

# STATE OF NEVADA DEPARTMENT OF EDUCATION

## DUE PROCESS REVIEW

IN THE MATTER OF:

STUDENT, by and through, PARENT,<sup>1</sup>

Appellant,

Lyn Beekman, State Review Officer

v

Representatives:

SCHOOL DISTRICT,

Marina Dalia-Hunt, Esq., for Appellant

[ ], Esq., for Appellee

Appellee.

## STATE REVIEW OFFICER'S DECISION

### PROCEDURAL BACKGROUND<sup>2</sup>

Student is 17 years old and is in the 12<sup>th</sup> grade at High School in the School District.<sup>3</sup>

The Parent filed a RDP on May 10, 2024, under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et. seq., and its implementing regulations, 34 C.F.R. §300 et seq., Chapter 388 of the Nevada Revised Statutes (NRS), and Chapter 388 of the Nevada Administrative Code (NAC).<sup>4</sup> On May 17, 2024, the Nevada Department of Education (NDE) appointed Victoria T. Oldenburg to hear this matter.<sup>5</sup> The hearing was held on September 4, 5,

<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision.

<sup>2</sup>The record includes a transcript of the hearing held on September 4, 5, and 18, 2024, references to which will be "Tr., at p. \_." In addition, the record contains three types of exhibits from the hearing below. First, those exhibits of the Hearing Officer which will be referred to by as "IHO\_." Second, those exhibits of the Petitioner/Parent which will be referred to as "P\_." Third, those exhibits of the Respondent/School District which will be referred to as "R\_." And fourth, the exhibits of this State Review Officer (SRO), set forth in the State Review Officer Exhibit List, which are hereby admitted and shall be referred to as "SRO\_."

<sup>3</sup> J-3

<sup>4</sup> HO -1

<sup>5</sup> HO-1

and 18, 2024. The parties made closing arguments on the record.<sup>6</sup> On October 5, 2024, the hearing officer rendered her decision.<sup>7</sup>

The Parent/Appellant filed a Notice of Appeal from Decision of Hearing Officer on November 5, 2024, pursuant to the provisions of NAC 388.315.<sup>8</sup> On November 5, 2024, the NDE appointed the undersigned as the State Review Officer (SRO) to hear this appeal.<sup>9</sup> On November 14, 2024, a conference call was held with counsel.<sup>10</sup> During the call this SRO addressed whether either party: a) had any objections to my serving as the SRO (none did); b) contended additional evidence was necessary as part of this review within the meaning of 34 C.F.R. §300.514(b)(2)(iii) (Parent’s counsel indicated she did)<sup>11</sup>; c) wanted to file any additional written argument or brief (the District’s counsel responded it did)<sup>12</sup>; and d) had any other questions or requests regarding the review process (neither party responded they did). This SRO inquired as to what attempts, if any, had been made to resolve the matter and a discussion ensued, ending with the parties agreeing to allow this SRO try to assist them to settle the matter subject to certain important specific conditions and limitations. The deadline for the decision on appeal to be rendered was confirmed as being on or before December 5, 2024.<sup>13</sup>

While an attempt to resolve the matter continued and December 5, 2024, approached, pursuant to one of the conditions agreed upon at the prior conference call with counsel, the parties requested an extension of the decision deadline to January 4, 2025, to, if necessary, allow

<sup>6</sup> Tr., pp. 356-371

<sup>7</sup> SRO-1

<sup>8</sup> SRO-2

<sup>9</sup> SRO-3

<sup>10</sup> SRO-6

<sup>11</sup> Parent in her Notice of Appeal at p. 21 requested the opportunity to present “supplemental evidence.” The request was addressed by the parties agreeing to the admission of certain facts and exhibits. SRO-16, SRO-17 and SRO-20.

<sup>12</sup> After the date was set for CCSD’s counsel to file its brief, Parent’s counsel requested to file a reply brief. The request was denied on several grounds. SRO-14, SRO-15, SRO-18 and SRO-19.

<sup>13</sup> SRO-7

time for the District to file a response and this SRO to review the record and render a decision. The request was granted.<sup>14</sup>

On December 9, 2024, this SRO declared the parties were at impasse in trying to settle this appeal, set December 20, 2024, as the deadline for the District's response to be filed and proposed a stipulation to address Parent's request to supplement the record.<sup>15</sup> The parties agreed to supplement the record as proposed.<sup>16</sup> The District submitted its response on December 20, 2024.<sup>17</sup>

### **STANDARD OF REVIEW**

With respect to the standard of review, a state review officer is required to make an independent decision, reviewing the entire record of the hearing below. (20 U.S.C. § 1415 (g); NAC 388.315 (f).) This SRO has done so here, having reviewed the decision of the hearing officer, the three volumes of the transcript, and all exhibits.

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

<sup>14</sup> SRO-8, SRO-9, SRO-10 and SRO-11.

<sup>15</sup> SRO-16.

<sup>16</sup> SRO-16, SRO-17 and SRO-20.

<sup>17</sup> SRO-21.

record read in its entirety would compel a contrary conclusion. Accordingly, this is the standard of review that this SRO uses in rendering this decision.<sup>18</sup>

### **PROCEDURE**

Pursuant to NAC 388.315(b), the review officer must ensure that the procedures of the hearing officer below were consistent with the requirements of due process. Parent in her Notice of Appeal did not challenge any of the hearing officer's procedures nor did the District in its response.

After reviewing the entire record in this matter this SRO finds the hearing officer's actions were consistent with due process requirements.

### **ISSUE**

The issues presented in this review are:

1. 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?
2. 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 AND CONCLUSIONS OF LAW**

<sup>18</sup> See also *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 103 LRP 33278 (9<sup>th</sup> Cir. 2001) (impliedly approving the Third Circuit's approach in *Carlisle*).

To make the “independent decision” as required under IDEA and the NAC, this SRO has reviewed the entire record in this matter even though only portions of the record are noted in this decision, as well as in the decision of the HO. After considering all the evidence in the record, the closing arguments at the hearing, the Parent’s Notice of Petitioner’s Appeal, and the District’s Appellate Brief, the Findings of Fact and Conclusions of Law of the HO below are adopted as this SRO’s own “independent decision.”

This SRO gives deference to the credibility judgments of the hearing officer. Not only is there no non-testimonial, intrinsic evidence in the record that would justify a contrary conclusion, but the record read in its entirety does not compel a contrary conclusion. This SRO sees no need to duplicate the hearing officer’s commendable efforts. The decision of the hearing officer is well stated, with Findings of Fact being clearly supported by a preponderance of the evidence on the record, and the Conclusions of Law being legally well based and correct. For these reasons the decision below is affirmed.

However, this SRO shall supplement those Findings of Fact and Conclusions of Law and provide clarifying amendments to certain of the relief granted, in part in response to concerns raised by Parent in her Notice of Appeal, and providing more specific citations to the transcript as follows:

1. Parent asserts in her Notice of Appeal that the IHO erred in not finding Student had been denied a free appropriate public education (FAPE) during the 2022-2023 school year “due to an unsupported finding that he was primarily in a DHH class instead of a LIF class.”<sup>19</sup> The supplemental evidence admitted into to the record on appeal

<sup>19</sup> SRO-2 at p. 3.

confirms Student was primarily in a DHH class during the 2022-2023 school year, specifically 5 out of 7 periods.<sup>20</sup>

2. Parent raises a concern that the wording used by the IHO in paragraph 2 of her order, i.e. "... a DHH teacher who is fluent in ASL, has experience in working with DHH students and students with multiple disabilities, and 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," might be interpreted to allow the District to remove Student from LIF classes and place him in Autism classes and avoid providing him access to a DHH teacher.<sup>21</sup> While the IHO's order might have been more clearly worded in this regard, her finding of fact #34 makes her intent clear and unequivocal:

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).<sup>22</sup>

Since it is clear the hearing officer found "Student needs a teacher fluent in ASL across the continuum of the Student's self-contained classes throughout the day," paragraph 2 of the IHO's order is amended to read:

<sup>20</sup> SRO-16.

<sup>21</sup> SRO-2 at p. 5.

<sup>22</sup> SRO-1 at p. 19.

The Student's current IEP is hereby revised<sup>23</sup> to provide that 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, to work closely with Student in all his self-contained classes on the Student's goals for each class for the remainder of the 2024-2025 school year. In addition to the qualifications for the DHH teacher set forth immediately above, the DHH teacher in Student's LIF class must be familiar with the LIF curriculum. 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.

Whether or not this provision of the hearing officer's order has already been implemented, the provision as here revised shall be implemented within fifteen (15) school days from the date of this SRO's decision.<sup>24</sup>

3. It appears at the time the hearing officer wrote her decision she did not have a written transcript for when citing to the testimony in her Findings of Fact she refers generally to the testimony of a particular witness. In reviewing the transcript where the hearing officer generally cited a witness's testimony in support a fact finding this SRO noted the specific pages which support each finding.<sup>25</sup>

## **DECISION AND ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is the independent decision of this SRO that the hearing officer's decision is AFFIRMED.

<sup>23</sup> By here ordering this revision of Student's IEP, an IEP meeting need not be convened to do so. Rather, the ordered provision's language must merely be appended to all copies of Student's current IEP.

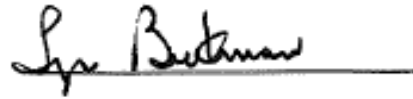
<sup>24</sup> Also, for the sake of clarity, if a second assistive technology tablet has not already been provided Student pursuant to paragraph 3 of the hearing officer's order, it must be provided within five (5) school days from the date of this SRO's decision.

<sup>25</sup> The Findings of Fact section of the hearing officer's decision citing what this SRO finds are the relevant page(s) of the transcript supporting each finding is attached as Appendix B to this decision.

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It is so ordered with the amendment of paragraphs 2 and 3 of the IHO's orders as set forth above.

Dated: January 2, 2025.

A handwritten signature in black ink, appearing to read "Lyn Beekman", is written over a horizontal line.

Lyn Beekman, State Review Officer

### **NOTICE OF APPEAL RIGHTS**

This decision of the State Review Officer is final unless a party appeals the decision. A party may appeal from the decision of the State Review Officer by initiating a civil action in a court of competent jurisdiction within 90 days after receipt of this decision. NAC §388.315.



## APPENDIX B

**Note: The citations to specific pages of the transcript added by this State Review Officer to the Findings of Fact of the hearing officer below are in italics.**

1. The Student was born on May 11, 2007. (J-3.) At the time the DPC was filed the Student was an 11<sup>th</sup> 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,<sup>1</sup> Autism Spectrum Disorder (ASD) secondary, and Hearing Impairment, tertiary.<sup>2</sup> (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 *at Tr.*, pp. 52-53, 55; *Testimony of Deaf and Hard of Hearing (DHH) Teacher at Tr.*, pp. 108, 151.)

<sup>1</sup> 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 *at Tr.*, pp. 312-318.)

<sup>2</sup> 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.)

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 *at Tr.*, pp. 218-219; Testimony of Clinical Psychologist *at Tr.*, pp. 309-311; J-2.) In addition to the Student's multiple disabilities, the Student's absences were an issue in learning retention. (Testimony of DHH Teacher *at Tr.*, pp. 145-147.)<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> (Testimony of Asst. Principal *at Tr.*, p. 42; Testimony of DHH Teacher *at Tr.*, pp. 88,97; J-3.) The remaining minutes in reading and written expression were provided in the DHH classroom using distance and hybrid learning.<sup>6</sup> (J-3.)

<sup>3</sup> 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 *at Tr.*, pp. 38-42.)

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

<sup>5</sup> The District provided the Student with an assistive technology device (tablet). (J-3.)

<sup>6</sup> 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, *at Tr.*, pp. 33-34; Testimony of DHH Teacher *at Tr.*, pp. 88-90.) The autism program supports students on the spectrum and provides behavioral and social support. (Testimony of Asst. Principal *at Tr.*, pp. 32-33.)

6. During the 2020-2021 school year the Student did not have a 1:1 sign language aide interpreter (SLA) in 9<sup>th</sup> 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 *at Tr.*, pp. 277, 281; 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 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 *at Tr.*, pp. 95-96.)

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 *at Tr.*, pp. 95-96; Testimony of School Psychologist *at Tr.*, pp. 228-229; 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 *at Tr.*, pp. 70-71, 80.)

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 *at Tr.*, p. 51; Testimony of Clinical Psychologist *at Tr.*, p. 334.) 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 *at Tr.*, pp. 229-230.)

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 education 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.<sup>7</sup> (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 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.)<sup>8</sup>

<sup>7</sup> The District introduced some work samples from the 2021-2022 school year. (R-9.)

<sup>8</sup> 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

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 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

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.)

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 *at Tr.*, pp. 153-154.)

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 *at Tr.*, pp. 70-71.)

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 *at Tr.*, pp. 48,56.) 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 *at Tr.*, p. 492.)

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 *at Tr.*, pp. 195-198; 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.<sup>9</sup> 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

<sup>9</sup> 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.)

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.<sup>10</sup> In present levels of academic achievement and functional performance for language, the December 6, 2023 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 *at Tr.*, p. 88.)

27. The DHH program uses multimodal instruction for the Student which is a combination of

<sup>10</sup> 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.)

pictures/flash cards (Picture Exchange Communication System “PECS”), gestures, assistive technology (a tablet with a voice communication system) voice, and signing.<sup>11</sup> 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.<sup>12</sup> (Testimony of Asst. Principal *at Tr.*, p. 51; Testimony of DHH Teacher *at Tr.*, pp. 70-71, 94-95.)

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 *at Tr.*,

<sup>11</sup> 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. (Testimony of DHH Teacher *at Tr.*, p. 71.) The 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.

<sup>12</sup> 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 *at Tr.*, p. 51; Testimony of DHH Teacher *at Tr.*, pp. 102-103, 105-106.)

*pp. 57-58.*) 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 *at Tr.*, *pp. 517-518, 522.*)

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 Tr.*, *pp. 107-109, 131-134, 138-139.*) 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 *at Tr.*, *pp. 322-323.*)

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 *at Tr.*, *pp. 221-226;* Testimony of Clinical Psychologist *at Tr.*, *pp. 356-358, 372-373;* Testimony of former DHH Teacher for the District *at Tr.*, *pp. 425-431;* 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 *at Tr.*, p. 312.) 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 *at Tr.*, p. 240; Testimony of Clinical Psychologist *at Tr.*, pp. 324-326.) 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 *at Tr.*, pp. 241-243.) 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 *at Tr.*, pp. 309-311.)

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 *at Tr.*, pp. 434-440.) The Student would benefit from being in a small classroom. (Testimony of Clinical Psychologist *at Tr.*, p. 360; Testimony of Former DHH Teacher for the District *at Tr.*, pp. 447-448.)<sup>13</sup>

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.

<sup>13</sup> 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 *at Tr.*, pp. 431-433.)

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 *at Tr.*, pp. 310-311, 328, 331, 340.)

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 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 *at Tr.*, pp. 328-331.) 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 *at Tr.*, pp.425-431,434-437.)

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 *at Tr.*, pp. 443-445.)

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 *at Tr.*, p. 449.)