022 school year. Student spent more time out of the classroom walking than inside the classroom for instruction. Staff cannot

lock the door or put something in front of the doorway to block students from leaving. When Student is walking around and eloping, Student is missing class and disrupting other classes on campus. It has a huge negative impact academically on Student. For teachers to help Student at Student's levels and to give Student learning opportunities, Student needs to be in the classroom, and if Student is not in the classroom, then Student is not receiving those important educational minutes. Student's teachers had incentives, such as tokens, snacks, candy, and computer time, but those did not work with Student. Principal provided support to Student's teachers regarding Student's behaviors. Principal frequently visited Student's classroom because Principal wanted to build positive relationships with all students. (Principal's testimony; Assistant Principal's testimony)

33. A student is marked absent if out of the classroom for more than 30 minutes of that period. Student had 32 absences for first period, 33 absences for second period, 32 absences for third period, 36 absences for fourth period, 31 absences for fifth period, 30 absences for sixth period. This number of absences is not common for a student in middle school, the average absences for a middle school student is 10-12. For a student in the STAR program or any student with an IEP, the absences are excessive. Student's attendance is not a product of Student's disability. The supports are there, the behavior plan is there, the goal is for all students to be in class to receive instruction. Student's absences were a result of not going to class, not staying in class, not following instruction, and the constant eloping. Student was RPC'd for 11 days and suspended with instruction for 25 days during the school year. (J-2; Principal's testimony)
34. School started on 8/9/2021, but Student started attending School on 8/20/21. Student's BIP from Elementary School was adopted verbatim on 8/20/2021 by STAR Teacher. Student returned to therapy three times a week in the fall of 2021. Parent notified School that Student was attending therapy. Student was RPC'd in September 2021 because another student brought a gun on school property, was showing it to other students, including Student, and Student did not report it to School. The RPC was supposed to be over a period of 3 days, but the behavior chronology report states that it was actually only for a period of 2 days because the following Monday was a staff development day. Student was sent home with some papers, but School did not call and speak to Parent. Parent had to meet with Principal before Student could return to School, and it seemed to Parent that Student

was out of school for a long period of time for that incident. Attendance records show that Student was RPC'd on 9/10/2021 and 9/14/2021, but that Student had unverified absences on 9/15/2021, 9/16/2021 and 9/17/2021. Student was RPC'd on 9/22/2022 for punching another student. District police offered Student Behavior School as a result of that incident. (Parent's testimony; P-8; J-8; P-6; J-14, pg. 44-45; J-2, pg. 11)

35. STAR Teacher taught at School for 5 years and then in August 2022 took a position as an English resource teacher. STAR Teacher had Student in the sixth grade for the 2021-2022 school year. Student's class size fluctuated between five and nine students. It fluctuated because a lot of students in the program were transient, only attending a few months at School and then moving to another school. STAR Teacher had a peer educator support staff person in class. There were other aides that also worked in the classroom, but not on a regular basis. When Student began the 2021-2022 school year, STAR Teacher looked at the IEPs that were in the computer system, the annual IEP and the revision IEP thereafter. STAR Teacher was implementing all of Student's supports on the IEP, so nothing new needed to be added. Student was added into Review 360 and STAR Teacher added Student's goals in the system. STAR Teacher added updated objectives for Student on 9/10/2021. (STAR Teacher's testimony; P-8)
36. STAR Teacher noted in Student's Status Record that Student's sporadic attendance makes critical data collection and observations difficult, and more data was needed for IEP accuracy. (J-7, pg. 9)
37. Student was RPC'd for two days on 11/2/2021 and 11/3/2021 for fighting another student. Student was RPC'd for two days on 12/2/2021 and 12/3/2021 for harassing and provoking another student to fight. Prior to the incident Student was also walking into classrooms, using profanity and causing disruptions. (J-14)
38. Parent had an informal meeting with School in December before Student's behaviors got worse. Parent genuinely wanted to see what Parent could do to help School help Student. Parent signed permission for District to contact region personnel in December 2021 for additional assistance to help School with behavior in Student's classroom, including specifically for Student. Parent agreed that Student needed additional help with behavior. Parent began going to School in person to shadow Student in January 2022 to try and help School with Student's elopement behaviors. Parent always went unannounced so Student

would not know ahead of time. The region personnel were there for a long time. The personnel became involved in January 2022. Likely their data was used in helping to create Student's behavior plan. (SEIF's testimony; Parent's testimony)

39. Student's annual IEP was completed on 1/7/2022. Instruction was in person for the entirety of the 2021-2022 school year. Student's eligibility category is SLD. The IEP team was comprised of Parent, SEIF (acting as LEA), STAR Teacher and Art Teacher. All members of the team participated virtually. Changes are made to the IEP as the meeting progresses. The assessments conducted/reviewed include the 2019 MDT and the Northwest Evaluation Association (NWEA) MAP in reading along with teacher observations. The NWEA MAP testing shows Student at the first percentile for reading as of 8/24/2021. According to the results, Student is able to locate information in diagrams or illustrations and infer character feelings or thoughts, but is unable to locate details in informational text, determine the main/central idea in informational text, determine the topic in informational text, locate information in tables of contents, draw conclusions about a setting based on a description and identify conflict and/or resolution in literary text. (J-11; SEIF's testimony; STAR Teacher's testimony)
40. Assessments were not completed on Student for decoding skills, letter recognition, spelling, or phonological awareness. Any assessments outside the scope of what a general education student would be tested on requires parent permission. An annual CORE Phonics Survey and KTEA would both require parent permission. All of the assessment tools that can be used to screen for indicators of dyslexia listed in the Guide would require parent permission. For a determination that Student has SLD with dyslexia under consideration of special factors in Student's IEP, Student would have to show indicators through screening assessments. (IC's testimony)
41. STAR Teacher noted that Student refused to read in the classroom setting but will quietly follow along while text is read and is able to accurately answer basic multiple choice comprehension questions that are read to Student. STAR Teacher could not work on fluency with Student because Student would not read for STAR Teacher. STAR Teacher tried to get Student to read, but Student refused. STAR Teacher also noted that although Student presents with very low reading skills, assessment results are also likely negatively impacted by behavior. STAR Teacher noted that when using sentence starters, Student is

able to answer writing prompts about a text with simple sentences, is able to copy from a model, and is willing to complete assignments when typing from a provided model. STAR Teacher could not assess Student because Student would not stay and sit for assessments, so all STAR Teacher had was MAPS testing results to assess Student. This Hearing Officer finds that Student's resistance to special education, the numerous absences and refusal to read for STAR Teacher made it difficult, if not impossible, to obtain accurate present levels. (J-11; SEIF's testimony; STAR Teacher's testimony)

42. STAR Teacher used the curriculum and scholastic magazine, which has several different subjects. There is an online version, videos, audio texts, workbook and activities to answer comprehension questions for the entire class. Instruction in reading was individualized. Student would not participate in scholastic magazine for reading. The online version of scholastic is audio, it reads the story to students, and it matches the hard copy of the magazine so it looks exactly the same on the computer screen. Students will click on the computer screen and it will read to them. There was no one-on-one reading instruction provided to Student by either STAR Teacher or the aide. (STAR Teacher's testimony)
43. Student's social/emotional/behavioral teacher/staff observations include 25 incidents between 8/23/2021 and 12/17/2021. It also notes that Student continues to complain that Student is supposed to be in seventh grade and wants other students on campus to believe that Student is in the seventh grade. This could be driving Student's continued presence in the seventh grade hallway. Student has a lot of friends in the seventh and eighth grade, and has stated numerous times that "they don't know" that Student is in sixth grade. Student displays typical and escalated task avoidance behaviors due to academic difficulties and concerns over social standing. Student's special education status and grade retention in elementary school seems to be a source of anxiety and concern. Student avoids having general education students see Student coming and going from the self-contained classroom, which is in the sixth grade hallway. While in the self-contained classroom, Student will participate in academic activities and generally gets along with and interacts appropriately with other students in class. Parent concerns state that Parent is concerned with Student's reading ability. Under consideration of special factors, it notes that student's behavior impedes the student's learning or the learning of others. Question 7 of the

consideration of special factors asks whether Student has SLD and Dyslexia and the “No” box is checked. (J-11; SEIF’s testimony)

44. Student’s reading goal states, “By annual review, Student will identify the central idea from an informational text by identify[ing] 2 relevant supporting details with 80% accuracy measured by observation and documentation as implemented by special education teaching staff.” Student’s written expression goal states. “By annual review, Student will demonstrate command of the conventions of standard English capitalization and punctuation, achieving a criteria of 70% as measured by observation and documentation as implemented by special education staff.” Student’s reading fluency goal was removed because STAR teacher thought they were working more towards providing the accommodations so Student could learn more of the content areas. Generally, at the middle school level, they are looking more at comprehension. STAR Teacher could not provide grade progress reports to Parent because when the IEP was expired the system would not let STAR Teacher put the information in at that time. STAR Teacher did update Parent through Review 360. (J-11; SEIF’s testimony; STAR Teacher’s testimony)
45. Goals that a student with characteristics or early indicators of dyslexia would benefit from include the reading and written expression goals listed for Student in the 1/7/2022 IEP. (IC’s testimony)
46. Student’s social/emotional/behavioral goals state (1) By annual review, when calm, Student will identify situations which may anger or frustrate Student, two calming strategies, and an approved cool down area, achieving a criteria of 70% accuracy as measured by observation and documentation, implemented by special education staff; (2) By annual review date, Student will remain in the assigned area, engaging in the activity and interacting with other students without exhibiting challenging behaviors or leaving the area, achieving a criteria of 70% as measured by observation and documentation, implemented by special education staff; and (3) By annual review date, Student will independently transition throughout campus 50% of the time with 0 incidents of documentable behaviors as determined by 360 behavior tracking and IC behavior tracking and implemented by special education staff. (J-11; SEIF’s testimony)
47. The 1/7/2022 IEP contains the following modifications, accommodations or support: text to speech; student may have access to sight word list, graphic organizer, and sentence

starters; speech to text program; use of calculator; use of multiplication chart; the environment will be modified so that Student does not have direct line to doors; Student may have extra time to complete assignments and tests; during transitions, Student will be within close proximity to staff; behavior intervention plan to be implemented across all settings; Student will be seated in close proximity to the source of instruction; and frequent reminders, re-direction, and prompting to complete tasks. The specific reading accommodations that a student with characteristics or early indicators of dyslexia would benefit from include text to speech program; access to sight word list, graphic organizer, and sentence starters; speech to text program; extra time to complete assignments; student will be seated in close proximity to instruction; and frequent reminders and prompting. Parent agreed with the IEP. (J-11; SEIF's testimony; IC's testimony)

48. After Student's 1/7/2022 IEP was implemented, between absences and disciplinary removals, Student missed 59 days of 84 days of instruction. (J-2)
49. Student was suspended with instruction on 1/24/2022 and 1/25/2022 for being disruptive, disrespectful, interrupting staff, and using profanity towards a staff member. (J-2; J-14, pg. 37)
50. On 2/8/2022 Student swore and ranted at a teacher, refused to listen to the teacher when directed to go to class, subsequently went into the teacher's classroom, made derogatory comments and refused to leave, and then after finally leaving the classroom, tried to prevent the teacher from closing the door to keep Student out and called the teacher another name. Student was RPC'd on 2/9/2022 and 2/10/2022 and suspended with instruction on 2/11/2022, 2/12/2022, 2/14/2022 and 2/15/2022 for throwing stink bombs in teachers' classrooms. Because Student was already being disciplined for the incident on 2/9/2022, Student was not also disciplined for the 2/8/2022 incident. School does not stack punishments. (J-2; J-14, pg. 35-36; Assistant Principal's testimony)
51. On 2/17/2022 Parent was on campus and spoke with SEIF regarding scheduling a manifestation determination review (hereinafter "MDR") meeting on 2/22/2022. (J-7, pg. 2)
52. On 2/22/2022 an MDR and IEP revision meeting was held virtually via Google Meet. The team members included: Parent, SEIF, a special education teacher and PE Teacher. The MDR was held because of the incidents that occurred on 2/9/2022 wherein Student threw

stink bombs into two classrooms and on 2/18/2022 wherein Student was purposely holding the door shut and not allowing anyone to exit the classroom. The team determined that the conduct was a manifestation of Student's disability because the behaviors were very impulsive. Parent agreed with the determination. Student's FBA and BIP were updated 1/2022 and were still appropriate for Student's behaviors. Current levels, reading goals and accommodations were not revised. (J-12; SEIF's testimony)

53. After the MDR, Student's behaviors and elopement were discussed with Parent. Parent wanted to help and was concerned about the behaviors and wanted Student to improve Student's academic standing. Parent came onto campus a few times and tried to shadow Student. Even with Parent being on campus, Student eloped from a classroom. School tried to figure out Student's motivation. They concluded that it gave Student a sense of power to be disruptive. There was nothing they could find during the FBA that would motivate Student enough to stay in the classroom. SEIF does not know that School could have done anything more, because a new behavior plan was written, a new FBA was completed, they were working with Parent and they cannot physically restrain a student to stay in a classroom. (SEIF's testimony; Assistant Principal's testimony)
54. Student's BIP dated 2/22/2022 included an FBA Summary stating, "when student transitions from electives, asked to complete schoolwork, comply with behavior expectations in any setting, Student will elope within campus causing classroom and campus disruptions, in order to escape and avoid." Replacement behaviors included, "when in the general education setting, if student feels student will be unable to be successful without causing a disturbance, student will request to go to the classroom, SSC or SEIF's office; student will stay in assigned location for a minimum of 25 minutes without eloping, including electives, lunch, and self-contained classroom. Student can request accommodations of flexible seating, walking in the back of the classroom or a short (2 min) break." Proactive strategies and supports include: (1) provide a 10 minute "warning" before transitioning to electives/lunch; (2) Student will be seated away from doors; (3) the environment will be modified so that Student does not have a direct line to doors; (4) during transitions, Student will be within close proximity to staff (within 7 feet); and (5) Student's points in Review 360 will be reviewed with Student after each class period. Intervention/teaching Strategies included: (1) special education teacher and teaching staff

will teach replacement behaviors of flexible seating choices, requesting to walk in the back of the classroom, and asking for a break daily through social skills class; (2) Student will earn points in Review 360 and will earn positive non-verbal feedback and points for transitioning appropriately to electives and/or after lunch back to class without eloping. Student will also earn points for staying in the assigned location every 10 minutes without eloping; (3) the points will be used for computer time, time helping with campus beautification, and/or time with a desired staff member for social time. Each motivator will be assigned a point value in order for Student to earn it; (4) provide the student with simple directives and choices; (5) listen to the student before reacting; (6) give brief and direct instructions in a calm tone; and (6) discuss the problem privately with the student. (J-8)

55. Student's BIP was implemented, but an integral part of the BIP requires Student to do what is asked of Student. Student was not in class based on the excessive absences, so there was not enough time in class for the BIP to work. School can meet Student's needs for academic instruction so long as Student remains in class and seated to receive the instruction from the teacher. Student's BIP is meant to curb Student's behavior, but Student has to be in class in order for the BIP to be used. (J-8; Principal's testimony; SEIF's testimony; Assistant Principal's testimony)
56. On 2/22/2022 Student engaged in additional behaviors including wandering the hallways and causing a disruption, walked into a classroom that Student did not belong in and disrupted the learning environment, and allegedly threatened another student. A total of three different incidents were logged that day. (J-14, pg. 32-33; Assistant Principal's testimony)
57. On 2/23/2022 during sixth period, Student entered a classroom, proceeded to walk around the classroom, talking to students and caused a ruckus. Student started picking on another student and the teacher could tell that the student was scared that Student was going to start a fight. The teacher tried to diffuse the situation, but Student called the teacher a name. The teacher described Student's behavior as belligerent and threatening. There were a total of four behavioral incidents logged on 2/23/2022. The resolution included suspension with instruction for a period of 13 days and a referral to Behavioral School. Parent initiated the referral because Parent did not know what else to do at that point. Parent declined to move forward with the appointment at Behavioral School but did not indicate why. Behavioral

School provides supportive services for parents and children and was intended to be another support for Student so Student could be successful and stay in the classroom. (J-14, pg. 32-33; Principal's testimony; Assistant Principal's testimony)

58. On 2/24/2022, Student's behaviors were escalating and resulted in a total of nine behavioral referrals. Student's behaviors included harassment and name calling of a teacher; disrupting other classes; jumping on tables in a classroom; calling teachers names; cussing at students; acting aggressively towards a teacher, including walking up to the teacher, getting in the teacher's face and cussing out the teacher causing the teacher to worry that Student was going to assault the teacher; and threatening to jump another student. The resolution noted for all nine incidents was that Student is on suspension pending Behavior School for a different incident. Because of Student's IEP, Student could not be kept at home during this process and Student was allowed to attend school while the referral to Behavior School was being submitted. Parent does not recall any work being sent home with Student to complete during this period of time. Parent sought out help from a legal aid center on 2/25/2022. This Hearing Officer finds Parent's testimony that Parent was consistently concerned with Student's reading abilities credible. This Hearing Officer also finds Parent's concern about helping Student and School with Student's behaviors credible. Parent was frustrated that School could not do more to help Student. (J-14; Assistant Principal's testimony; Parent's testimony; J-7, pg. 8)
59. Psychologist began working for District as an intern in 2007 and as a school psychologist since 2008. Psychologist is part of the MDT team, helps with response to intervention, works with the crisis team and helps with mental health issues. Student was brought to Psychologist's attention as needing a reevaluation in February of 2022. (Psychologist's testimony)
60. On 2/24/2022, Psychologist reviewed special education data in anticipation of the upcoming eligibility review and annual IEP meeting. Psychologist discussed the scope with Nurse and possible outside medical conditions. Psychologist sent home a prior notice and a CCF607 form, to request additional assessments, as there were significant observational behavioral and academic data noted. Upon review of the 9/25/2019 psychotherapy treatment plan, Psychologist noted the diagnoses of DMDD (related to Student's outbursts above what is normal) ADHD (related to Student's issues with paying attention) and PTSD

(how Student is impacted and causes anger) and wanted to open scope to address concerns related to these diagnoses.⁵ Psychologist spoke with Parent about the need for an MDT meeting. Parent requested a meeting date of 3/22/2022. The MDT team is required to have parent input and participation, so they set the meeting for the date that Parent wanted. Parent did not necessarily realize that the meeting was being delayed. An MDT can be held without a parent, but School does everything that they can to make sure that they do the evaluation with the parent. (J-7, pg. 3; Psychologist's testimony)

61. On 2/25/2022 SEIF called Parent to set up a second MDR due to new behavior incidents that occurred on 2/23/2022 and 2/24/2022. Parent was unavailable for a meeting on 3/1/2022 and requested the meeting take place on 3/8/2022. (J-7, pg. 2)
62. Nurse reviewed Student's psychotherapy treatment plan dated 9/25/2019 in preparation for the MDT meeting. Based on the review of the treatment plan, Nurse reached out to Parent to see if there was any additional information since that treatment plan but did not receive a response. Based on Nurse's review of the treatment plan, Nurse wanted to perform a full assessment of Student, but was unable to because of the lack of consent from Parent. Nurse was looking at the possible eligibility of Other Health Impairment (hereinafter "OHI"). Nurse made several attempts to obtain additional assessments for Student for the upcoming MDT including 3/4/2022, 3/7/2022, and 3/8/2022. On 3/8/2022 Parent informed Nurse that Parent could not give Nurse any new information until cleared by Advocate and Parent would send Nurse Advocate's information. Nurse informed Psychologist and emailed Parent a 503 release of information form to obtain updated medical records and health status. A 503 form is a consent for release of information from a third party, such as a therapist or doctor. Nurse was unable to obtain updated records because Parent never responded to the email or returned the signed 503 form. Psychologist was unable to complete updated assessments because Parent did not agree to open scope. Parent believed that School was only reaching out to Parent because Parent obtained an Advocate. Parent

⁵ When seeing a diagnoses like DMDD and PTSD, those diagnoses tend to line up with Nevada Administrative Code criteria for emotional disturbance, because a child's emotions are disturbed. They are struggling with those emotions. They would want to evaluate the child and get assessment data on current emotional functioning so that they could design an IEP to address how the child functions emotionally and behaviorally within that profile. With ADHD, they typically consult with the nurse and talk about a possible health impairment. Looking at the diagnoses contained in the 2019 MDT, District was unable to adequately investigate and evaluate them for the 2022 MDT. (Coordinator's testimony)

also believed that if School wanted to conduct additional testing, then the team should have said something during the [January] IEP meeting. (R-1; R-2; Nurse's testimony; Psychologist's testimony; Parent's testimony)

63. On 3/8/2022 a second MDR and IEP revision meeting was held. The team members included Parent, Principal (acting as LEA), STAR Teacher, SEIF and Advocate. The alleged infractions listed included threatening and aggressive behaviors towards staff members and students. Between 2/22/2022 and 2/24/2022 Student had 18 behavior referrals. Three were labeled as threatening behavior and a fourth as aggressive behavior. Student was still on suspended with instruction status on 2/22/2022 and was not supposed to be on campus when the infractions occurred. The team determined that the behavior did not have a significant relationship to Student's disability and therefore was not a manifestation of Student's disability. This determination was different because the behaviors were different than the last MDR. Student's prior behaviors were impulsive, and these behaviors including running into classrooms that were not Student's, picking on a student, threatening to fight a student, being very belligerent and threatening and disrupting the education of others, and receiving a notification that another student was afraid of Student due to threats. Parent disagreed with the determination. Parent believed that this was part of Student's disability and did not realize that after the first MDR that there could be another MDR. Parent was under the impression that there would not be any more suspensions. As a result of the determination, a recommendation for expulsion was made. School missed the deadline to submit the required packet for expulsion, therefore Principal rescinded the recommendation. Following the determination Student was provided suspension with instruction, wherein Student still had the opportunity to learn by signing in online and take classes on a device. (J-13; Principal's testimony; SEIF's testimony)

64. Student's 3/8/2022 IEP revision was to address behavior, present a new BIP and update the SDI page. It placed Student in Alternative Instruction Arrangements (hereinafter "AIA") from 3/8/2022 through 3/31/2022 while Student was awaiting Behavior School. That instruction would be in conformance with Student's IEP. Student's placement beginning 4/1/2022 was to return to the self-contained program. Parent disagreed with this IEP because Parent did not agree with the MDR determination. SEIF did not act as the LEA for this meeting and asked Principal to fulfill that role because SEIF needs to maintain

relationships with parents so that they do not feel uncomfortable coming to SEIF with questions, so that parents feel heard, and SEIF knew that Parent would probably not agree with this determination. Student's behavior and absences are the biggest hinderances to Student's academic progress. The biggest behavioral issues included elopement and running through campus disrupting the education of others. The change in Student's behaviors from the beginning of the school year to the aggressive and threatening behaviors was concerning. (J-13; Principal's testimony; SEIF's testimony)

65. When a student has significant behavior concerns, with as many incidents as Student, (wandering the halls, being out of the classroom, being in the wrong classrooms, threatening, fighting, things that can result in suspensions) that correlates with having significant emotion built up and prevents learning. And even if Student is in class, there is still some emotional trauma that Student is struggling with. District needs to help Student with all of that so that they can get Student's brain in a calm place where Student is ready to learn. (Coordinator's testimony)
66. On 3/10/2022, Psychologist attempted to contact Parent to facilitate parental consent for evaluation after it was determined that there was a need for updated assessment data to use with the current data for eligibility decision-making purposes. Psychologist was able to speak to Parent and reviewed scope with Parent concerning the reevaluation. Psychologist informed Parent why consent for the evaluation was required by law for Nurse and Psychologist to complete assessments. Parent asked that the consent form be sent by email so that Parent could speak with Advocate about whether it was okay to have Student assessed. (J-7, pg. 4)
67. On 3/11/2022, Psychologist attempted to contact Advocate to determine whether Parent was assured that it was in Student's best interest for Parent to allow assessments by Psychologist and Nurse. Psychologist was unable to reach Advocate and attempted to call Parent numerous times to try and set up a time the following week to assess Student at school. On 3/15/2022, Psychologist spoke with Advocate and discussed the rationale for getting Parent's consent for assessments to open scope and look at the possibility of ED and/or OHI, in addition to current SLD eligibility. Student was unwilling to complete certain tasks. The 2019 MDT showed that Student was able to perform in math. Student's skills in 2022 went down significantly. For Student to get the scores in 2019, Student had

the skill to obtain those scores, and when there is such a significant drop, that is when Psychologist looks for behavior problems, because that is usually an indicator that Student was having issues elsewhere besides school. Advocate spoke to Parent, but they were unwilling to open scope. Psychologist explained to Advocate that if Parent refuses to consent to the assessments for a reevaluation, the reevaluation must proceed with no additional assessments and only the statement of eligibility from the former classification would be completed by the MDT team with Student's eligibility decision made based on existing data. Advocate informed Psychologist that Advocate and Parent believed that SLD best explains Student's behaviors and were unwilling to open scope. (J-7, pg. 5; Psychologist's testimony)

68. On 3/15/2022, a voicemail was left for Parent stating that the school rescinded the Behavior School referral and Student could return to school the following day. (J-14, pg. 32)
69. On 3/16/2022, Nurse attempted to pull Student from class to complete the vision and hearing screening, but Student was not in class and the teacher informed Nurse that Student did not return to class after lunch. (R-1, pg. 5; Nurse's testimony)
70. On 3/18/2022, for Student's 3-year reevaluation, Student completed and passed the vision and hearing screening. No additional assessments were completed. Information for the health assessment was obtained from a review of records. A consent for a full evaluation was not granted. Student's past medical history was noted. The MDT meeting remained scheduled for the date and time Parent requested of 3/22/2022. Psychologist noted that the meeting will continue without opening scope above the previously known/suspected eligibility SLD using only data that is currently available and normal school data. Student had returned to School but presented several incidents of negative behavior and noncompliance with school rules. (R-1; J-7, pg. 5; Nurse's testimony)
71. On 3/22/2022 the team attempted to complete the reevaluation but was unable to move forward because Parent was not present. The team called Parent twice from the meeting. In an attempt to obtain Parent's participation, the meeting was rescheduled for 3/29/2022. Prior notice and meeting arrangements were mailed and emailed to Parent. (J-7, pg. 5; R-1, pg. 6; Nurse's testimony)
72. Student had two behavioral incidents on 3/22/2022, an additional eight behavioral incidents on 3/23/2022 and three additional incidents on 3/24/2022. Student had unverified absences

on 3/24/2022, 3/25/2022, 3/28/2022 and 3/29/2022. On 3/25/2022 Advocate contacted Assistant Principal to set up an appointment to discuss Student's behaviors over the previous few days. (J-2, pg. 7; J-14)

73. An MDT reevaluation was completed on 3/29/2022 (hereinafter "2022 MDT"). The 2022 MDT team included Parent, Advocate, Psychologist, STAR Teacher, Nurse, and general education teachers. A discussion occurred about the lack of updated assessments for Student. The team noted that no consent was obtained for new assessments, and therefore the team moved forward with the meeting. Psychologist referred Student for a reevaluation due to concerns/deficits in basic reading skills, fluency skills, reading comprehension skills, math calculation skills, math problem skills and written expression skills. Due to significant behaviors that have been observed at school and outside data indicating diagnoses of PTSD, DMDD, and ADHD, staff suspected additional eligibilities, such as serious emotional disturbance and/or other health impairment other than orthopedic, however, parent was unwilling to provide consent for assessments under SED and OHI. The 2022 MDT notes that Student's known medical history may adversely affect the ability to learn. (J-4; Nurse's testimony; Coordinator's testimony)
74. The 2022 MDT noted that Student typically refuses to do non-preferred tasks, when redirected will usually respond with negative comments and refusal. When Student wants to work, Student will put forth effort. Student is capable of following instructions until Student wants to do something else and can become verbally abusive towards teachers who insist that Student follow classroom rules/instructions. Student's case manager uses a point tracking and reward system to increase positive behavior, however, it has been difficult to find a reward that will work as a means of producing more compliant behavior. Parent noted that Student's behavior is much better at home than school and that Parent wants Student to do better in school. (J-4)
75. Under Student's current social/emotional/behavioral category in the 2022 MDT, it notes that Student's initial eligibility team believed that the negative behaviors were likely related to lower academic skills and a desire by Student to not appear to others as having poor academic skills. While students experiencing significant deficits in academic skills may present significant behaviors to mask weakness or due to academic frustration, Student's behavior may also be influenced by significant outside events/experiences. It has

been reported that Student is upset at being in the sixth grade rather than the seventh grade and one teacher suggested that may be why Student likes going to the seventh grade areas. Student does not like being told what to do and responds by ignoring or using derogatory language at those in authority positions. Student appears to be accepted by peers and has been sought out by other students who attempt to ditch and misbehave. Student's misbehaviors appear to be volitional, although Student has presented as impulsive, inattentive and hyperactive. Student may misbehave or be tardy/truant because Student does not want to be seen as a student who needs special education supports. Student appears to present an inflated self-concept and when corrected presents with anger and rage, showing no apparent remorse after negative behavior, and blames others. Student appears to manipulate facts and rules to Student's benefit. When willing, Student can present a cool demeanor, follow rules, and interact with staff and students in an appropriate manner. Student appears to understand the limitations that staff have to enforce discipline and exploits this. Student's work avoidance and disregard for those in authority greatly impacts Student's learning and when disrupting class, negatively impacts the learning of others. Student's social-emotional status appears to not be typical to that of peers. (J-4; Coordinator's testimony)

76. Student's history of significant defiance and aggression is not typical of a student with dyslexia. Student's behaviors are affecting academics. Student is unable to learn because Student is either not in class, and even if in class, Student is struggling with emotional trauma that prevents learning. Student may be trying to avoid stressful situations and that can impact ability to make progress. Some of Student's behaviors during the 2021-2022 school year were consistent with the behaviors noted in 2019, however Student had over 60 behavioral incidents during this school year and these incidents were more significant than the incidents from third grade. (J-4; Coordinator's testimony)
77. Student's current levels of performance were evaluated using Measures of Academic Progress (MAP) testing and a Rasch Interval Unit (RIT) scale. MAP assessments are computer adaptive achievement tests used to measure a student's growth in reading and math while a RIT scale is designed to measure what students know, regardless of grade level, measuring growth over time, allowing schools to track a child's progress throughout the school year and across multiple years. Student's MAP testing was completed in the fall

of the sixth grade, receiving an overall score of 159 in reading, which is at the first percentile and a standard score of 62 in the lower extreme range. Student's understanding of literary text and informational text areas is a relative personal strength, however those skills in those areas remain well below grade expectation. Student's vocabulary skills are significantly low. Student is able to locate information in diagrams or illustrations and infer character feelings or thoughts. Student is unable to locate details, determine the main/central idea, determine the topic and locate information in tables of contents. In the literacy text area, Student is unable to draw conclusions about a setting based on a description and identify conflict and/or resolution. Student is able to read within a Lexile level range of BR200 to BR50L, which is well below grade level expectation and indicates that Student continues to present with significant difficulty with basic reading skills, reading fluency skills and reading comprehension skills. (J-4)

78. A review of MAP assessment results going back to the fall of second grade reveal continued weakness in reading skills. Student is unwilling or unable to write independently. Student has difficulty writing words correctly even when words are verbally spelled aloud. Student is able to copy from a model, but still mixes capital and lowercase letters within words. (J-4)

79. The 2022 MDT team determined that Student is exhibiting inadequate achievement in the areas of mathematical calculations, mathematical problem solving, written expression, basic reading skills, reading fluency skills and reading comprehension. Student appears to present significant deficits in accurate and fluent word recognition and poor spelling and decoding abilities that are typically the result of specific learning disability that includes deficits in the phonological component of language. Data from the initial evaluation and current school data appear to indicate that Student presents characteristics associated with dyslexia and continues to meet the two conditions necessary for eligibility under the SLD funding category. Parent agreed with the MDT. The team always focuses on need whether they can reevaluate or not. The information that the team did have did not disqualify Student from the SLD category. Psychologist and Nurse agreed with the SLD eligibility because the team was not granted consent for new assessments and therefore could not change eligibility. At the conclusion of the MDT meeting, Nurse called Parent for an update on any new medications. A voicemail was left pending a return call. Student did not

suffer any deprivation by having the MDT completed two months later. Deprivation occurs when a student cannot be in class and receive instruction. Instruction, the teacher and the classroom were all available and everyone was ready to help Student during that timeframe. Psychologist cannot diagnose dyslexia as part of an MDT. School becomes aware of a diagnosis by a parent bringing in a diagnosis from an outside agency. (J-4; Nurse's testimony; Psychologist's testimony; Coordinator's testimony)

80. Student's 3/29/2022 BIP modified the 2/22/2022 BIP in the proactive strategies and supports. It revised the prior support of providing a 10 minute warning before transition to electives/lunch by adding that there would be a count down every 5 minutes until transition. It also added two additional strategies/supports including (1) Parent will bring Student to the office at the beginning of school and wait for an adult staff member to arrive to escort Student to class; and (2) Student will be escorted on campus by an adult when outside of the self-contained classroom. (J-8)
81. On 3/31/2022 Student was suspended with instruction for running down hallways during SBAC testing. (J-2; J-14)
82. Student had unverified absences on 4/1/2022, 4/4/2022, 4/5/2022, and 4/6/2022. Student was suspended with instruction on 4/7/2022 for threatening and trying to provoke another student to fight, along with aggressive behavior towards staff that made staff concerned for their safety. Student had unverified absences on 4/8/2022, 4/19/2022, 4/20/2022, 4/21/2022, 4/22/2022, 4/25/2022, 4/26/2022. Student was RPC'd on 4/26/2022 and 4/27/2022 for fighting another student. Student had unverified absences on 4/29/2022, 5/2/2022, 5/3/2022, 5/4/2022, 5/5/2022, 5/6/2022, 5/9/2022, 5/10/2022, 5/11/2022, 5/12/2022, 5/13/2022, 5/16/2022, 5/17/2022, 5/18/2022, and 5/9/2022. (J-2; J-14)
83. On 5/4/2022 Student was seen on camera walking up and down the hallway pointing a toy gun sideways. One teacher reported that Student was pointing the toy gun at another student, and another teacher reported that Student was banging on the classroom door trying to get in and scared the students in that classroom. A student reported being terrified of being shot. Student was brought to the Student Success Center and was told to wait but ended up running out of the office and off campus. Due to the Complaint being filed, School documented the incident and RPC'd Student. However, the attendance records show that this occurred during a string of unverified absences, so it is not clear whether

Student or Parent knew there was an RPC. Parent did not recall the incident (J-14, pg. 7; J-2; Parent's testimony)

84. Student engaged in additional disruptive behaviors on 5/9/2022, 5/12/2022, 5/16/2022, 5/17/2022, and 5/19/2022. During the incident on 5/19/2022, Student told a teacher, "I'll come back and shoot you up with my 40." A racial comment was made along with the threat to shoot a teacher. Student along with other peers ran away from the teacher and fled campus when police apprehended them. Parent reported that Student would be going to a long-term facility as a result of the incident. (J-14)
85. School is not the best school for Student. Student was not successful there. Student needs more structure and guidance than can be provided to Student in a general education school. Having numerous doors where Student can elope is not good for Student. (Assistant Principal's testimony)
86. Student was enrolled in AIA School from 3/8/2022 to 4/22/2022. The 2021-2022 school year ended on May 25, 2022. (J-1; Principal's testimony)
87. Due to Student's suspensions and lack of attendance at School, based on the recommendation of Student's therapist, Parent felt that the only option Parent had was to admit Student to a Residential Treatment Center (hereinafter "RTC"). Student was admitted to a RTC on 6/9/2022 for a period of 93 days. Parent informed School that Student would be going to an RTC, but could not recall when the notification was provided. Parent attended one virtual family therapy session with Student while Student was at RTC. (Parent's testimony; R-11)

Seventh Grade

88. Student was enrolled at School for the current school year but was a no show. The system had Student enrolled, but Student never filled the seat, so Student was then unenrolled. The 2022-2023 school year began on 8/8/2022. When students have excessive absences District sends out messages to parents through District's online program, additionally, letters go out to parents or guardians listed in District's system. Student has not been enrolled in any District comprehensive campus for this school year. Principal did not have any firsthand knowledge of Student's location at the beginning of the school year. Student was discharged from RTC on 9/9/2022. Student's diagnoses while at RTC included: oppositional defiant disorder; bi-polar disorder; attention-deficit hyperactivity disorder,

combined type; and parent-biological child conflict. Student was attending a Middle School while at the RTC. (Principal's testimony; R-11; Parent's testimony)

89. Student was accepted at a different facility in November 2022, but there was a wait time for a bed. Parent was frustrated with the wait time and decided not to send Student to the facility. Parent wants Student "to count" and wants Student to go to a regular school and get the help that Student needs. (Parent's testimony)
90. Even though not enrolled, Student was sighted on School's campus several times, both before and after school, usually interacting with friends or family. Principal also saw Student a few times walking around the school, appearing to try and get into the school, but as soon as Student realized Principal was walking towards Student, Student ran away. Early in the school year, Student snuck onto campus during the second or third period and was riding a scooter through the campus causing disruptions, similar to the behavior when Student was enrolled. Student recently tried to enter campus and was cited by District police for trying to come onto campus. (J-1; J-3; Principal's testimony)
91. Based on a review of Student's 2019 psychotherapy treatment plan, MDTs, behavior chronology, and academics Student's eligibility tends to line up for emotional disturbance. District would want to evaluate where Student is currently at and get assessment data for current emotional functioning. The diagnoses in the 2019 psychotherapy plan may not be current information. Due to the ADHD, District would want to consult with the nurse on that and consider an eligibility of a health impairment. District would want to evaluate under those two areas by assessing Student, comparing Student's assessments to national norms, and look at the breakdown diagnostically to determine what interventions they can provide to help Student on campus. (Coordinator's testimony)

Dyslexia Expert

92. 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. (Dyslexia Expert's testimony)

93. The basic components of reading are phonological awareness, phonemic awareness, reading comprehension, fluency and vocabulary. Phonemic awareness is the ability to auditorily and verbally manipulate your language before you introduce letters or graphemes; this is when you are just saying a word to a student and asking them what sounds they hear in the word. Phonological awareness is being able to manipulate and understand the sound system of the language while also adding a grapheme, which is a letter. Fluency is how fast you can read something while also gaining comprehension from the text. Decoding is looking at something written on a page and being able to decode the word and move on to the next word fast enough to be able to know what that word means and be able to pick up the meaning on the page. They have to be able to make sure that their brain processes each letter, with the sound and then they can keep moving. Encoding is spelling. (Dyslexia Expert's testimony)
94. Student would benefit from a multisensory, explicit, cumulative systematic instruction from someone who understands English, so that when Student does come across something that Student does not understand it can be explained to Student. Modifications or accommodations that would help Student include books on audio, text to speech, speech to text, having someone take notes for Student, giving Student power point presentations ahead of time, never asking Student to read out loud in the classroom; never ask Student to write on the board, and keyboarding might help if there is also dysgraphia. (Dyslexia Expert's testimony)
95. Dyslexia Expert cannot diagnose dyslexia, has not met Student, has never written an IEP in Nevada, was not aware that Student was in a self-contained classroom, was not aware of Student's teachers' qualifications, was not aware of why Student was not attending school; and was not aware that Parent did not give consent to complete assessments. Therefore, this Hearing Officer gave little 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 denied the Student a FAPE by failing to appropriately address Student's reading deficits in the IEPs dated September 30, 2020; March 24, 2021; March 25, 2021⁶; January 7, 2022; February 22, 2022; and March 8, 2022.

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."⁷ Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether it is ideal.⁸ Actions of the school systems cannot be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective. In striving for "appropriateness," an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.⁹

9/30/2020 IEP Revision

Student's 9/30/2020 IEP was a revision without a meeting to accommodate distance education. The 9/30/2020 IEP references the 2019 MDT, the CORE Phonics Survey completed 11/22/2019 and the Reading-Kaufman Test of Educational Achievement (KTEA). Student was struggling with short vowel consonant blends, scoring 9 out of 15. Student scored 62 for letter and recognition, 60 for reading comprehension and 58 for reading composite. On the letter and word recognition subtest, Student's ability to recognize familiar words and blend unfamiliar words was measured in the low range. Student's reading comprehension skills were also measured in the low range on the reading comprehension test. Student was able to read a couple simple sentences and do what the words said, but struggled when the words and sentences became more difficult. Student scored a 407 on the Fall benchmark in iReady, which is well below grade level. Student was reading 12 words per minute on fluency assessments. Student can restate and recall details

⁶ The 3/25/2021 IEP Revision is also the 3/24/2021 IEP Revision, and therefore is treated as one IEP Revision. (J-10)

⁷ *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 1001 (2017).

⁸ *Id.*

⁹ *Adams v. State of Oregon*, 195 F.3d 1141 (9th Cir. 1999)

from a story that has been read to Student in sequential order. Student has difficulty decoding multisyllabic words. Student scored 56 for spelling, 42 for written expression and 45 for written language composite on the Writing KTEA test. Student scored in the low range on the spelling subtest. Student's writing skills were measured in the very low range on the written expression subtest. Although Student was able to write the correct letters for words given to Student and spell some words correctly during the writing task, Student does not demonstrate mastery of basic writing conventions such as correct punctuation, capitalization and grammar. Student is not yet producing complex sentences independently and tends to write with fragmented sentences. The effect to Student noted in the IEP states, "Due to Student's deficits in reading comprehension and decoding, Student will struggle with grade level material." (FOF 14; 15)

The 9/30/2020 IEP has a reading goal that states, "Student will increase ability to read long vowel words achieving a criteria of 80% as measured by teacher data and implemented by special education teacher and teaching staff." Benchmarks/short term objectives including the following: (1) Student will increase ability to read short vowel consonant blend words (trap, quit, spell); (2) Student will increase ability to read short vowel diagraph & triagraph words (when, dodge, match); (3) Student will increase ability to read r-controlled vowel words (harm, dirt, form); and (4) Student will increase ability to read long vowel words (tape, key, toe). It has a reading comprehension goal that states, "Student will increase ability to determine the theme of a story and compare and contrast two texts at reading level achieving a criteria of 4/5 trials as measured by observation and documentation as implemented by special education teacher and teaching staff." It has a reading fluency goal that states, "Student will increase fluency in reading achieving a criteria of 60 words per minute as measured by teacher data implemented by special education teacher and teaching staff." It has a writing goal that states, "Student will increase ability to produce a written produce on a given topic including producing at least 5 sentences using correct conventions (i.e. grammar, spelling, punctuation, and paragraph structure) achieving a criteria of 80% as measured by student work samples implemented by special education teacher and teaching staff." These goals would benefit a student with characteristics or early indicators of dyslexia. (FOF 17; 18)

Student's 9/30/2020 IEP included the following SDI: 200 minutes per week in a self-contained/distance education for reading synchronous; 250 minutes per week for reading asynchronous; 50 minutes per week in written expression asynchronous; 150 minutes per week in

synchronous; 150 minutes per week in behavior synchronous; 100 minutes per week in asynchronous; and 275 minutes per week in social emotional behavior asynchronous in the general education/distance education setting. The following modifications, accommodations and supports were also listed: behavior intervention plan to be implemented across all settings; the environment will be modified so that Student does not have direct line to doors; during transitions, Student will be within close proximity to staff; Student will be seated away from doors; Student may have extra time to complete assignments and tests; Student may have assignments shortened if needed; have Student repeat directions to check for understanding; Student will be allowed to take short breaks to avoid fatigue and frustration; frequent reminders, re-direction, and prompting to complete tasks; Student may have access to sight word list, graphic organizer, and sentence starters; and Student will be seated in close proximity to the source of instruction. Parent agreed with the IEP. (FOF 20)

The modifications/accommodations that would support Student's reading, reading comprehension and fluency goals are student may have questions read aloud when not testing reading ability; extra time on assignments; shortened assignments if needed; close proximation of instruction; and Student may have access to sight word list, graphic organizer, and sentence starters. (FOF 21) At the time that the 9/30/2020 IEP was revised, it was reasonably calculated to enable Student to make progress in light of Student's circumstances.

Therefore, District appropriately addressed Student's reading deficits in the 9/20/2020 IEP Revision and Student was not denied a FAPE.

3/24/2021 IEP Revision

Student's IEP was revised 3/24/2021 to reflect educational delivery methods used during distance education. Student's SDI was revised to add distance learning, hybrid and in person minutes. In March 2021 District was still in distance education but was starting to transition into hybrid instruction where students would attend through distance education part of the week and in person part of the week. The remainder of the IEP, including current levels, goals and accommodations, were not revised from the 9/30/2020 IEP. The Notice to Implement IEP notes that contact was made with Parent and Parent was provided with the opportunity to raise and discuss all concerns and participate in the development of the IEP revision. Parent agreed with this IEP revision. (FOF 26) At the time that the 3/24/2021 IEP was revised, it was reasonably calculated to enable Student to make progress in light of Student's circumstances.

Therefore, District appropriately addressed Student's reading deficits in the 3/24/2021 IEP Revision and Student was not denied a FAPE.

1/7/2022 Annual IEP

Student's annual IEP was completed on 1/7/2022. Instruction was in person for the entirety of the 2021-2022 school year. Student's eligibility category is SLD. The IEP team was comprised of Parent, SEIF (acting as LEA), STAR Teacher and Art Teacher. All members of the team participated virtually. Changes are made to the IEP as the meeting progresses. The assessments conducted/reviewed include the 2019 MDT and the Northwest Evaluation Association (NWEA) MAP in reading along with teacher observations. The NWEA MAP testing shows Student at the first percentile for reading as of 8/24/2021. According to the results, Student is able to locate information in diagrams or illustrations and infer character feelings or thoughts, but is unable to locate details in informational text, determine the main/central idea in informational text, determine the topic in informational text, locate information in tables of contents, draw conclusions about a setting based on a description and identify conflict and/or resolution in literary text. (FOF 39)

Assessments were not completed on Student for decoding skills, letter recognition, spelling, or phonological awareness. Any assessments outside the scope of what a general education student would be tested on requires parent permission. An annual CORE Phonics Survey and KTEA would both require parent permission. All of the assessment tools that can be used to screen for indicators of dyslexia listed in the Guide would require parent permission. For a determination that Student has SLD with dyslexia under consideration of special factors in Student's IEP, Student would have to show indicators through screening assessments. (FOF 40)

STAR Teacher noted that Student refused to read in the classroom setting but will quietly follow along while text is read and is able to accurately answer basic multiple choice comprehension questions that are read to Student. STAR Teacher also noted that although Student presents with very low reading skills, assessment results are also likely negatively impacted by behavior. STAR Teacher noted that when using sentence starters, Student is able to answer writing prompts about a text with simple sentences, is able to copy from a model, and is willing to complete assignments when typing from a provided model. STAR Teacher could not assess Student because Student would not stay and sit for assessments, so all STAR Teacher had was MAPS testing results to assess Student. This Hearing Officer finds that Student's resistance to special education, the

numerous absences and refusal to read for STAR Teacher made it difficult, if not impossible, to obtain accurate present levels. (FOF 41)

Student's reading goal states, "By annual review, Student will identify the central idea from an informational text by identify[ing] 2 relevant supporting details with 80% accuracy measured by observation and documentation as implemented by special education teaching staff." Student's written expression goal states. "By annual review, Student will demonstrate command of the conventions of standard English capitalization and punctuation, achieving a criteria of 70% as measured by observation and documentation as implemented by special education staff." Student's reading fluency goal was removed because STAR teacher thought they were working more towards providing the accommodations so Student could learn more of the content areas. Generally, at the middle school level, they are looking more at comprehension. Goals that a student with characteristics or early indicators of dyslexia would benefit from include the reading and written expression goals in this IEP. (FOF 44; 45)

The 1/7/2022 IEP contains the following modifications, accommodations or support: text to speech; student may have access to sight word list, graphic organizer, and sentence starters; speech to text program; use of calculator; use of multiplication chart; the environment will be modified so that Student does not have direct line to doors; Student may have extra time to complete assignments and tests; during transitions, Student will be within close proximity to staff; behavior intervention plan to be implemented across all settings; Student will be seated in close proximity to the source of instruction; and frequent reminders, re-direction, and prompting to complete tasks. The specific reading accommodations that a student with characteristics or early indicators of dyslexia would benefit from include text to speech program; access to sight word list, graphic organizer, and sentence starters; speech to text program; extra time to complete assignments; student will be seated in close proximity to instruction; and frequent reminders and prompting. Parent agreed with the IEP. (FOF 47) At the time that the 1/7/2022 IEP was created, it was reasonably calculated to enable Student to make progress in light of Student's circumstances which included significant absences and an inability to assess Student beyond MAPS testing.

Therefore, District appropriately addressed Student's reading deficits in the 1/7/2022 IEP and Student was not denied a FAPE.

2/22/2022 IEP Revision

An MDR and IEP revision meeting were held due to Student's behaviors. The team determined that the conduct was a manifestation of Student's disability. Parent agreed with the determination. Student's FBA and BIP were updated 1/2022 and were still appropriate for Student's behaviors. Current levels, reading goals and accommodations were not revised from the 1/7/2022 IEP and remained appropriate. (FOF 52) At the time that the 2/22/2022 IEP was revised, it remained reasonably calculated to enable Student to make progress in light of Student's circumstances.

Therefore, District appropriately addressed Student's reading deficits in the 2/22/2022 IEP Revision and Student was not denied a FAPE.

3/8/2022 IEP Revision

On 3/8/2022 a second MDR and IEP revision meeting was held. Student's 3/8/2022 IEP revision was to address behavior, present a new BIP and update the SDI page. Parent disagreed with this IEP because Parent did not agree with the MDR determination. Current levels, reading goals and accommodations were not revised from the 1/7/2022 IEP and remained appropriate. (FOF 63; 64) At the time that the 3/8/2022 IEP was revised, it remained reasonably calculated to enable Student to make progress in light of Student's circumstances.

Therefore, District appropriately addressed Student's reading deficits in the 3/8/2022 IEP Revision and Student was not denied a FAPE.

II.

Whether District failed to timely reevaluate Student by January 29, 2022 (procedural violation) resulting in a denial of FAPE.

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.¹⁰

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

¹⁰ 34 CFR 300.305(a)(1)

school officials, but also by the input of the child's parents or guardians.¹¹ 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.¹² If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.¹³

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.¹⁴ Violation of the procedural requirements may constitute the denial of a FAPE, but mere technical procedural violations "will not render an IEP invalid."¹⁵ 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."¹⁶

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."¹⁷ 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."¹⁸

Parental participation safeguards are among the most important procedural safeguards in the IDEA and that procedural violations that interfere with parental participation, such as in the IEP formulation process, undermine the very essence of the IDEA.¹⁹ If a student does not suffer a deprivation of educational benefit when a deadline is missed, that student is not denied a FAPE.²⁰

A public agency shall ensure that a reevaluation of each pupil with a disability is conducted if the public agency determines that the needs of the pupil for educational or related services,

¹¹ *M.C.*, 858 F.3d at 1194.

¹² *Amanda J.*, 267 F.3d at 890 (quoting *Board of Education v. Rowley*, 458 U.S. 176, 206-07 (1982)).

¹³ *Id.*

¹⁴ 20 U.S.C. § 1415.

¹⁵ *Id.* at 892 (internal quotations and citation omitted).

¹⁶ *Id.* (internal quotations and citations omitted).

¹⁷ 20 U.S.C.A. § 1414(c)(1)(A)(i).

¹⁸ *Id.* at § (d)(3)(A)(ii).

¹⁹ *Doug C. ex rel. Spencer C. v State of Hawaii, Dep't of Educ.*, 720 F.3d 1068, (9th Cir. 2013) citing *Amanda J.*, 267 F.3d at 882, 892.

²⁰ *A.M. v. Monrovia*, 627 F.3d 773, 779 (9th Cir. 2010).

including, without limitation, improved academic achievement and functional performance, warrant a reevaluation or if the parent or teacher of the pupil requests a reevaluation. A reevaluation shall occur not more than once a year, unless the parent and the authorized representative of the public agency otherwise agree; and at least once every 3 years, unless the parent and the authorized representative of the public agency agree that a reevaluation is not necessary.²¹ Each reevaluation of a pupil must be conducted in the manner prescribed by the committee that developed the individualized educational program for the pupil pursuant to NAC 388.281 and other qualified personnel in accordance with the needs of the pupil. Such a reevaluation also must comply with the requirements set forth in NAC 388.300, 388.330, 388.335, 388.336, 388.340 and 388.420, as appropriate.²²

Informed written consent must be obtained from the parents of the pupil before conducting additional assessments in a reevaluation. The public agency shall make reasonable efforts to obtain such consent. If a parent refuses to provide consent for a reevaluation requiring additional assessments, the public agency may, but is not required to, request mediation pursuant to NAC 388.305 or file a due process complaint pursuant to NAC 388.306.²³

If a public agency has made reasonable efforts to obtain informed consent from the parent and the parent refuses to provide consent for a reevaluation requiring additional assessments and the public agency does not request mediation or file a due process complaint upon the parent's failure to respond or refusal, the public agency does not violate any obligations pursuant to NAC 388.215 and 388.330 to 388.440, inclusive, for the conduct of a reevaluation of the pupil.²⁴

Initial Evaluation

While not before this Hearing Officer, it is important to note that an initial MDT Report was conducted on 1/30/2019. At that time, Student was in the third grade. The 2019 MDT team determined that Student's underachievement in written expression, basic reading skills, reading fluency skills and reading comprehension was significantly low and not primarily the result of a visual, hearing or motor disability; mental retardation; emotional disturbance; other disabilities or other exclusionary factors. SLD was believed to be the best and most probable explanation for Student's underachievement among reasonable alternative explanations. (FOF 2; 6)

²¹ NAC 388.440 (1)

²² NAC 388.440 (3)

²³ NAC 388.300 (1)

²⁴ NAC 388.300 (2)(a)

Reevaluation

While District alluded to the delay between 1/29/2022 and 2/24/2022 in both its opening statement and closing argument, the only evidence before this Hearing Officer to explain why there was a delay between these dates includes Student's suspensions and RPC's on 1/24/2022, 1/25/2022, 2/9/2022, 2/10/2022, 2/11/2022, 2/12/2022, 2/14/2022 and 2/15/2022. On 2/24/2022, Psychologist reviewed special education data in anticipation of the upcoming eligibility review and annual IEP meeting. Psychologist discussed the scope with Nurse and possible outside medical conditions. Psychologist sent home prior notice and a CCF607 form, to request additional assessments, as there were significant observational behavioral and academic data noted. Psychologist spoke with Parent about the need for an MDT meeting. Parent requested a meeting date of 3/22/2022. The reevaluation team is comprised of the IEP team, which includes Parent and the team is required to review information provided by Parent and take into account input from Parent, so the MDT team²⁵ set the meeting for the date that Parent wanted. Parent did not necessarily realize that the meeting was being delayed. An MDT can be held without a parent, but they do everything that they can to make sure that they do the evaluation with the parent. (FOF 49; 60)

On 3/10/2022, Psychologist attempted to contact Parent to facilitate parental consent for evaluation after it was determined that there was a need for updated assessment data to use with the current data for eligibility decision-making purposes. Psychologist was able to speak to Parent and reviewed scope with Parent concerning the reevaluation. Psychologist informed Parent why consent for the evaluation was required by law in order for Nurse and Psychologist to complete assessments. Parent asked that the consent form be sent by email so that Parent could speak with Advocate about whether it was okay to have Student assessed. (FOF 66)

On 3/11/2022, Psychologist attempted to contact Advocate to determine whether Parent was assured that it was in Student's best interest for Parent to allow assessments by Psychologist and Nurse. Psychologist was unable to reach Advocate and attempted to call Parent numerous times to try and set up a time the following week to assess Student at school. On 3/15/2022, Psychologist spoke with Advocate and discussed the rationale for getting Parent's consent for assessments to open scope and look at the possibility of ED and/or OHI, in addition to current SLD

²⁵ 34 C.F.R. § 300.305 (a)(1-2); NAC 388.336

eligibility. Advocate spoke to Parent, but they were unwilling to open scope. Psychologist explained to Advocate that if Parent refuses to consent for evaluation for a reevaluation, the reevaluation must proceed with no additional assessments and only the statement of eligibility from the former classification would be completed by the MDT team with Student's eligibility decision made based on existing data. Advocate informed Psychologist that Advocate and Parent believed that SLD best explains behaviors and are unwilling to open scope. (FOF 67)

On 3/16/2022, Nurse attempted to pull Student from class to complete the vision and hearing screening, but Student was not in class and the teacher informed Nurse that Student did not return to class after lunch. On 3/18/2022, for Student's 3-year reevaluation, Student completed and passed the vision and hearing screening. No additional assessments were completed. Information for the health assessment was obtained from a review of records. A consent for a full evaluation was not granted. Student's past medical history was noted. The MDT meeting remained scheduled for the date and time Parent requested of 3/22/2022. Psychologist noted that the meeting will continue without opening scope above the previously known/suspected eligibility SLD using only data that is currently available and normal school data. (FOF 69; 70)

On 3/22/2022 the team attempted to complete the reevaluation but was unable to move forward because Parent was not present. The team called Parent twice from the meeting. In an attempt to obtain Parent's participation, the meeting was rescheduled for 3/29/2022. Prior notice and meeting arrangements were mailed and emailed to Parent. (FOF 71)

An MDT reevaluation was completed on 3/29/2022. The 2022 MDT team included Parent, Advocate, Psychologist, STAR Teacher, Nurse, and general education teachers. A discussion occurred about the lack of updated assessments for Student. The team noted that no consent was obtained for new assessments, and therefore the team moved forward with the meeting. Psychologist referred Student for a reevaluation due to concerns/deficits in basic reading skills, fluency skills, reading comprehension skills, math calculation skills, math problem skills and written expression skills. Due to significant behaviors that have been observed at school and outside data indicating diagnoses of PTS, DMDD, and ADHD, staff suspected additional eligibilities, such as serious emotional disturbance and/or other health impairment other than orthopedic, however, parent was unwilling to provide consent for assessments under SED and OHI. (FOF 73)

Student's 1/7/2022 IEP that Parent participated in and agreed to, was in effect and being implemented. The 1/7/2022 IEP team considered Student's unique needs and developed an IEP calculated to provide Student an educational benefit. The IEP Team considered Student's levels of performance that were available from the 8/24/2021 testing, prior available data, Parent's input and STAR Teacher observations. Student was not deprived of an educational benefit by having the MDT completed two months later because there was a valid IEP in effect and being implemented from 1/29/2022 through 3/29/2022. Further, Student was not in school for several days during that period; the MDT team was required to have Parent's participation and input; the MDT team scheduled the MDT based on Parent's requested date; and then the MDT Team rescheduled the meeting because Parent did not attend on the original date that Parent requested. (FOF 39; 41; 44; 45; 47; 48; 59; 71; 73)

Therefore the District's failure to timely reevaluate Student by January 29, 2022 did not result in a denial of FAPE.

III.

Whether District changed placement of Student after removing Student from school for a total of 26 days due to disciplinary action resulting in a denial of FAPE.

The IDEA provides that a district may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 consecutive school days, provided the same change in placement would be made in the case of a student without a disability.²⁶ The same rule applies to additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those removals do not constitute a change in placement under 34 CFR 300.536).²⁷

An out-of-school suspension for 10 consecutive school days or less is not a change in placement and therefore neither triggers IDEA procedural safeguards nor requires the provision of FAPE during the removal.²⁸ However, when the removal is part of a series of removals that total more than 10 school days in a single school year and constitute a "pattern" of removals, the IDEA disciplinary provisions come into play.²⁹

²⁶ 34 C.F.R. § 300.530 (b)

²⁷ 34 C.F.R. § 300.530 (b). *See also Honig v. Doe*, 559 IDELR 231 (U.S. 1988).

²⁸ 34 C.F.R. § 300.536

²⁹ 34 C.F.R. § 300.536 (a)

Cumulative, short-term removals constitute a pattern and a change in placement if: (1) the series of removals total more than 10 school days in a school year; (2) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; or (3) additional factors, such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another, indicate a pattern.³⁰

If the district determines that a child's misconduct was not related to his disability, then the child is subject to the same sanctions for misconduct as a child without a disability. However, the child must continue to receive educational services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.³¹

A manifestation determination review must be conducted when school personnel propose to change the placement of a child with a disability because of a violation of the school's code of student conduct. The manifestation determination review must occur within 10 school days of the decision to change the placement of the child because of a violation of the school's code of student conduct.³² The behavior must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that the child's behavior was caused by, or had a direct and substantial relationship to, the child's disability, or the behavior in question was the direct result of the LEA's failure to implement the IEP.³³

The calculation of the 10 school days of suspension addressed in 34 C.F.R. § 300.530 could include exclusions that take place outside of IDEA's discipline provisions which occur because of a child's behavior. Actions that result in denials of access to, and significant changes in, a child's educational program could all be considered as part of the 10 days of suspension and also could constitute an improper change in placement. These actions could include when a school administrator unilaterally informs a parent that their child with a disability may only remain in school for shortened school days because of behavioral issues or when a child with a disability is not allowed by the teacher to attend an elective course because of behavioral concerns. These types of actions are generally considered disciplinary removals unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately

³⁰ 34 C.F.R. § 300.536

³¹ 34 C.F.R. § 300.530 (d)(i)

³² 34 C.F.R. § 300.530(e)(1); NAC 388.265

³³ 34 C.F.R. § [300.530](#)(e)(1)(i)-(ii)

participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement.

The LEA makes the determination, on a case-by-case basis, of whether a pattern of removals constitutes a change in placement under the discipline provisions in IDEA.³⁴ Under IDEA, school authorities may only remove a child with a disability who violates a school's code of student conduct from the child's current placement to an appropriate IAES, another setting, or suspension, for not more than 10 school days at a time. This removal may only occur to the extent that such disciplinary action is applied to children without disabilities for the same violation.³⁵ Requiring the public agency to carefully review the child's previous behaviors to determine whether the behaviors, taken cumulatively, are substantially similar is an important step in determining whether a series of removals of a child constitutes a change in placement, and is necessary to ensure that public agencies appropriately apply the change in placement provisions. Whether the behavior in the incidents that resulted in the series of removals is "substantially similar" should be made on a case-by-case basis and include consideration of any relevant information regarding the child's behaviors, including, where appropriate, any information in the child's IEP. When the child's behaviors, taken cumulatively, are objectively reviewed in the context of all the criteria for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in placement has occurred.³⁶ When school personnel determine that a change of placement would occur as a result of a proposed disciplinary action, prior notice and a copy of the procedural safeguards must be provided to the parent of a child with a disability consistent with the requirements under 34 C.F.R. §§ 300.503 and 300.504. If school personnel determine that a pattern of removals is not a change in placement³⁷, the child's parent may challenge this decision through IDEA's dispute resolution mechanisms, which include filing a State complaint under 34 C.F.R. § 300.153.

If the parent of a child with a disability and the LEA agree to a specific change in the current educational placement of the child to implement the child's current IEP, then it is not

³⁴ 34 C.F.R. § [300.536](#) (b)(1)

³⁵ 34 C.F.R. § [300.530](#) (b)

³⁶ Federal Register/Vol 71, No 156/ Monday, August 14, 2006 / Rules and Regulations, Pg. 46729

³⁷ NAC 388.265 (6)

considered a removal under the discipline provisions. If school personnel and the parent agree that a different educational placement is required to better implement the child's current IEP in order to ensure the provision of FAPE, the new placement would not be considered a "change of placement" in the context of the discipline requirements. Such changes in placement remain subject to the placement requirements in 34 C.F.R. § 300.116 and the prior written notice requirements in 34 C.F.R. § 300.503.

Student's Discipline

Student's RPC on 9/10/2021 and 9/14/2021 were for failing to report that another student had a gun on school property. (FOF 34)

Student's RPCs on 9/22/2021, 11/02/2021, 11/03/2021, 4/27/2022 and 4/28/2022 were all for fighting another student. Student's RPC on 12/2/2021 and 12/3/2021 were for harassing and provoking another student to fight. Student's suspension with instruction on 4/7/2022 was for provoking and threatening to fight another student, running towards staff and the staff feeling unsafe as a result. (FOF 34; 37; 82)

Student's behavior in February 2022 which included throwing stink bombs into classrooms and running away was found to be a manifestation of Student's behavior. Student was RPC'd for 2 days, which this Hearing Officer determined was a disciplinary removal. Student was also suspended with instruction for an additional 3 days, for a total of 5 days of disciplinary removal. The only other suspension with instruction that was similar in behavior was on 3/31/2022 when Student was running down hallways and disrupting classrooms during SBAC testing. (FOF 50; 81) At this point, although Student had been removed from school for more than 10 school days, this did not constitute a pattern of behavior because the 6 days of discipline noted herein were not substantially similar to the previous incidents.

Student's behaviors that led to 13 days of suspension with instruction at the end of February 2022 through mid-March 2022 included running into classrooms that were not Student's, picking on a student, threatening to fight a student, being very belligerent and threatening and disrupting the education of others, and receiving a notification that another student was afraid of Student due to threats, walking up to the teacher, getting in the teacher's face and cussing out the teacher causing the teacher to worry that Student was going to assault the teacher. This removal was for more than 10 consecutive days. These behaviors were different than Student's impulsive behaviors at the beginning of the school year and therefore did not constitute a pattern. Additionally, Parent

initiated the referral for Student to attend Behavioral School. (FOF 56; 57; 58; 63; 64; 68) While Parent did not go through with the referral, School believed that Student was being referred to Behavioral School, and therefore, the instruction time missed during this period of time was in part due to Parent's request to change Student's placement and therefore the new placement would not be considered a "change of placement" in the context of the discipline requirements.

Student's suspension with instruction for five days in May 2022 was due to Student's threat to shoot a teacher and students, resulting in the police being called and Student being apprehended by the police. (FOF 84) This removal was not for more than 10 consecutive days of school. This removal did not constitute a pattern because Student's behaviors were not substantially similar to Student's behaviors in previous incidents that resulted in a series of removals.

Therefore, District did not change placement of Student after removing Student from school for a total of 18 days due to disciplinary action and Student was not denied FAPE.

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision by filing with the Nevada Department of Education, Superintendent of Public Instruction, 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 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 cross appeal to the other parties within 10 days after receiving notice of the initial appeal. [At the parties' request, this decision is being delivered to the parties both by e-mail and U.S. Postal Service. Receipt of this Decision and Order will be determined by either the date of actual delivery, or the date of the first attempt to deliver, by the U.S. Postal Service.]

Dated: February 17, 2023

/s/ Audrey J. Beeson
Hearing Officer

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