

IMPARTIAL DUE PROCESS HEARING
BEFORE THE IHO
APPOINTED BY THE STATE SUPERINTENDENT OF PUBLIC SCHOOLS

STATE OF NEVADA

In the Matter of

DECISION OF THE IHO

Date: October 5, 2024

STUDENT¹, by and through The Parents,

The Parents,

v.

The Parents: Marina F. Dalia-Hunt,
Esq., Cynthia D. Johnston, Esq., Jennie
G. Albarado, Esq.

SCHOOL DISTRICT,

The District: Daniel Ebihara, Esq.

The District.

Victoria T. Oldenburg,
Impartial Hearing Officer (IHO)

INTRODUCTION AND PRELIMINARY MATTERS

1. The parties to the present matter are the Student, by and through the Parent (“Petitioners”) and the School District (“Respondent and/or “District”).²
2. On May 10, 2024 Petitioners filed a Request for an Impartial Due Process Hearing (“hereafter referred to as the Due Process Complaint or “DPC”) under the Individuals with Disabilities Education Act (“IDEA), 20 U.S.C. §1400 et. seq., and its implementing regulations, 34 CFR §300 et seq., Chapter 388 of the Nevada Revised Statutes (NRS), and Chapter 388 of the Nevada Administrative Code (NAC).³

¹ Personally identifiable information is included in the Appendix to the final decision in this matter and will be removed prior to public distribution. *See Letter to Schad*, 105 LRP 4754 (December 23, 2004).

² All pre-hearing documents referenced herein were provided electronically.

³ IHO Exhibit (HO) 1.

3. On May 17, 2024 the Nevada Department of Education (NDE) Superintendent of Public Instruction appointed the undersigned IHO, Victoria T. Oldenburg, to this matter.⁴

4. On May 17, 2024, Respondent filed a Notice and Response to the DPC.⁵

5. On May 21, 2024 the IHO issued a Preliminary Order setting forth the statutory time periods applicable to the proceeding as established in 34 C.F.R. §§300.510-300.515. The IHO also issued a Notice of Status Conference setting the telephonic Status Conference for May 29, 2024 at 10:00 a.m. and issued the Rights of the Parties.⁶ The primary purpose of the Status Conference was to set the dates for the Pre-Hearing Conference and hearing in the event the parties were unable to resolve the issues in the DPC.

6. At the Status Conference the parties reported that they had submitted the matter to mediation. The parties stipulated to a sixty (60) day extension of the decision due date. On June 6, 2024 the IHO issued an Order After Status Conference, Order Extending Decision Due Date, and Order Setting Hearing and Prehearing Conference in the event the parties were not able to resolve the issues in the DPC through the mediation process.⁷

7. The parties were not able to resolve the issues in the DPC through mediation. On August 1, 2024 the IHO issued a Notice of Prehearing Conference and provided the parties with the Hearing Guidelines.⁸

⁴ HO 1

⁵ HO 2

⁶ HO 3, 4 and 5.

⁷ HO 7

⁸ HO 8.

8. On August 5, 2024 the IHO issued a Preliminary Statement of Issues.⁹
9. The Prehearing Conference was rescheduled and on August 5, 2024 the IHO issued a Second Notice of Prehearing Conference.¹⁰
10. On August 16, 2024 the Prehearing Conference was held. Petitioners informed Respondent and the Hearing Officer they would be filing a motion for the production of internal emails in the possession of Respondent, and the Hearing Officer set a briefing schedule for Petitioners' motion and Respondent's response.¹¹ A second Prehearing Conference was scheduled for August 27, 2024.¹²
11. On August 19, 2024 Petitioners submitted a Motion to Produce Complete Education Records, Including Internal Emails ("Motion"). The Petitioners had previously requested internal emails in a March 26, 2024 request for documents ("March Request"). In their Motion, Petitioners attached their March Request and 379 pages of emails that were produced by Respondent in response to the Request and within the 45-day time period required under 34 CFR 300.613.¹³
12. On August 26, 2024 Respondent submitted an Opposition to Motion to Produce Complete Education Records, Including Internal Emails. In their Opposition, Respondent reported that, pursuant to Petitioners' March Request, on August 21, 2024 it had conducted a preliminary search of the Student's first name, last name, first and last initial, and student's number and any

⁹ HO 10

¹⁰ HO 11

¹¹ HO 12

¹² HO 15

¹³ HO 16

combination thereof in response to the Motion. The search in Google Workspace yielded 3,195,095 instances of those terms in over 112,000 email accounts dating back to August 2021.¹⁴

13. During the August 27, 2024 Second Prehearing Conference the Motion and Response were discussed. The IHO referred the parties to the issues identified to be heard as set forth in the Prehearing Conference Report and Order, and asked Petitioners to state the reasons for their belief that they had not been provided with all education records in the form of emails regarding the Student. Petitioners responded that (i) they expected to see emails from a contractor who worked with the Student on sign language yet there was only 1 email produced thus they suspected there were more; (ii) a May 15, 2024 email produced from one District staff member to another did not contain the referenced attachment and; (iii) no emails were produced from a retired teacher who had worked with the Student during the 2023-2024 school year. Other than the three identified concerns, the IHO found there was insufficient evidence to justify the review of 3,195,095 email to determine whether they were education records of the Student collected, maintained, or used by the agency under 34 CFR Part 300. The IHO ruled that because the contractor would be testifying at the hearing a search of any emails the contractor may have authored was not necessary notwithstanding Petitioners speculation that the contractor he likely authored emails.¹⁵ The IHO ordered Respondent to provide the attachment to the May 15, 2024 email, and ordered Respondent to produce emails with the retired teacher and the Student's identifiers from May 2023 to the present that had not been previously provided to Petitioners. *See* September 2, 2024 Order Granting in Part and Denying in Part Motion to Produce Complete

¹⁴ HO 17

¹⁵ Although the contractor was listed as a witness by Petitioners, the contractor was not called to testify at the hearing.

Education Records, Including Internal Emails (HO 18).

14. On August 26, 2024 Petitioners informed the IHO, via email, that they received Respondent's proposed exhibits and had not previously been provided with exhibits R7 through R-11 in response to the March Request, and requested that a briefing schedule be set on a motion in *limine* to preclude the introduction of the proposed exhibits on the grounds the Petitioners should have been provided with the exhibits earlier which would have enabled them to provide the exhibits to their experts to further form their opinions. At the Second Prehearing Conference the IHO issued an oral ruling denying the request to preclude the introduction of exhibits R-6 through R-11 because the relevancy of the proposed exhibits had not yet been established. On August 28, 2024, Respondent sent an email to the IHO requesting permission to exclude Petitioners' proposed exhibit P-60 because of the nature of its content and because it was not relevant. In a written order the IHO codified its denial of Petitioners' request to exclude the introduction of exhibits R-6 through R-11, and denied Respondent's request to excluded proposed exhibit P-60 because the relevancy of the proposed exhibit had not yet been established.¹⁶ During the hearing Petitioners renewed their objection to the introduction of exhibits R-6 through R-11 which objection was noted by the IHO and overruled.

15. The due process hearing was held on September 4, 5, and 18, 2024. Pursuant to stipulation of the parties, the hearing was held via simultaneous electronic audio/visual means ("Zoom"). Petitioners opted for the hearing to be closed to the public. The Student attended all 3 days of the hearing and testified on the third day with the assistance of interpreters since the Student has a hearing impairment. The Parent did not testify.

¹⁶ HO 18, page 5.

16. At the hearing, IHO Exhibits 1 through 20 were admitted, Joint Exhibits J-1 through J-9 were admitted, Respondent Exhibits R-1 through R-6 and R-8 through R-10 were admitted, and Petitioners' Exhibits P-2 (redacted), P-3, P-11, P-12, P-30, P-47, P-53, and P-65-67 were admitted. The hearing was to conclude on September 5, 2024 and the initial decision due date was September 21, 2024. However, a third day for the hearing was required which was set for September 18, 2024. This necessitated a continuance of the decision due date. Therefore, the parties stipulated to a fifteen (15) day extension of the decision due date and the IHO issued an order on September 18, 2024 extending the decision due date to October 6, 2024.¹⁷

ISSUES

As set forth in the Pre-Hearing Conference Report and Order, the issues to be decided by the IHO are:

- A. Were the Student's IEPs from May 9, 2022 to May 9, 2024 (April 6, 2022, May 22, 2023, September 8, 2023, October 5, 2023, December 6, 2023, February 1, 2024) appropriately developed, tailored to the Student's unique individual needs and reasonably calculated to enable the Student to receive educational benefits and make appropriate progress in light of the student's circumstances, specifically with regard to the Student's communication needs in the areas of sign language, reading and writing, through a multimodal approach or other method? If not, was there a denial of FAPE?

- B. In the development of the Student's IEPs from May 9, 2022 to May 9, 2024 were the Parents significantly impeded from meaningfully participating and providing input to the IEP team based upon the Parents' claim that the District provided inaccurate information in the IEPs? If so, was there a denial of FAPE?

FINDINGS OF FACT

After considering all the evidence, this IHO's Findings of Facts are as follows:

¹⁷ HO 20

1. The Student was born on May 11, 2007. (J-3) At the time the DPC was filed the Student was an 11th grade pupil at High School. (HO 1)
2. The Student qualifies for special education and related services under the eligibility category of Multiple Impairments, including Moderate Intellectual Disability as the Student's primary disability, ¹⁸ Autism Spectrum Disorder (ASD) secondary, and Hearing Impairment, tertiary.¹⁹ (J-1), (P-30)
3. When the Student entered High School in the fall of 2021, the Student was significantly behind in the areas of reading vocabulary, reading comprehension, written expression and math. The Student was working at a pre-primer level in reading (kindergarten or beginning of first grade) and written expression. (J-3) The Student was not proficient in American Sign Language (ASL) and was at pre-school level. (testimony of Asst. Principal, Deaf and Hard of Hearing (DHH) Teacher)
4. The Student's communication skills are complicated by the Student's intellectual disability and hearing impairment, in addition to autism which appears to be the primary impact on the Student's educational performance. (testimony of School Psychologist, Clinical Psychologist, J-2) In addition to the Student's multiple disabilities, the Student's absences were an issue in

¹⁸ The Student's full-scale IQ is 52. According to the Diagnostic and Statistical Manual of Mental Disorders (DSM) the Student is on the cusp between mild and moderate intellectual disability. (J-2, testimony of Clinical Psychologist)

¹⁹ Although Petitioners have not challenged the Student's eligibility category of Hearing Impairment, the Student had been referred to during the hearing by Respondent witnesses as deaf, and the IEE notes the Student has historically demonstrated a bilateral profound hearing loss and qualifies for special education as a deaf student under the Nevada Administrative Code (NAC) 388.387. (J-2) It is noted that several school documents state the Student has severe sensorineural hearing loss bilaterally. (J-3 through J-8)

learning retention. (testimony of DHH Teacher)²⁰

5. During the 2021-2022 and 2022-2023 school years the Student was in three programs - the Deaf and Hard of Hearing program (DHH), an autism program, and a life skills program for students with intellectual disabilities, a.k.a “LIF.” All three programs were taught in self-contained classrooms.²¹ The Student’s main placement was in the DHH program for all academic core classes. The Student’s April 6, 2022 IEP provided the Student with a total of nine hundred (900) full in-person minutes in the DHH classroom in the areas of reading and written expression.²² (testimony of Asst. Principal, DHH Teacher, J-3). The remaining minutes in reading and written expression were provided in the DHH classroom using distance and hybrid learning.²³ (J-3)

6. During the 2020-2021 school year the Student did not have a 1:1 sign language aide interpreter (SLA) in 9th grade as the IEP did not include interpreting services. The Student had exposure to interpreters because the Student was in the same classes with other students who had interpreting as a related service in their IEPs. (testimony of Special Education Programs and Projects (SEPP) Director, P-3) In order to obtain clarification on how the Student utilizes the interpreters for other students in the Student’s classes, the April 6, 2022 IEP included interpreter

²⁰ The Student had several absences from certain periods during the 2022-2023 and 2023-2024 school years. Many were medically related and many were unverified. Attendance may not have been accurately reported. (R-3, testimony of Asst. Principal)

²¹ The Student spent 35% of the school day in general education (PE). (J-3, J-4)

²² The District provided the Student with an assistive technology device (tablet). (J-3)

²³ The LIF Program is focused on functional academics including basic skills for independent living. The LIF Program uses more basic words and pictures. (testimony of Assistant Principal, DHH Teacher) The autism program supports students on the spectrum and provides behavioral and social support. (testimony of Asst. Principal).

utilization reports from the interpreters the Student was exposed to; those reports showed the Student was not able to successfully utilize those interpreters. (P-3, J-3) Having an interpreter that was not a 1:1 SLA in the classroom would not help the Student to access the non-DHH classes as the Student has difficulty paying attention due to the Student's autism and self-stimulating behavior, and because the Student's language skills are not at the level where the Student could understand an ASL interpreter; to fully understand the class through an interpreter the Student would have to be more proficient in ASL. (testimony of DHH Teacher).

7. The 2022-2023 and 2023-2024 IEPs provided that the Student would have a 1:1 deaf SLA who accompanied the Student throughout the day. The SLA is a fluent signer modelling vocabulary and works closely with the Student to provide sign language interpretation at the Student's level to assist the Student with staying on task and completing school work, and in facilitating communication between the Student's peers and non-signing individuals. The SLA does not sign word for word what the teacher is signing to the class as the Student is not at the necessary comprehension level. (testimony of DHH Teacher, School Psychologist, P-12, J-4)

8. When the DHH Teacher is teaching the Student words the Teacher is also teaching the Student to sign in ASL for the words. When working directly with the Student the DHH Teacher will introduce a sign to the SLA so that they are using the same sign for the same word. The SLA will then go over the sign with the Student using methods such as PECS and gestures. The DHH teacher starts with five words; if the Student can explain, draw or sign the words back then another word is added. (testimony of DHH Teacher)

9. The SLA does not have a teaching license, has no instructional duties, does not assist in developing the student's language, and is not independently responsible for teaching the Student ASL. (testimony of Asst. Principal, Clinical Psychologist). A DHH teacher has the formal

educational training on how to work and instruct students with hearing loss using a variety of modalities. The DHH teacher has the experience and expertise on how to modify and adjust curriculum to ensure that the student with a hearing loss can access the curriculum. An SLA will not necessarily have that formal training. (testimony of School Psychologist)

10. The Student's April 6, 2022 IEP provided the following goals related to language:

(i) Reading Vocabulary: The Student will determine or clarify the meaning of nouns, verbs and adjectives based on primer level words achieving a criterion of 100 new words as measured by observation and documentation implemented by special education teaching staff.

(ii) Writing: By annual review date, in a classroom setting, when given a picture, the Student will correctly write one sentence (noun and verb) to describe the picture in 4/5 trials as measured by teacher observation and work samples as implemented by special education teachers and staff.

(iii) Language: By annual review date, in a classroom setting, the Student will be able to answer questions with "yes and no," "who" and "where" by any means possible achieving a criterion of 80% as measured by teacher observation as implemented by special educations teachers and staff supported by the SLP.

(iv) Reading Literature: By annual review date, in a classroom setting, the Student will be able to read and comprehend literature at the primer level achieving a criterion of 80% as measured by teacher observation as implemented by special education teachers and staff.

(J-3)

11. The May 20, 2022 Progress Report for the April 6, 2022 IEP indicated satisfactory progress in the areas of reading/vocabulary, writing, language, and reading literature while noting only that the Student had not had enough time to make progress on the goals since the IEP.²⁴ (J-3)

12. The October 7, 2022 Progress Report indicated that the Student had unsatisfactory progress in all of four of the goals. (J-3)

13. The December 16, 2022 Progress Report indicated that the Student made satisfactory

²⁴ The District introduced some work samples from the 2021-2022 school year. (R-9)

progress in reading literature in that the Student was able to answer 7 or 15 questions at the Student's instructional level; made satisfactory progress in reading vocabulary, in that the Student was able to identify 17 words the Student did not know from the Student's reading during the 2022 fall semester; made satisfactory progress in writing in that the Student had learned to spell 19 new words to help the Student create sentences (but still requires support), and; made satisfactory progress in language in that the Student was able to work on asking questions when prompting.

(J-3)

14. The March 10, 2023 Progress Report indicated satisfactory progress in the areas of reading/vocabulary, writing, language, and reading literature while only noting "NEW IEP in development awaiting an [Multidisciplinary Evaluation Team] MDT Report. Not enough progress to evaluate." (J-3)²⁵

15. The May 22, 2023 Progress Report (annual review) indicated that the Student made satisfactory progress in reading literature noting that the Student "was not able to sequence stories, however [the Student] was able to identify the title of a story. [The Student] is unable to explain the difference between a title and the author. A new IEP is being written for this year and in the

²⁵ As noted on the May 22, 2023 IEP and subsequent IEPs, the Student was given a Stanford Achievement Test (SAT) on January 18, 2023. Based upon the SAT scores and teacher observations/work samples through May 23, 2023, the Student's score for reading was significantly below average; the Student was able to identify, using a single sign or speech, 24/50 words on the kindergarten list and 30/100 words on the first-grade list. The Student was assessed using the Dolch words at a pre-primer and primer level. Dolch words have multi meanings using ASL signs. The Student was able to identify 31/40 words at the pre-primer level and 25/52 words at the primer level with only signing one meaning per word. The SAT score for sentence comprehension shows the Student was significantly below average and the Student made little progress from the prior year. Reading comprehension was significantly below average and the Student made limited progress from last year. The Student was slowly improving reading and requires intensive repetition as the Student struggles with remembering information. With regards to written expression, the SAT-10 results, teacher observations, and work samples showed that the Student made some progress from the prior year in that the Student could write most letters of the alphabet in uppercase, and when asked to write letters out of sequence in either upper or lower case the Student was able to do so with the exception of 4 letters. The Student was not able to complete writing the Student's address. The Student was able to choose correctly spelled letters slightly better than the prior year. Language information was derived from SLP data, progress reporting, and observation from April 6, 2022 to May 6, 2023. (J-4 through J-8).

process of being completed.” The Report indicated satisfactory progress in reading vocabulary, in that the Student “was able to learn 20-30 words this year in the areas of nouns, verbs and adjectives.” The Report indicated satisfactory progress in writing, noting the Student “has been able to learn around 20 spelling words this past year. [The Student] is working on capitalizations and punctuations but is not proficient and is not able to place the correct article before a noun. This goal was revised in the new IEP that is in progress.” The Report indicated satisfactory progress in language, noting the Student “is increasing his ability to request the bathroom. [The Student] is able to answer who and where questions when the person is in the same area. [The Student] is unable to say no if a problem is incorrect. [The Student] refers back to the answer of ‘yeah’.”

16. The MDT Report stated that the Student’s speech and language development appeared to be generally consistent with the cognitive abilities and adaptive skill of the Student. (J-1)

17. On May 22, 2023 a new IEP was developed by the IEP Team, including the Parent who disagreed with the IEP. The IEP was implemented with an anticipated duration of services until May 21, 2024. The May 22, 2023 IEP changed the Student’s main placement to the LIF Program. The IEP Team, except the Parent, did not feel that all of the Student’s needs, i.e. behavior, focus, academic, and functional skills, were being addressed in the DHH program. The IEP provided the following goals related to language:

(i) Fundamental Reading Goal: The Student will increase reading readiness skills at the Student’s instructional level by identifying environmental print, sequencing stories, and retelling stories that have been signed to the Student to 4/5 trials as measured by work samples and implemented by special education teachers and staff.

(ii) Functional Writing: The Student will increase writing skills at the Student’s instructional level by labeling work with name and date, writing full address, and using sentence stems and a word bank to compose sentences using correct capitalization and punctuation as measured by work samples and implemented by special education teachers

and staff.

(ii) Functional Communication: The Student will increase receptive and expressive language using sign, voices and/or assistive technology in 4 out of 5 opportunities as measured by special education teachers and staff and supported by the SLP.

(J-4, Testimony of DHH Teacher)

18. For functional communication one of the benchmark or short-term goals was to increase daily vocabulary usage by 30 words. (J-4). This was to be achieved by using a combination of ASL, voice, and assistive technology. However, the easiest way to teach the goal was through ASL. One measurement of the goal would be if the Student drew a picture of one of the 30 words or added words in assistive technology. (testimony of DHH Teacher).

19. The May 22, 2023 IEP provided that the Student would receive 225 minutes per week of reading in the DHH class (on the block schedule – broken into two to three times per week), 450 minutes per week of reading instruction in the content area and 175 minutes per week of written expression in the LIF class, and 100 minutes per week of communication in the school campus; the IEP did not state a specific program where communication skills would be taught. Accommodations included a 1:1 SLA throughout the school day, providing the Student with an opportunity to practice reading skills in an atmosphere away from the large group setting in a group of 1-3 students with the location of services being the school campus (50 minutes per week), an assistive technology voicing device for communication, and related services of a SLP for 90 minutes per month. (J-4, testimony of Asst. Principal). The Student had contact with the Student's deaf peers in the DHH classes and interacted with hearing impaired students in the autism and the LIF class. (R-4, testimony of SEIF – Special Education Instructional Facilitator).

20. The Student's functional communication goal was supported by the SLP who worked with

the Student. The logs indicate the services were sporadic mostly due to the Student's absences/unavailability; the reason for the absences was not noted on the SLP's logs. The logs indicate the Student received 930 minutes of direct SLP services (not including time logged for administering testing on April 14, 2023 and SLP attendance at the May 15, 2023 IEP meeting) from April 1, 2022 through May 10, 2024. (R-6)

21. The SLP also used a combination of ASL and voicing with the Student. If the Student did not understand the SLP would scaffold by using methods such as Signed Exact English (SEE), pictures, eye gaze, facial expressions, gestures and restating questions and gestures. In general, the Student made progress as the Student communicates the Student's preferences more clearly now than in the beginning. An example was that the SLP would initially need to remind the Student to bring the Student's water with him to the SLP service and eventually learned to bring the water without being told to do so. (testimony of SLP, (R-6))

22. The May 22, 2023 IEP did not state which classroom the Student would be in for each self-contained class but noted the location of services, i.e. self-contained, across school settings, school campus, general education. (J-4) The Parent was aware the May 22, 2023 IEP Team was looking to providing IEP services in different classrooms and that the Students' primary classroom could be changed from the academic DHH classroom to the LIF classroom and the matter was discussed at the May 22, 2023 IEP Team meeting. (R-4)

23. The IEP Team, including the Parent, conducted IEP revision meetings. Additional IEPs were written on September 8, 2023, October 5, 2023, December 6, 2023 and February 1, 2024 (referred to as "the additional IEPs). The Parent agreed with the December 6, 2023 IEP but

disagreed with the others.²⁶ The additional IEPs contained the same language goals for reading, writing and functional communication, provided the same 225 minutes per week of reading in with the DHH Teacher, and provided the same accommodations and related services as in the May 22, 2023 IEP - 1:1 SLA, assistive technology device throughout the day across school settings, and SLP for 90 minutes per month. (J-5 through J-8)

24. The method for reporting progress set forth in the May 22, 2023, September 8, 2023, October 5, 2023, December 6, 2023, and the February 1, 2024 IEPs was by providing quarterly specialized progress reports. No specialized progress reports were provided after May 22, 2023 up to the filing of the DPC. (J-4 through J-8)

25. The IEPs since May 22, 2023 included most of the same teacher observations and data pertaining to present levels of academic achievement and functional performance in language that had been reported in the May 22, 2023 IEP. In present levels of academic achievement and functional performance for language, the September 8, 2023 was identical to the May 22, 2023 IEP. In present levels of academic achievement and functional performance for language, the October 5, 2023 IEP was identical to the May 22, 2023 with the exception that it included a September 2023 teacher observation that the Student is struggling to keep up with the pace and rigor of the DHH class and has a very hard time remembering new vocabulary.²⁷ In present levels of academic achievement and functional performance for language, the December 6, 2023

²⁶ The December 6, 2023 IEP included a new support in that the teacher would decide the best methods for providing printed materials that may be enlarged to meet the Student's needs, beginning on December 6, 2023 and ending on January 31, 2024, across the general education and self-contained classroom. (J-7).

²⁷ The IEPs from October 5, 2023, December 6, 2023, and February 1, 2024 indicate additional teacher observations on September 6, 2023. However, those observations are a rendition of the SAT results reported in the May 2023 IEP. (J-4, J-6, J-7, J-8)

IEP was identical to the May 22, 2023 IEP with the exception that it included a December 2023 observation that stated in the Student's reading class the full class period is spent either reading text at the Student's academic level or working on learning new vocabulary in order to increase reading comprehension. In present levels of academic achievement and functional performance for language, the February 1, 2024 IEP was identical to the May 22, 2023 IEP with the exception of including a reference to the December 19, 2023 MDT report. There was nothing in the IEPs or progress reports which measured the Student's progress towards the Student's goals since May 22, 2023. In addition, there was minuscule new information on the Student's present levels. (J-5 through J-8)

26. The DHH program works on academics and is typically for students who are at or near grade level and provides extra independent direct instruction to students with the goal of graduating with a standard diploma. Students entering the DHH program are expected to have some ability of functional reading. (testimony of DHH Teacher)

27. The DHH program uses multimodal instruction for the Student which is a combination of pictures/flash cards (Picture Exchange Communication System "PECS"), gestures, assistive technology (a tablet with a voice communication system) voice, and signing.²⁸ While the DHH Teacher is teaching the Student words through multimodal approaches the teacher is also teaching the Student to sign for the words. The DHH Teacher's primary focus is to get the students to learn ASL.²⁹ (Testimony of Asst. Principal, Testimony of DHH Teacher)

²⁸ The voice communication system is to enable the Student to speak with people who do not know ASL. The Parent does not send the tablet to school with the Student. (Test. of DHH Teacher). There was no indication in the record that the District addressed the issue of the Student not bringing the table to school and the reasons why.

²⁹ The DHH Teacher does not *specifically* teach proficiency or fluency in ASL. ASL is not taught at the secondary level; there is no curriculum to teach ASL specifically as a language. (testimony of Asst. Principal, testimony of DHH Teacher)

28. On December 19, 2023 an Independent Educational Evaluation (IEE) was prepared for the Student; the Student was tested by the Clinical Psychologist on October 19, 2023. The IEE summarized the Student's early childhood history, medical history, educational history, audiological history, and previous testing. The Clinical Psychologist administered 11 subtests from the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V). The Student's overall cognition functioning at present seemed to be in the extremely low range which is due in part to repeated hospitalizations, and changes in the Student's language of instruction and access to fluent sign language models in academic settings. Abnormalities in communication are complicated by the Student's autism, deafness, intellectual disability and lack of consistent exposure to ASL which has contributed to language deprivation. (J-2)

29. The LIF Teacher is not part of the DHH community. (testimony of Asst. Principal). The current LIF Teacher is also the autism teacher and has been covering for the former LIF teacher since 2023. The LIF Teacher does not speak ASL, does not work with the Student on learning ASL signs, and is not sure of what life skills a deaf student needs to work on as the teacher is not in the DHH program. In the LIF class the teacher works with the Student on math, reading, writing, and functional living skills with the assistance of the SLA. (testimony of LIF Teacher).

30. The Student best communicates with a combination of sign and speech, known as SimCom (simultaneous communication), where the Student voices and signs words at the same time. The Student communicates mostly in single word signs and voicing. The Student understands common words better in ASL and, in class, when talking about classwork, ASL must be used for the Student to understand basic words. The Student's lack of proficiency in ASL makes it hard for the Student

to access the DHH class as the DHH Teacher cannot have a functional/basic conversation with the Student in ASL. Improving the Student's proficiency in ASL would make it easier to communicate with the Student. (J-3, testimony of DHH Teacher) At the Student's level, at a minimum the Student should be able to express needs, desires, feelings and have shared experiences. (testimony of Clinical Psychologist)

31. The Student needs a multimodal approach to instruction to include ASL, PECS, spoken English, scaffolding. The Student learns at a slow rate so concepts should be introduced one at a time and then building on each concept. The Student needs repetition to consistently practice skills. The Student needs global support. (testimony of School Psychologist, Clinical Psychologist, Former DHH Teacher for the District, J-1, J-2)

32. While the Student will not be a person who is going to function independently, the Student could function better. (testimony of Clinical Psychologist) While the Student may not make significant progress due to the Student's uniqueness and progress will be slower, the Student is capable of learning new signs in ASL to grow the Student's vocabulary and capable of improving ASL fluency and proficiency. (testimony of School Psychologist, Clinical Psychologist). If the Student had more sign vocabulary and sign skills the Student would be able to learn to understand directions, for example, and to sign using more than single words. (R-5, testimony of School Psychologist.) The Student needs to increase the ability to read environment print in order to prepare for transitioning to life after High School, (J-4 through J-8), and needs language skills and vocabulary geared towards understanding future living situations and daily functioning. The lack of consistent exposure to ASL has contributed to the Student's language deprivation. (Testimony of Clinical Psychologist).

33. It is important for the Student to have exposure to multiple DHH models such as an ASL

fluent teacher for instruction, a 1:1 SLA to support the instruction, and other deaf peers including those with other disabilities. (testimony of Former DHH Teacher) The Student would benefit from being in a small classroom. (testimony of Clinical Psychologist, testimony of Former DHH Teacher for the District)³⁰

34. The Student needs a teacher fluent in ASL across the continuum of the Student's self-contained classes throughout the day; the only way for the Student to understand what the language is supposed to look like is for the Student to have models of what the language is supposed to look like and who can recognize what the Student is trying to say as the Student is an awkward signer. Having educators for the Student that are consistent across the board is very important. If all educators were fluent in ASL the Student would start having more consistency and repetitions throughout the school day which will benefit the Student and improve the Student's communication. With access to fluent signers and appropriate curriculum verbal skills can go up to where the Student's visual spatial skills are. (testimony of Clinical Psychologist).

35. The IEPs from May 22, 2023 to the present provide for 100 minutes per week in communication (location-school campus). (J-4 through J-8)

36. The Student needs a teacher who is fluent in ASL who is also very adept at a LIF skills curriculum and who can work very closely with the Student or in small groups and who has the Student engaged in activities and speaking with the Student as the Student is doing things, and who can correct signing and behavior. The Student needs hands on experience from an ASL fluent teacher on how to deal with LIF skills and in connecting the language with the task instead of it

³⁰ The former teacher had not worked directly with the Student but had reviewed the Student's IEPs as the Student was expected to attend ESY, which the Former DHH Teacher taught, but did not attend. (testimony of Former DHH Teacher).

just being on paper. The Student needs concrete materials to connect the language with the task, e.g. constant signing and learning of each word as the task is being performed, e.g. making a sandwich and signing the word for cutting board, bread, knife. (testimony of Clinical Psychologist)

Variety of instruction is important and must connect to real life, e.g. words that will be part of the Student's world. The appropriate strategy to teach ASL students is for the student to have multiple models. An SLA provides a strong model for a student but there is an instructional approach to teaching ASL that an SLA would not have. A beneficial program practice would be for a DHH teacher to work directly with the LIF teacher to assure that language in the deaf modality was being met. (testimony of Former DHH Teacher).

37. At the Student's age and grade, given the short time that the Student will be in school maximum communication skills should be used that would best support the transition into community and adult life. (testimony of Former DHH Teacher).

38. There are ASL fluent teachers in the District that have expertise working with DHH students who have multiple disabilities. (testimony of Former DHH Teacher).

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Conclusions of Law of this IHO are as follows:

The Individuals with Disabilities Education Act ("IDEA") was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). The IDEA requires that FAPE be provided to children with disabilities residing in the state from ages 3 to 21. 20 U.S.C. § 1412(a)(1)(A). School districts work with parents to develop an individualized program (IEP) that should assess the student's current academic

performance, articulate measurable educational goals, and specify the nature of the special education and related services the district will provide. 20 U.S.C. § 1414(d)(1)(A)(i). An IEP is constructed only after careful consideration of the student’s present levels of achievement, disability, and potential for growth. *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 580 U.S. 386, 137 S.Ct. 988, 999 (2017); 20 USC §§ 1414(d)(1)(A)(i)(I)-(IV), (d) (3)(A)(i)-(iv).

School districts must comply procedurally and substantively with the IDEA. *E.G., Crofts v. Issaquah School Dist. No. 411*, 22 F.4th 1048, 1054 (9th Cir. 2022). The IDEA requires that a due process decision be based upon substantive grounds when determining whether a child has received a FAPE, unless a procedural violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to their child or causes a deprivation of educational benefits. 20 U.S.C. §1415(f)(3), *Rowley, supra*, 458 U.S. at 206-207.

Procedural violations are not harmless if they “substantially interfere with the parents’ opportunity to participate in the IEP formulation process, result in the loss of educational opportunity, or actually cause a deprivation of educational benefits...” *Timothy O v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1118 (9th Cir. 2016). Procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of the parents' opportunity to participate in the IEP process are insufficient to support a finding that a student has been denied a FAPE. *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1482 (9th Cir. 1992).

The substantive requirements of the IDEA are violated when a school district fails to offer an IEP that is “reasonably calculated to enable a child to make progress appropriate in light of the

child’s circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 580 U.S. 386, 403, 137 S.Ct. 988 (2017). “The ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials.” *Andrew F* at 999, citing *Rowley* at 207, 102 S.Ct. 3034.

A FAPE “does not mean the absolutely best or ‘potential-maximizing’ education for the individual child.” *Gregory K. v. Longview School District*, 811 F.2d 1307 (9th Cir. 1987). However, the IEP must be “appropriately ambitious” in light of the student’s circumstances and an IEP that offers “merely more than *de minimis*” progress violates the IDEA.³¹ *Andrew F.*, 580 U.S. at 402-403, 137 S.Ct. 988. The essential function of the IEP is to set out a plan for pursuing academic and functional advancement. *Andrew F.* at 999, citing §§ 1414(d)(1)(A)(i)(I)-(IV). An IEP must be designed to convey a “meaningful benefit” to the student. *D.O. ex rel Walker v. Escondido Union Sch. Dist.*, 39 F.4th 394, 417 (9th Cir. 2023); *Adams v. State of Oregon*, 195 F.3d 1141 (9th Cir. 1999). For students whose developmental disabilities preclude them from achieving at the same academic level as their non-disabled peers, the appropriate benchmark for measuring the academic benefits they receive is progress toward meeting the academic goals established in the Student’s IEP. *See L.H. v. Hamilton County Department of Education*, 900 F.3d 779, 793 (6th Cir. 2018); *County of San Diego v. California Special Education Hearing office*, 93 F.3d 1458, 1462 (9th Cir. 1996).

The IDEA “accords educators discretion to select from various methods for meeting the individualized needs of a student” so long as those methods are “reasonably calculated to provide him with educational benefit.” *R.P. ex rel C.P v. Prescott Unified School Dist.*, 631 F.3d 1117,

³¹ *De minimis* is a Latin term which means too trivial or minor to consider.

1122 (9th Cir. 2011). With a child who is deaf or hard of hearing, the IEP team must specifically “consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode”. 20 U.S.C. § 1414(d)(3)(B)(iv).³²

- A. Were the Student’s IEPs from May 9, 2022 to May 9, 2024 (April 6, 2022, May 22, 2023, September 8, 2023, October 5, 2023, December 6, 2023, February 1, 2024) appropriately developed, tailored to the Student’s unique individual needs and reasonably calculated to enable the Student to receive educational benefits and make appropriate progress in light of the student’s circumstances, specifically with regard to the Student’s communication needs in the areas of sign language, reading and writing, through a multimodal approach or other method? If not, was there a denial of FAPE?

With regards to the Student’s IEPs from May 9, 2022 to the end of the 2022-2023 school year, the Hearing Officer finds that the Student’s April 6, 2022 IEP was reasonably calculated to

³² NRS 388.437 Pupils with hearing or visual impairment: Requirements for consideration in development of individualized education program for pupils with hearing impairment; use of criteria to evaluate language and literacy skills of certain pupils with hearing or visual impairment; additional considerations for best feasible instruction.

1. When developing an individualized education program for a pupil with a hearing impairment in accordance with [NRS 388.419](#), the pupil’s individualized education program team shall consider, without limitation:

(a) The related services and program options that provide the pupil with an appropriate and equal opportunity for communication access;

(b) The pupil’s primary communication mode;

(c) The availability to the pupil of a sufficient number of age, cognitive, academic and language peers of similar abilities;

(d) The availability to the pupil of adult models who are deaf or hearing impaired and who use the pupil’s primary communication mode;

(e) The availability of special education teachers, interpreters and other special education personnel who are proficient in the pupil’s primary communication mode;

(f) The provision of academic instruction, school services and direct access to all components of the educational process, including, without limitation, advanced placement courses, career and technical education courses, recess, lunch, extracurricular activities and athletic activities;

(g) The preferences of the parent or guardian of the pupil concerning the best feasible services, placement and content of the pupil’s individualized education program; and

(h) The appropriate assistive technology necessary to provide the pupil with an appropriate and equal opportunity for communication access.

enable the Student to make progress appropriate in light of the child's circumstances. The Student's ASL language instruction was primarily from a DHH teacher fluent in ASL who worked with the Student on increasing the Student's ASL vocabulary through a modality of instruction and the Student was able to learn new words. While the Student's progress was only satisfactory, the Student made progress towards the academic language goals in the IEP.

With regards to the Student's IEPs for the 2023-2024 school year, the Hearing Officer finds that the Student's IEPs pertaining to the Student's language goals and functional communication were not appropriately developed, tailored to the Student's unique individual needs, and reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances. The 2023-2024 IEPs placed the Student in the LIF class for the majority of the Student's education. The LIF class (which included the autism class) was not taught by an ASL fluent teacher. The IEP did not provide accommodations to the Student while in the LIF class to enable the Student to progress on the Student's language goals and functional communication including increasing the Student's ASL vocabulary by providing an ASL fluent teacher in the LIF class who could work with the Student in learning new ASL words.³³

The evidence is consistent in that Student understands common words better in ASL. When talking about classwork, ASL must be used for the Student to understand basic words. The Student's lack of proficiency in ASL makes it hard for the Student to access the DHH class as the teacher cannot have a functional/basic conversation with the Student in ASL. Improving the Student's proficiency in ASL would make it easier to communicate with the Student. The evidence shows that the appropriate way to teach the Student new words is with a multimodal approach and

³³ For example, when the Student was asked the Student's last name, the Student signed the word "tree." (testimony of Student).

exposure to new ASL words. While the District uses a multimodal approach with the Student, the Student's exposure to learning new ASL words through the DHH Teacher was significantly limited by the 2023-2024 IEPs and there is no evidence the Student made progress in language and functional communication. Pursuant to 34 CFR § 300.320(3), each IEP must describe how the district will measure the student's progress towards their annual goals, and when the district will provide periodic reports on the student's progress towards their annual goals. There is no reporting on the Student's progress towards the Student's goals for the 2023-2024 school year, and no showing of progress made towards the Student's language and functional communication goals. This is true even though the Student had a 1:1 SLA for the 2022-2023 and 2023-2024 school years. Given no meaningful data from which one can derive that the Student was making progress on the language goals and functional communication further supports the conclusion that the Student was not making any progress from September 2023 through May 9, 2024. The lack of any progress on the Student's language goals and functional communication is additionally supported by the IEE.

The Student has the potential to acquire additional ASL words and improve the Student's communication in ASL which would enable the Student to meaningfully access the Student's education and the curriculum, including the LIF curriculum, which is critical to the Student's learning of functional life skills for transitioning from High School. Although the DHH Teacher does not "teach" ASL proficiency and fluency using a curriculum, for all intents and purposes the

DHH Teacher was the only teacher providing instruction to the Student in acquiring new ASL words; that is not the role of the 1:1 SLA. By significantly limiting the Student's minutes with the DHH Teacher and not providing the Student with a DHH fluent ASL teacher in the Students LIF class, the May 22, 2023, September 8, 2023, October 5, 2023, December 6, 2023, and February 1, 2024 IEPs were not reasonably calculated to enable the Student to make meaningful progress

on the Student's language and functional communication goals. Therefore, the Student was denied a FAPE.

- B. In the development of the Student's IEPs from May 9, 2022 to May 9, 2024 was the Parent significantly impeded from meaningfully participating and providing input to the IEP team based upon the Parent's claim that the District provided inaccurate information in the IEPs? If so, was there a denial of FAPE?

While information in the IEPs was duplicative, there was no evidence that the information in the IEPs was inaccurate. In addition, while the Parent argued she should have been told that the Student's primary classroom would be changed from the self-contained DHH class to the self-contained LIF class, there is no requirement that the May 22, 2023 IEP indicate which self-contained classroom the Student would be in for instruction. The IEP appropriately noted the location of services, i.e. self-contained, across school settings, school campus, general education. In addition, the Parent was aware the May 22, 2023 IEP Team was looking at providing IEP services in different classrooms and that the Students' primary classroom could be changed from the academic DHH classroom to the LIF classroom. The matter was also discussed at the May 22, 2023 IEP Team. Therefore, there was no procedural violation of the IDEA.

REMEDIES

In any proceeding brought under the IDEA the Hearing Officer has the authority to order any relief necessary to ensure the Student receives a FAPE. *Letter to Armstrong*, 28 IDELR 3030 (OSEP) 1997.

In *Park v. Anaheim Union School District*, 464 F.3d 1025 (9th Cir. 2006) the court noted that compensatory education services can be awarded as appropriate equitable relief, citing 20 U.S.C. 1415 (i)(2)(B)(iii) ("shall grant such relief as the court determines appropriate"); *Parents of Student W. v Puyallup Sch. Dist.*, 31 F.3d 1489, 1496-97 (9th Cir. 1994) (appropriate relief is

relief designed to ensure the student is appropriately educated within the meaning of the IDEA). The court has the discretion on crafting the relief and there is no obligation to provide a day-for-day compensation for time missed. *Id.* at 1446. The basis of compensatory services remedies is the past denial of educational and related services that were not originally provided. *Letter to Riffel*, 34 IDELR 292 (OSEP 2000).

Based upon the credible evidence presented and the applicable law, the Hearing Officer finds that the following remedies are appropriate to address the District's denial of FAPE to the Student, and Orders that:

1. In the April 6, 2022 IEP the Student received a total of nine hundred (900) full in-person minutes per week in the DHH classroom in language (reading and written expression). In the 2023-2024 IEPs the Student received 225 minutes of reading per week in the DHH classroom; this amounts to a difference of 675 minutes per week (135 minutes per day) during the 2023-2024 school year of language instruction which was not provided by a DHH teacher fluent in ASL. There were 175 school days in the 2023-2024 school year which amounts to 23,625 minutes (394 hours).

Because the Student was provided with a 1:1 SLA during the 2023-2024 school year who was an appropriate support for the Student in facilitating communication the District shall provide compensatory education in the form of one-half of the minutes not received by the DHH teacher during the 2023-2024 school year, which amounts to 11,812 minutes, roughly 197 hours of 1:1 instruction, in the area of language and functional communication pursuant to the goals in the February 1, 2024 IEP, which shall be provided by a DHH teacher fluent in ASL. The compensatory education shall commence within ten (10) school days from the date of this decision, outside of the time the Student spends in the Student's self-contained classrooms under the current

IEP. The 1:1 SLA shall be present during the instruction if the new DHH fluent ASL teacher deems it necessary. The compensatory education shall consistently be provided to the Student throughout the remainder of the 2024-2025 school year.

2. Within fifteen (15) school days from the date of this decision, the Student's current IEP shall be revised and provide that the Student receive an additional accommodation which shall be a DHH teacher who is fluent in ASL, has experience in working with DHH students and students with multiple disabilities, and who is familiar with the LIF curriculum to work closely with the Student in the LIF class on the Student's academic and functional communication goals for the remainder of the 2024-2025 school year. This remedy shall not be in place of the time the Student spends on academics with the DHH Teacher in the current IEP, nor shall the Student be returned to the DHH class for the provision of this accommodation.

3. Within five (5) school days from the date of this decision the District shall provide the Student with a second assistive technology tablet for the Student to use during the school day and which shall be kept at the school.

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 thirty (30) days after receiving the decision. A party to the hearing may file a cross appeal by filing a notice of cross appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within ten (10) days after receiving notice of the initial appeal. At the parties' request, this decision is being

delivered to the parties by electronic mail and U.S. Postal Service. Receipt of this Decision and Order will be determined by the date of actual delivery.

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