

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

In the Matter of

STUDENT<sup>1</sup>,

**FINDINGS OF FACT AND  
DECISION**

Petitioner,

v.

SCHOOL DISTRICT

Respondent

**I.**

**INTRODUCTION AND PROCEDURAL HISTORY**

This due process complaint was filed on May 6, 2024 by Petitioner’s counsel.<sup>2</sup> This Hearing Officer was appointed on May 9, 2024.<sup>3</sup> Respondent’s Notice and Response was filed on May 16, 2024.<sup>4</sup> A *Notice of Status Conference, Status Conference Agenda, Preliminary Order, Hearing Process Guidelines & Rights of Parties* was issued on May 20, 2024.<sup>5</sup> A status conference was held on May 29, 2024. The *Status Conference Report and Order* and *Notice of Prehearing Conference* were issued on May 29, 2024.<sup>6</sup>

The prehearing conference was held on June 13, 2024. Counsel for Petitioner made an oral motion to continue the decision date from July 20, 2024 to August 16, 2024 to allow the parties time to brief the issues raised by the parties during the prehearing conference. To allow adequate time for briefing and the rendering of a decision before holding a three-day hearing and allotting enough time to issue a decision, this Hearing Officer found good cause to grant Petitioner’s motion, and on June 27, 2024, this Hearing Officer issued the *Prehearing Report and Order* and granted the Motion to Continue the Decision Deadline from July 20, 2024 to August 16, 2024. The hearing

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

<sup>2</sup> HO-1

<sup>3</sup> HO-2

<sup>4</sup> HO-3

<sup>5</sup> HO-4

<sup>6</sup> HO-5

dates were scheduled for July 24, 2024 through July 26, 2024.<sup>7</sup> During the prehearing conference preliminary discussions related to Parent participating throughout the hearing were raised. Counsel for Petitioner stated that Student had executed a *Limited Power of Attorney for Purposes of Education Rights* and provided the same to this Hearing Officer and the District during the prehearing conference. After reviewing the same, which was signed and dated March 22, 2024, District withdrew their objection related to the Student's power of attorney.<sup>8</sup>

A second prehearing conference was held on July 8, 2024 and the *Second Prehearing Report and Order* was issued the same day.<sup>9</sup> The parties exchanged their five-business day disclosures including their lists of proposed witnesses and exhibits on July 17, 2024.<sup>10</sup>

On July 24, 2024 counsel for the parties engaged in additional settlement negotiations prior to the matter being placed on the record. Negotiations were unsuccessful and Petitioner's counsel made an oral motion to continue the decision date so that Petitioner could retain new counsel, stating that the attorney was withdrawing from representation. As a result, this Hearing Officer vacated the hearing dates. On July 24, 2024 Petitioners' Counsel filed a *Notice of Withdrawal and Notice of Attorney Lien*.<sup>11</sup>

On July 29, 2024, this Hearing Officer emailed both parties regarding the oral motion to continue the decision date and asked each party to provide the amount of time that they needed for the continued decision date. A response was requested no later than July 31, 2024.<sup>12</sup> On July 30, 2024 Parent requested to continue the decision date for a period of 60 days.<sup>13</sup> This IHO asked for District's input. No response was received from the District by the requested date of July 31, 2024, therefore this Hearing Officer construed the lack of response as an agreement to Parent's proposed continuance of 60 days. On August 1, 2024, this Hearing Officer found good cause and issued an *Order Granting Motion for Continuance of Decision Date* from August 16, 2024 to October 15, 2024 to allow Petitioner enough time to retain new counsel and to reschedule the hearing dates in this matter.<sup>14</sup> A Second Status Conference was scheduled for August 29, 2024.

<sup>7</sup> HO-11

<sup>8</sup> HO-6

<sup>9</sup> HO-13

<sup>10</sup> HO-15 to HO-18

<sup>11</sup> HO-20

<sup>12</sup> HO-21

<sup>13</sup> HO-21

<sup>14</sup> HO-22

As of August 29, 2024, Petitioner had not retained new counsel and during the second status conference requested another 60 days to retain counsel. Parent made an oral motion to continue the decision date to February 7, 2025 so that counsel, once retained, could get caught up on the case and participate in the prehearing conference and the hearing dates. District had no objection to Parent's motion. This Hearing Officer found good cause to grant Parent's request for an additional continuance to allow for Petitioner to retain counsel, for counsel to become familiar with the case, to hold the hearing and issue a decision thereafter. The decision date was continued from October 15, 2024 to February 7, 2025. The hearing was scheduled for January 10, 2025 and January 13, 2025. A *Second Status Conference Report and Order* and *Notice of Third Status Conference* was issued on August 29, 2024 memorializing the same.

A third status conference was held on November 12, 2024. At that time, Parent advised that they had not yet retained counsel and were having trouble retaining new counsel due to the attorney's lien that was filed in the matter. A *Third Status Conference Report and Order* and *Notice of Third Prehearing Conference* were issued on November 12, 2024.<sup>15</sup> The third prehearing conference was scheduled for December 2, 2024. During the prehearing conference Parent advised that they were still looking for counsel to represent Petitioner at the hearing and/or for the mediation process. Due to the upcoming holidays, the difficulty finding an attorney that would accept the case due to the attorney's lien filed on the case, and the Parent's ongoing attempts to retain counsel, Parent requested to continue the decision date to April 25, 2025. This Hearing Officer found good cause to grant the continuance based on the following: this matter was originally scheduled to be heard on July 24, July 25 and July 26, 2024. During the first day of the hearing, counsel engaged in additional settlement discussions, which were not successful, and Petitioner's counsel withdrew immediately prior to the commencement of the hearing. Parent attempted to find replacement counsel since that time, to no avail. Parent was not comfortable representing Student at the hearing without counsel. Therefore, this Hearing Officer found good cause to grant the motion to continue the decision date from February 7, 2025 to April 25, 2025. The same was memorialized in the *Third Prehearing Report and Order* and *Order Granting Motion to Continue the Decision Date* issued on December 2, 2024.<sup>16</sup> The hearing was scheduled for April 3, 2025 and April 4, 2025.

<sup>15</sup> HO-24

<sup>16</sup> HO-25

The matter was scheduled for a status conference on February 3, 2025. Parent incorrectly calendared the same and advised that Fridays worked better, so this Hearing Officer issued a *Notice of Fourth Prehearing Conference* on February 3, 2025 scheduling the same for February 14, 2025.<sup>17</sup> During the fourth prehearing conference call a fifth prehearing conference was scheduled for March 20, 2025 and this Hearing Officer issued a *Notice of Fifth Prehearing Conference* on February 14, 2025.

On March 20, 2025 a *Fifth Prehearing Conference Report and Order*, an *Order Vacating Hearing Dates* and *Notice Setting Sixth Prehearing Conference* were issued.<sup>18</sup> Mediation was scheduled for March 25, 2025 and Parent was still attempting to find counsel. Due to the proximity of the mediation date to the dates of the hearing and because Petitioner had not yet retained counsel, Parent requested to vacate the hearing dates and hold an additional prehearing conference to discuss the status of the case after mediation. The District had no objection to the request. A sixth prehearing conference was scheduled for April 4, 2025. On March 25, 2025 District notified Parent and this Hearing Officer of a scheduling conflict on April 4, 2025 at the time set for the prehearing conference and asked to reschedule the same for the afternoon of the same date. That same day, District informed this Hearing Officer that they spoke with Parent and Petitioner's Education Advocate and that they agreed to reschedule the time. A *Re-Notice of Sixth Prehearing Conference* was issued on March 27, 2025.<sup>19</sup>

At the sixth prehearing conference, the parties made a joint motion to continue the decision date from April 25, 2025 to September 12, 2025. This Hearing Officer found good cause to grant the joint motion for the following reasons: (1) even if mediation was successful the parties would not be able to draft and execute a settlement agreement by the decision date of April 25, 2025; (2) Petitioner was still looking for counsel, especially if this matter went to hearing; (3) if mediation was not successful, Respondent did not have two days available for a hearing in this matter prior to the end of the school year unless another matter settled; (4) this Hearing Officer wanted to ensure that Petitioner had a date certain scheduled for hearing at the beginning of the next school year to avoid further delay in scheduling due to new due process complaints that may be filed between then and the new school year. The hearing was scheduled for August 20, 2025 and August

<sup>17</sup> HO-26

<sup>18</sup> HO-29

<sup>19</sup> HO-30

21, 2025 and a seventh prehearing conference was scheduled for May 16, 2025. The same was memorialized in a *Sixth Prehearing Conference Report and Order, Order Granting Motion to Continue Decision Date, and Notice Setting Seventh Prehearing Conference* issued on April 4, 2025.<sup>20</sup>

On May 16, 2025 this Hearing Officer attempted to hold a seventh prehearing conference. Parent was not present. The District called Parent and this Hearing Officer left a voicemail message for Parent setting a status conference for July 11, 2025 at 11:00 a.m. which was a Friday, to accommodate Parent's work schedule. A *Seventh Prehearing Report and Order and Notice Setting Status Conference* was issued on May 21, 2025.<sup>21</sup>

On July 11, 2025 at 9:14 a.m. Parent emailed stating that Parent needed to reschedule the meeting. This Hearing Officer asked the parties whether mediation was rescheduled and if any progress was made; and if settlement was not possible whether the parties were ready to proceed with the hearing in August. The District advised that mediation was rescheduled and took place. The District agreed to an Independent Education Evaluation (IEE) for Petitioner and they were waiting to hear back from the mediator to schedule a status update.<sup>22</sup>

On July 24, 2025, this Hearing Officer followed up with the parties to inquire whether the update with the mediator was scheduled. On July 25, 2025, the District responded that they provided the mediator with a date they are available but had not heard back from the mediator yet. On August 5, 2025 this Hearing Officer followed up with the parties to inquire whether Petitioner would be moving forward with the hearing dates or requesting to withdraw the Complaint. Not having received a response, this Hearing Officer followed up again on August 15, 2025 after which Petitioner's Education Advocate forwarded an email from Parent dated August 6, 2025 stating that Parent was asking for another extension while waiting for the IEE to be scheduled. Education Advocate informed the parties that the IEE was scheduled for August 29, 2025.<sup>23</sup> Education Advocate also sent a second email instructing Parent to "Reply All" if requesting an extension.<sup>24</sup>

On August 18, 2025 this Hearing Officer forwarded an ex-parte communication from Parent to all parties informing Parent that all communications must be copied on the District so

<sup>20</sup> HO-31

<sup>21</sup> HO-32

<sup>22</sup> HO-33

<sup>23</sup> HO-34

<sup>24</sup> HO-35

that they have the opportunity to respond and that the District already stated that if Petitioner was not withdrawing the Complaint that the District was ready to proceed with the hearing as scheduled.<sup>25</sup> On August 18, 2025 this Hearing Officer sent the parties the zoom link for the hearing, informed the parties that she had not received a proper request for an additional continuation of the decision date, that continuances can only be granted for good cause, that witnesses were scheduled by the District and the hearing would move forward on August 20, 2025 and August 21, 2025.<sup>26</sup> On August 18, 2025 in response to another ex-parte communication from Parent, the Hearing Officer copied all parties and advised the Parent of the need to copy the District on all communications, that an IEE approved more than two months ago that was not scheduled until the day after the hearing without an explanation of how it was relevant to the issues before the Hearing Officer was not good cause, and without a proper motion, with the District copied on the communication, a continuance could not be granted with only one business day before the scheduled hearing.<sup>27</sup>

On August 19, 2025 Parent requested to continue the decision date, asking to extend the hearing date to October 20, 2025 because Student had an emergency psychiatric appointment on August 20, 2025, Parent did not know that Student would have a breakdown about school; the parties were in the middle of a two-part mediation with an IEE which could help resolve the compensatory education issues through a mediation agreement; and evidence and witness lists had not been exchanged on either side because mediation was planned. The reason for the delay in requesting the extension after this Hearing Officer reached out to the parties on August 5, 2025 to make sure that the hearing was moving forward was because Petitioner's Education Advocate had a death in the family, the advocate tried to help Parent afterwards, but Parent works Sunday through Thursday where no internet is available, Parent replied wrong (not "replying all") on some of the emails and did not know what was needed to request an extension. This Hearing Officer asked the District to advise what their position was regarding the request. The District did not respond by the close of business on August 19, 2025, so this Hearing Officer advised both parties to be present for the hearing so the District could orally respond to the request and a decision could be made thereafter.<sup>28</sup>

<sup>25</sup> HO-36

<sup>26</sup> HO-37

<sup>27</sup> HO-38

<sup>28</sup> HO-39

On August 20, 2025, this Hearing Officer went on the record restating Parent's request for a continuance. The District objected to the request for a continuance based on the ongoing mediation process and the pending IEE because the IEE had no relevance to the issues that are before the Hearing Officer that deal with the timeframe of May 6, 2022 to May 2024. The District had no basis to object to Parent's request for a continuance based on the medical emergency of Student. This Hearing Officer did not find good cause for a continuance based on the pending IEE which would not be relevant to the issues that are before this Hearing Officer during the timeframe of May 2022 to May 2024. This Hearing Officer reminded the parties that witness lists and exhibits were already exchanged in 2024 prior to the July hearing dates, a copy of which was forwarded to Parent on March 20, 2025, therefore all evidence has already been exchanged between the parties and provided to the Hearing Officer. This Hearing Officer did find good cause to grant Parent's request for a continuance based on Student's psychiatric emergency for which the student had a medical appointment.<sup>29</sup>

The parties were initially looking at a hearing date in October, however, the Petitioner's Education Advocate forwarded an email on August 19, 2025, to this Hearing Officer with a copy to the District from the parties' mediator that stated that due to the IEE being scheduled for August 29, 2025, the results of which would not be available for a few weeks afterwards, the following dates were proposed for a continuation of the mediation: October 10, October 17 or October 24, 2025. Petitioner's Education Advocate was not available on October 10, 2025. The District had two Due Process Hearings in other matters scheduled for both October 17 and October 24, 2025, therefore the parties needed to reach out to the mediator and try to schedule the mediation for the end of October or the beginning of November. Parent requested to set a status check after mediation was completed to schedule the hearing. This Hearing Officer denied that request and informed Parent that the Hearing Officer cannot grant a continuance for an unspecified period and must limit the continuance to a specific period of time by setting a new decision date with hearing dates.<sup>30</sup>

All parties were available for a hearing on December 4, 2025 and December 5, 2025 from 9:00 a.m. to 5:00 p.m. virtually. The decision date was continued from September 12, 2025 to January 2, 2026 to allow for sufficient time for the Hearing Officer to consider all relevant

<sup>29</sup> HO-39; 8/20/2025 Transcript

<sup>30</sup> HO-39; 8/20/2025 Transcript

evidence and testimony, while accounting for the holidays, so that a thorough decision could be issued. Parent stated that the parent felt rushed, and requested a hearing date farther out, which this Hearing Officer denied for the following reasons: Petitioner had more than three months to secure witnesses for the hearing; this Hearing Officer sent another copy of the Exhibit and Witness Lists provided by Petitioner's formal counsel, and copied the Education Advocate on the email; this matter had already been pending for over a year; these matters are required to be completed within two and a half months from the filing of the complaint. While this Hearing Officer was cognizant of the fact that Petitioner does not have and was unable to retain counsel in this matter, this Hearing Officer has afforded Petitioner every opportunity to try and obtain new counsel and has conducted other hearings with unrepresented Petitioners; and Petitioner was aided by the Power of Attorney and an Education Advocate in this matter. The parties were advised that this would be the last continuance in this matter.<sup>31</sup>

On November 14, 2025 Petitioner's Education Advocate advised that Parent and Student could not attend the status conference scheduled for that day due to personal emergencies and advised that the final day of mediation was scheduled for November 25, 2025.<sup>32</sup> On December 2, 2025 the parties provided their proposed witness schedule for the hearing.<sup>33</sup>

The due process hearing was held virtually on December 4, 2025 and December 5, 2025. Student was unrepresented but aided by the Power of Attorney and Education Advocate. The District was represented by their attorney. The following witnesses testified for Respondent: Director I, Psychological Services (hereinafter "Director"), Special Education Instructional Facilitator (hereinafter "SEIF"), Special Education Teacher 2 (hereinafter "SPED Teacher 2"), and Special Education Teacher 3 (hereinafter "SPED Teacher 3"). The following witnesses testified for Petitioner: Private Psychologist, Special Education Teacher 1 (hereinafter "SPED Teacher 1") and Student.

The following exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits HO-1 through HO-41; Respondent's Exhibits R-1, R-2, R-3, R-6, R-15 through R19; and Petitioner's Exhibits P-7 through P-18, P-20 through P-24, P-26 through P-48, P-50 through P-66, P-68, P-70, and P-71.

<sup>31</sup> HO-39; 08/20/2025 Transcript

<sup>32</sup> HO-40

<sup>33</sup> HO-41

The record was closed on December 5, 2025 with the exception of allowing Parent to submit a written closing argument which would be labeled and admitted as Hearing Officer's Exhibit HO-42. The District had no objection to the same so long as the written closing argument was based on the evidence admitted during the hearing and nothing more. Parent never provided this Hearing Officer and the District with the same. A decision is due January 2, 2026.

## **II.**

### **JURISDICTION**

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

## **III.**

### **ISSUES**

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

#### **Issue One**

Whether District failed to complete Student's triennial evaluation in February 2023, failed to timely and appropriately assess Student in the areas of reading, writing, speech and language, for characteristics of Dyslexia, for Occupational Therapy, for social skills, and for emotional and educationally related mental health needs? If so, did this constitute a denial of a Free Appropriate Public Education (FAPE) from May 6, 2022 to May 6, 2024?

#### **Issue Two**

Whether District failed to design appropriate reading, writing, math goals and services and failed to provide behavior and mental health goals, executive functioning, language pragmatics, and fine motor goals in Student's February 2, 2022, and February 3, 2023 IEPs? Did the District fail to identify and provide services for "possible needs" in the areas of executive functioning, language pragmatics and fine motor skills? If so, was there a denial of a FAPE from May 6, 2022 to May 6, 2024?

#### **Issue Three**

Whether District failed to provide appropriate transition assessments, goals, services, and independent living skills related to obtaining an education with non-disabled peers, designed to facilitate Student's movement from school to post-secondary life in Student's February 2, 2022

and February 3, 2023 Annual IEPs? If so, was there a denial of a FAPE from May 6, 2022 to May 6, 2024?

#### **Issue Four**

Whether District failed to implement Student's Individual Safety Plan, incorporated into the student's May 18, 2023 Amended IEP, exacerbating Student's social and emotional deficits causing a regression? If so, did this constitute a material failure in implementing the IEP denying Student a FAPE?

#### **Issue Five**

Whether District failed to provide Student's complete educational records in response to the parent's request, and/or failed to have the required participants at the IEP team meetings on February 3, 2023 and May 18, 2023? If so, did this significantly impede Petitioners' ability to participate in the decision-making process from February 3, 2023 to May 6, 2024, thereby denying Student a FAPE?

#### **REQUESTED RELIEF:**

Petitioners were advised that they would need to provide evidence to support the specific requests for relief as set forth:

1. District shall conduct and/or fund Independent Educational Evaluations (IEEs) in the following areas, including the assessor's participation at an IEP meeting to review his/her report: psychoeducational evaluation, reading and writing, math, transition skills, educationally related mental health services, language pragmatics and social skills, occupational therapy, and assistive technology. The reports shall be reviewed within 15 days of receipt of the reports.
2. District shall provide Student with compensatory education services in all areas of need as specified in the IEEs including speech and language therapy, specialized academic instruction, social and emotional skills, counseling, occupational therapy, dyslexia-based reading intervention, transitional skills provided through a non-public agency with transportation.
3. District will offer Student a transition program based on Student's unique needs and will consider the appropriateness of the JDP-II program, project SEARCH, and the YES program for college-bound students, or will craft an individually designed program tailored to Student's unique needs.

4. District shall provide a trust to ensure Student can survive on her own and receive additional services including transportation, therapy, college courses, remedial courses, social and emotional skills training, and speech and language therapy.
5. District shall provide Student additional supports such as training in the assistive technology tools offered.
6. District shall provide a six-hour training to the Special Education Director and its staff who during the statutory period, or are currently, working with Student at Student's School, including related service providers, special and general education teachers, and all members of Student's IEP Team. The training shall be provided by an outside special education counsel who does not represent District. Within ten (10) days of completing the training, District shall provide Student's attorney and Parent with a copy of the training agenda, curriculum vitae of the trainer, training materials, and the roster of attendees who participate in the training.
7. District shall provide training to Student's Parent as to any of the supports and services Student is eligible to receive to allow for consistency between the school and home.

**DISTRICT'S POSITION:**

An Individualized Education Program (IEP) was held on May 18, 2023 which included specially designed instruction in the areas of Math, Writing, Reading (Content) Social Studies, Reading (Content) Science, Behavior/Social Skills, and Prevocational skills, which provided Student with a FAPE.

**IV.  
FINDINGS OF FACT**

***Background***

1. Student was referred for a multidisciplinary reevaluation on January 8, 2014 as required by the Individuals with Disabilities Education Act (IDEA). At that time Student was receiving services under the eligibility category of Specific Learning Disability (SLD). No other disabilities were suspected at that time. The following procedures were components of the evaluation: information provided by Student's Parent; interview with teacher; review of school records; health assessment; Weschler Individual Achievement Test, 3<sup>rd</sup> Edition (WIAT-3); classroom observation; communication assessment; Behavior Assessment System for Children, 2<sup>nd</sup> Edition; and two qualifying conditions of eligibility. Parent informed the

Multidisciplinary Team (MDT) that Student had a history of Post Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD). Student was cooperative with the evaluation and attempted all tasks. Student's health status did not appear to adversely affect the student's learning at that time.<sup>34</sup>

2. At the time of the reevaluation, Student had been receiving 500 minutes per week for reading, 180 minutes per week for communication and 250 minutes per week for writing, math and behavior/social skills. Student was also receiving speech and language therapy. According to the student's IEP progress report dated 11/22/2013, Student had not met the student's goals. Student's standardized scores and present levels indicated that the student's level of performance was very low compared to typical peers and did not adequately improve in response to special education intervention and support. Student's rate of learning during individualized intervention was very slow and did not reflect academic growth that would be expected for same-skilled typical peers.<sup>35</sup>
3. Student's WIAT-3 scores were as follows: basic reading scores (composed of reading comprehension, word reading, and pseudoword decoding subtests) were in the below average range at the 2<sup>nd</sup> percentile; math composite scores (composed of math problem solving and numerical operations subtests) were in the below average range at the 4<sup>th</sup> percentile; written expression scores (measured by sentence composition and spelling subtests) were in the low range. Student's BASC-2 scores fell in the average range. Student's Oral-Written Language Scale, comprised of listening comprehension, oral expression, and written language, fell in the below average range.<sup>36</sup>
4. The 1/8/2014 MDT Report summary stated: Student's ability to comprehend language was slightly less than that which is expected in view of the student's cognitive abilities and level of development; Student does not attend to or comprehend negation, future/present/past tense markers, and function words that change the meaning of sentences; Student is able to follow directions in the classroom environment without difficulty and uses observational learning strategies to be successful during the academic day; Student's ability to use language was less than that which is expected in view of the student's cognitive abilities and level of

<sup>34</sup> P-07

<sup>35</sup> P-07

<sup>36</sup> Director's testimony; P-07

development; Although Student's social and conversational language skills are a relative strength, additional instruction is needed to target specific language skills and to develop grammatical skills in an academic setting. This language disorder interfered with the student's ability to communicate and had an adverse social, emotional, or academic effect. Student was found to still be eligible under SLD. This is the last MDT completed on Student.<sup>37</sup>

5. On January 25, 2022, a Progress Report was created for Student. The progress report included Student's progress on the following goals: Written Expression, Reading, Math, Pre Vocational, and Social/Emotional/Behavioral.<sup>38</sup>
6. Student's Written Expression Goal was to use all available tools to increase ability to produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience, achieving a criteria of 80%. It contained three objectives: (1) write a topic sentence and one supporting sentence about the topic with correct spacing, letter formation, and standard English conventions achieving a criteria of 80%; (2) write a topic sentence and two supporting details about the topic with a concluding sentence with correct spacing, sizing, letter formation and standard English conventions achieving a criteria of 80%; and (3) use all available tools to write a topic sentence and three supporting details about the topic with a concluding sentence with correct spacing, sizing, letter formation and standard English conventions achieving a criteria of 80%. All three objectives are checked off and the progress noted is "Satisfactory."<sup>39</sup>
7. Student's Reading Goal was to increase decoding skills by reading 70 words with consonant blends achieving a criteria of 4 out of 5 trials. It contained three objectives: (1) read 15 words with a consonant blend; (2) read 35 words with a consonant blend; and (3) read 60 words with a consonant blend. All three objectives are checked off and the progress noted is "Goal Met."<sup>40</sup>
8. Student's Math Applied Problems Goal was to solve word problems involving dollar bills, dimes, nickels, and use symbols appropriately achieving a criteria of 4 out of 5 trials. It contained three objectives: (1) write the dollar sign and cent sign symbols when writing money amounts achieving a criteria of 4 out of 5 trials; (2) add like coins up to \$1.00 achieving a

<sup>37</sup> Director's testimony; P-07

<sup>38</sup> P-08

<sup>39</sup> P-08

<sup>40</sup> P-08

criteria of 4 out of 5 trials; and (3) add mixed coins up to \$1.00 achieving a criteria of 4 out of 5 trials. All three objectives are checked off and the progress noted is “Goal Met.”<sup>41</sup>

9. Student’s Pre Vocational Goal was to demonstrate an understanding of behaviors appropriate during an interview. It contained four objectives: (1) maintain appropriate proxemics and posture; (2) have prior knowledge about the job or situation or company; (3) ask appropriate questions of the interviewer; and (4) provide the person with a resume or references (if appropriate). All four objectives are checked off and the progress noted is “Satisfactory.”<sup>42</sup>
10. Student’s Social/Emotional/Behavioral Goal was to demonstrate appropriate interpersonal behavior skills toward staff and peers, achieving a criteria of 4 out of 5 trials. It contained four objectives: (1) use socially appropriate language with peers and teachers achieving a criteria of 4 out of 5 trials; (2) engage in socially appropriate conversations with peers, achieving a criteria of 4 out of 5 trials; (3) respond appropriately with the teacher when given direction or new task, achieving a criteria of 4 out of 5 trials; and (4) independently settle minor conflicts with peers, achieving a criteria of 4 out of 5 trials. All four objectives are checked off and the progress noted is “Satisfactory.”<sup>43</sup>
11. On January 25, 2022, a *Parental Prior Notice of District Proposal*, written notice 1, was sent to Parent, also noting a telephone notice on January 18, 2022. The proposed action was to review/revise IEP. The reason the action was proposed was based on IEP development review. A *Parental Prior Notice – Proposed Meeting Arrangements* was also sent to Parent with a tentative meeting date of February 2, 2022.<sup>44</sup>
12. On February 2, 2022, a *Notice of Intent to Implement IEP* was sent to Parent proposing to implement the 2/2/2022 IEP which provided the following: the District will provide Student with specially designed instruction in the following areas – in person math 2/3/22 – 2/1/23 800 minutes per month self contained; in person pre vocational skills 2/3/22 – 2/1/23 800 minutes per month self contained; and in person reading 2/3/22 – 2/1/23 400 minutes per month self contained. The notice states that parents agree with the IEP, and that the following was used as a basis – WRAT 5, parent input, and teacher input.<sup>45</sup>

<sup>41</sup> P-08

<sup>42</sup> P-08

<sup>43</sup> P-08

<sup>44</sup> P-09

<sup>45</sup> P-11

13. The 2/2/2022 IEP was not admitted into evidence, but was subsequently amended on February 3, 2022 to add information under the “Strengths, Concerns, Interests, and Preferences” section based on Parent’s request, to add accommodations under “Supplementary Aids and Services” and to add “Extended School Year Services” based on Parent’s request. Student’s eligibility category is listed as SLD. The participants included Parent, an LEA representative, SPED Teacher 1, and a regular education teacher.<sup>46</sup>
14. Information provided by SPED Teacher 1 was very credible based on the fact that SPED Teacher 1 taught Student for approximately 3 years. Student was in SPED Teacher 1’s SLD class where Student was taught all the core subjects including English, math, science, social studies, social skills and job skills. When asked to describe Student, SPED Teacher 1 stated that Student was a good kid, always respectful in class, always very helpful and when Student put the student’s mind to something, was able to accomplish it. SPED Teacher 1 believes that Student can get through an interview and hold a regular job.<sup>47</sup>
15. The 2/2/2022 Amended IEP contains the student’s 4/10/2014 MDT information under the “Present Levels” section of the IEP, which states that Student displayed difficulty blending and segmenting sounds; Student had difficulty with processing information and answering basis “who” questions without prompts; struggled with numbers and basic mathematical computations; had difficulty writing simple sentences and displayed difficulty with basic spelling patterns; demonstrated difficulties with maintaining grade level appropriate behavior and social skills; and it was recommended that Student receive special education services for the areas of reading, written expression, math and behavioral/social skills.<sup>48</sup>
16. The 2/2/2022 Amended IEP contained the following information under present levels for reading: WRAT 5: Average Score is 90-110. The WRAT 5 is a formal assessment given to assess achievement in the areas of reading comprehension and word reading. Word Reading: 95; Sentence Comprehension: 66. Teacher observations indicated under “Basic Reading Skills” – can decode unfamiliar words; can read fluently using grade level material; and can read grade level material independently. Teacher observations indicated under “Reading Comprehension” – can follow written instructions to complete a project/assignment; needs to

<sup>46</sup> P-12, pages 1-2

<sup>47</sup> SPED Teacher 1’s testimony

<sup>48</sup> P-12, page 5

improve ability to answer comprehension questions after reading grade level material; needs to improve ability to use context clues to derive word meanings; and needs to improve ability to make inferences based on reading material.<sup>49</sup> Student could read at a second or third grade level at that time. SPED Teacher 1 used a program for Student that differentiated the questions the student was required to answer based on the reading ability of Student.<sup>50</sup>

17. The 2/2/2022 Amended IEP contained the following teacher observations for social/emotional/behavioral skills: Student has a good sense of humor and engages in conversation and participates with peers; has good attendance and completes assignments on time; needs to be more consistent when it comes to thinking before reacting to adverse situations as well as being polite and respectful to teachers and peers during class.<sup>51</sup>
18. The 2/2/2022 Amended IEP contained the following teacher observations for pre vocational skills: Student is able to develop and write a resume and complete a job application; able to decipher between appropriate and not appropriate ways to dress for job interviews and for the student's job; knows to ask employer for explanations on the dress code if there are questions and is aware of how to conduct oneself during a job interview; one of the things I would help is improving face to face interview skills and to research more prospective jobs for the near and distant futures.<sup>52</sup>
19. The 2/2/2022 Amended IEP contained the following information under present levels for math: Student took the WRAT 5 assessment in math and scored 77. Average Score is 90-110. Student was able to solve the following: single addition and subtraction problems, sequencing problems, 2-digit addition and subtraction problems, 3-digit addition and subtraction problems, division problems that involve dividing a two-digit number by a one-digit number, multiplication problems that involve multiplying 2- and 3-digit numbers by one number, substituting variables with numbers. Some concepts that Student needs to work on include comparing fractions, adding and subtracting fractions, solving problems that involve numbers that need to be squared and cubed, converting fractions into percentages and problems that involve converting percentages into fractions.<sup>53</sup>

<sup>49</sup> P-12, page 5

<sup>50</sup> SPED Teacher 1's testimony

<sup>51</sup> P-12, page 5

<sup>52</sup> P-12, pages 5-6

<sup>53</sup> P-12, page 6

20. The 2/2/2022 Amended IEP contained the following information under present levels for written expression: WRAT 5 spelling score 62. Average Score is 90-110. Teacher observations indicated: needs to improve ability to produce written work which is legible, properly spaced, capitalized, and punctuated; needs to improve ability to express a complete thought in a mature sentence structure; and needs to improve ability to write essays/paragraphs which are well organized and grammatically correct. Student can complete writing portions of assignments but still needs to work on the writing skills listed above. Student can access text to voice features and voice to text features on the chrome book when needed, an accommodation is listed under supplementary aids and services section of this IEP.<sup>54</sup>
21. The 2/2/2022 Amended IEP documented Student's strengths in word reading and math computation; Parent's concerns about functional math skills; and Student's interest in working in retail with a long term goal of becoming an attorney.<sup>55</sup> No evidence was offered or admitted that Parent or any teacher had concerns about Student in the areas of executive functioning, language pragmatics or fine motor skills.
22. Under "Consideration of Special Factors" on the 2/2/2022 Amended IEP two boxes are marked "Yes" – (1) the student requires assistive technology devices and services; and (2) the student is blind or visually impaired.<sup>56</sup> No additional evidence was offered or admitted related to these two factors, and they are not part of the issues before this Hearing Officer.
23. The "Diploma Option Selected for Graduation" on the 2/2/2022 Amended IEP indicates a "standard or advanced high school diploma."<sup>57</sup> SPED Teacher 1 did not have any questions or concerns about this indication at the time of the IEP.<sup>58</sup> The "Statement of Transition Services: Course of Study" states Student is on a standard course of study. The "Statement of Measurable Postsecondary Goals" indicates the following: Training/Education – after high school Student will attend college to study in the career field of choice; Employment – after high school Student will seek employment in an area that interests the student; and Independent Living Skills – Student will continue living with family after high school. The "Statement of Transition Services: Coordinated Activities" includes: Instruction – the District will provide

<sup>54</sup> P-12, page 6

<sup>55</sup> P-12, pages 6-7

<sup>56</sup> P-12, page 8

<sup>57</sup> P-12, page 8

<sup>58</sup> SPED Teacher 1's testimony

Student with specially designed instruction in the areas of reading, written expression, math, science and social studies; Related Services – the District will provide Student with the opportunity to attend college and career fairs virtually and/or on school campus; Community Experiences – the District will provide Student with the opportunity to attend college and career fairs virtually and/or on school campus; Employment and Other Post-School Adult Living Objectives – the District will provide Student with access to the college and career center and opportunities to discuss post-secondary goals with the transition specialist as the student advances throughout high school.<sup>59</sup>

24. The 2/2/2022 Amended IEP contains goals in written expression, reading, math, social/behavioral skills, and pre vocational skills.<sup>60</sup> The goals were written by SPED Teacher 1 who believed that they were adequate and appropriate for Student. SPED Teacher 1 had the special educational instructional facilitator review the drafted goals. SPED Teacher 1 acknowledged that the writing goal was “probably pushing it” based on the student’s ability, but SPED Teacher 1 believed that Student would be able to meet the goals. By the end of the school year however, Student had not met them due to issues with attendance during the last semester. SPED Teacher 1 never suspected that Student needed occupational therapy. SPED Teacher 1 never spoke with the school psychologist to reassess Student because the teacher believed there was enough information in Student’s IEPs to make the student successful, believed that the accommodations were sufficient, and Student made progress when the student attended school consistently.<sup>61</sup>
25. Student’s Written Expression Goal in the 2/2/2022 Amended IEP was to increase written expression skills by writing a 3-5 paragraph essay using an outline which will include an introduction, supporting details, and conclusion, as well as identify and correct errors with 80% accuracy. The goal contained four short-term objectives: (1) given a multi-paragraph writing assignment, Student will create an outline with support from a graphic organizer, with no less than 2 errors in 4 out of 5 opportunities; (2) given a multi-paragraph writing assignment, Student will write an introductory paragraph that includes a hook, connecting sentences, and a strong thesis statement with a score of 3 or higher on a 4 point rubric; (3) given a multi-

<sup>59</sup> P-12, pages 9-10

<sup>60</sup> P-12

<sup>61</sup> SPED Teacher 1’s testimony

paragraph writing assignment, Student will write body paragraphs that include an introductory sentence, 3 or more explanatory sentences, and a concluding sentence with a score of 3 or higher on a 4 point rubric; and (4) given a multi-paragraph writing assignment Student will write a concluding paragraph that includes an introductory sentence, 3 connecting sentences and a “call to action” sentence with a score of 3 or higher on a 4 point rubric.<sup>62</sup>

26. Student’s Reading Goal in the 2/2/2022 Amended IEP was to read fiction and non-fiction texts to make inferences based on reading material and answer comprehension questions after reading grade level material with 80% accuracy. The goal included two short-term objectives: (1) given a reading comprehension test, Student will answer comprehension questions related to the story; and (2) given a text, whether fiction or non-fiction, Student will make logical inferences from the text either orally or in writing.<sup>63</sup>
27. Student’s Math Goal in the 2/2/2022 Amended IEP was to increase ability to solve math problems involving comparing fractions, adding and subtracting fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80%. The goal included four short-term objectives: (1) solve problems that involve comparing fractions; (2) solve problems that involve adding and subtracting fractions; (3) solve problems that involve converting fractions into percentages; and (4) solve problems that involve converting fractions into percentages and problems that involve converting percentages into fractions.<sup>64</sup>
28. Student’s Social/Behavioral Skills Goal in the 2/2/2022 Amended IEP was when the student or others are angry, Student will increase ability to remain calm and breathe deeply, use a neutral voice and facial expression, avoid critical or sarcastic comments, listen to what the other person is saying, and report the incident to an adult achieving a criterion of 80%. The goal included five short-term objectives: (1) remain calm and breathe deeply when the student or others are angry; (2) use a neutral voice and facial expression when the student or others are angry; (3) avoid making critical or sarcastic comments; (4) listen to what the other person is saying when the student or others are angry; and (5) report the incident to an adult as soon as possible.<sup>65</sup>

<sup>62</sup> P-12, page 10

<sup>63</sup> P-12, page 11

<sup>64</sup> P-12, page 11

<sup>65</sup> P-12, page 12

29. Student's Pre Vocational Skills Goal in the 2/2/2022 Amended IEP was to increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long-term achieving a criterion of 80%. The goal included four short-term objectives: (1) greet the prospective employer in a positive and upbeat manner; (2) maintain eye contact during an interview; (3) research prospective jobs to work during high school; and (4) research prospective jobs to work post high school.<sup>66</sup> SPED Teacher 1 thought that Student needed speech therapy, but for learning different job and social skills.<sup>67</sup>
30. Student's placement in the 2/2/2022 Amended IEP was the self-contained program with 25% of the school day in the regular education environment.<sup>68</sup>
31. Student's 4/26/2022 Progress Report for Student's 2/2/2022 Amended IEP is marked "Satisfactory" for all five of Student's IEP Goals including all short-term objectives under each goal.<sup>69</sup>

#### ***Eleventh Grade 2022-2023 School Year***

32. Student was enrolled in a District School (hereinafter "School") for the eleventh grade during the 2022-2023 school year, from August 8, 2022 through May 22, 2023. Assistant Principal of School was familiar with Student during the 2022-2023 school year as well as the subsequent year. Assistant Principal described Student as being very intelligent, very introverted at times, and that Student knew how to request what the student needed to calm down, which demonstrated coping skills. As their relationship developed during the school year, Student would speak in passing to Assistant Principal. Student could be very defiant if escalated, and at times Assistant Principal had to ask Student to step out of a classroom because some policy or procedure was not being followed. Assistant Principal also worked with Student to create safe places for Student to go to so the student could calm down including areas where the Assistant Principal's office was located.<sup>70</sup>
33. Student took courses in the following subjects during the first half of the school year: English 3, Reas. & Sense-Make: Num & Fin; Principles of Physical Science, the Study of the U.S. Govt & Econ; Functional Fitness, Drawing I, Pre Vocational Skills, and Soc Living/Indep

<sup>66</sup> P-12, page 12

<sup>67</sup> SPED Teacher 1's testimony

<sup>68</sup> P-12, page 17

<sup>69</sup> P-14

<sup>70</sup> Assistant Principal's testimony; R-1; R-2; R-3

Living Skills. Student earned a grade of “B” in Functional Fitness and Drawing I, and a grade of “A” in all other subjects.<sup>71</sup>

34. Student’s 10/13/2022 Progress Report for Student’s 2/2/2022 Amended IEP was marked “Goal Achievement” for the Social/Behavioral Skills goal and “Satisfactory” for the remaining four goals including all short-term objectives under each goal.<sup>72</sup>
35. On December 8, 2022, *Parental Prior Notice of District Proposal, written notice 1*, was sent to Parent along with a telephone notification of the same to determine if a reevaluation was warranted based on academic and teacher concerns. The *Student Services Referral* form for the reevaluation, dated December 8, 2022, has a checkmark in the box option that states: “No further action needed. Team completes appropriate documentation. Consider whether follow-up notice to the parent is appropriate or required.” A *Parent Notification of No Additional Assessment Information Needed and Status of Reevaluation* form, dated December 8, 2022, sent to Parent has a checkmark in the box option that states: “The District proposes that a formal reevaluation is not warranted, based on review of existing evaluation data, no identified new assessment questions, and recognition that the current eligibility is still appropriate. A District representative will contact you to seek your agreement to waive your child’s reevaluation because it is not warranted.” Immediately thereunder, the form states: “You have the right to request further assessment to determine whether your child continues to be a child with a disability in need of special education services. If you believe that further assessment is warranted, please complete and return the lower half of this letter. If we do not receive the lower half of this letter by 12/18/2022 we will assume that you agree that no additional data is needed and that we can now schedule a meeting with you to discuss your child’s educational needs. Your child has procedural protections under the IDEA. These protections are explained in the ‘Explanation of Procedural Safeguards Available to Parents of Children with Disabilities.’ If you would like a copy of the procedural safeguards, or if you would like help understand the content, please contact School at Phone Number.” If the parent does not sign or return the *Parent Notification of No Additional Assessment Information Needed and Status of Reevaluation* after the date on the form passes, the IEP Team meets to hold the IEP and to

<sup>71</sup> R-5

<sup>72</sup> P-15

sign the unwarranted evaluation paperwork. Parent did not sign and return this form.<sup>73</sup> Parent did not refute the lack of signature, did not reach out to School, as directed on the form, with any questions or concerns, and did not request any assessments in the additional areas of speech and language, for characteristics of Dyslexia, for occupational therapy, or for emotional and educationally related mental health needs.

36. Parent was provided a *Statement of Need for Reevaluation* for Student that states: “A reevaluation must be conducted if the IEP Team, including a parent, and other qualified professionals determine that the educational or related services needs of the student warrant a reevaluation OR if the student’s parent or teacher request a reevaluation. A reevaluation shall occur once every 3 years, unless the District and parent agree that it is not necessary. For a reevaluation to occur more frequently than once a year, the District and parent must agree that it is warranted. As part of the reevaluation process, the combined members of the student’s IEP Team and Eligibility Team, including a LEA Representative, Special Education Teacher and Regular Classroom Teacher, were involved in the review of existing evaluation data. On the basis of that review and input from the student’s parent, the Team checked the “Yes” Box for all of the following:

- a. Student has two or more prior, consecutive evaluations confirming the current disability classification.
- b. Student’s identified disability continues to adversely impact achievement.
- c. No other disability is suspected of adversely impacting achievement.
- d. No additional assessments are needed or have been requested by a parent or teacher.
- e. Student progress toward IEP goals demonstrates a continuing need for specialized instruction.

Based on these decisions, it has been determined that further reevaluation is Unwarranted.\*”

At the bottom of the form, it includes the following notations in italics: *\*NOTE: To determine that reevaluation is unwarranted and can be waived, minimally, all five items above must be checked “Yes” and reasonable efforts must be made to obtain agreement between the parent and the LEA Representative to waive the reevaluation. A formal IEP Team meeting is not required to obtain agreement to waive the reevaluation. However, incorporating discussions and documentation of agreement among required IEP Team members, including the Special*

<sup>73</sup> Director’s testimony; P-16

*Education Teacher and General Education Teacher, within an IEP meeting is encouraged, when practical. In the absence of parent participation in decision making, reasonable (i.e. multiple) efforts by district personnel to encourage parent participation must be documented (Status Record) and it is still required to complete the Statement of Need for Reevaluation. In circumstances where formal reevaluation is determined to be unwarranted, reconsideration of the need for reevaluation of the student will occur within 3 years of the date of this agreement or whenever conditions warrant it. The form has signature lines for the parent, special education teacher, LEA representative, and general education teacher, however the copy admitted into evidence does not contain any signatures.*<sup>74</sup>

37. Student's 12/16/2022 Progress Report for Student's 2/2/2022 Amended IEP is marked "Satisfactory" for all five of Student's IEP Goals including all short-term objectives under each goal.<sup>75</sup>
38. A *Parental Prior Notice of District Proposal*, written notice 1, was sent to Parent on January 26, 2023 and provided to Parent by telephone the same day. The proposed actions include developing an annual IEP and educational placement, review/revise IEP, change in special education placement, conduct a manifestation determination and propose a disciplinary change of placement, and alternative instructional arrangements. The proposed actions were due to IEP development review and behavior concerns.<sup>76</sup> A second written notice and telephone contact were made to Parent on February 2, 2023.<sup>77</sup>
39. On February 3, 2023, an IEP following 3-year reevaluation meeting was held with the following participants: Student, Parent, the LEA representative, a special education teacher and a regular education teacher. Each participant's attendance was noted in handwriting by the LEA representative as having attended by Google Meets. The meeting was held virtually. Student's placement was changed to alternative instructional arrangements for the period 2/3/2023 to 2/17/2023 with 0% of the school day in the regular education environment, with a return to a self-contained program beginning 2/18/2023. Under "IEP Implementation" it notes that Parent agreed via Google Meets, also handwritten in by the LEA representative.<sup>78</sup> The

<sup>74</sup> P-16

<sup>75</sup> P-17

<sup>76</sup> P-18

<sup>77</sup> P-20

<sup>78</sup> P-21; R-6, pages 3-4

Parent did not raise any concerns about assessing the student in the areas of reading, writing, speech and language, for characteristics of Dyslexia, for occupational therapy, for social skills, or for emotional and educationally related mental health needs.

40. The 2/3/2023 IEP contained the same MDT information from 4/10/2014 that was included in the 2/2/2022 Amended IEP.<sup>79</sup>
41. The 2/3/2023 IEP contained the following information under present levels for reading: Wide Range Achievement Test 5<sup>th</sup> edition (WRAT 5): Average Score is 90-110. The WRAT 5 is a formal assessment given to assess achievement in the areas of reading comprehension and word reading. No scores were listed for Student in the areas of word reading or sentence comprehension. Therefore, it appears that Student did not complete this assessment. Teacher observations indicated under “Basic Reading Skills” – can decode unfamiliar words; can read fluently using grade level material; and can read grade level material independently. Teacher observations indicated under “Reading Comprehension” – can follow written instructions to complete a project/assignment; needs to improve ability to answer comprehension questions after reading grade level material; needs to improve ability to use context clues to derive word meanings; and needs to improve ability to make inferences based on reading material.<sup>80</sup>
42. The 2/3/2023 IEP contained the following information under present levels for math: The WRAT 5 is a formal assessment given to assess achievement in the areas of math calculation and reasoning. Student took the WRAT 5 assessment in math. No score is listed. Therefore, it does not appear Student took the assessment. Student was able to solve the following: single addition and subtraction problems, sequencing problems, 2-digit addition and subtraction problems, 3-digit addition and subtraction problems, division problems that involve dividing a two-digit number by a one-digit number, multiplication problems that involve multiplying 2- and 3-digit numbers by one number, substituting variables with numbers. Some concepts that Student needs to work on include comparing fractions, adding and subtracting fractions, solving problems that involve numbers that need to be squared and cubed, converting fractions into percentages and problems that involve converting percentages into fractions.<sup>81</sup>

<sup>79</sup> P-21, page 4

<sup>80</sup> P-21, page 4

<sup>81</sup> P-21, pages 4-5

43. The 2/3/2023 IEP contained the following information under present levels for written expression: The WRAT 5 is a formal assessment given to assess written expression achievement. No scores were listed for Student. Therefore, it appears that Student did not complete this assessment. Teacher observations indicated under “Written Expression” – needs to improve ability to produce written work which is legible, properly spaced, capitalized, and punctuated; needs to improve ability to express a complete thought in a mature sentence structure; and needs to improve ability to write essays/paragraphs which are well organized and grammatically correct. Student is able to complete writing portions of assignments, but still needs to work on the writing skills listed above. Student is able to access text to voice features and voice to text features on the chrome book when needed, an accommodation is listed under supplementary aids and services section of this IEP.<sup>82</sup>
44. The 2/3/2023 IEP contained the following information under present levels for social/behavioral skills: According to teacher input, Student enjoys the company of peers. Student is helpful with peers and teachers and is comfortable with students who are from different backgrounds and cultures. Student responds appropriately to adults and peers. Student is never disruptive in class, is very observant, aware of the environment, and responds appropriately to instruction. Additionally, the student has good verbal skills, is expressive, and able to advocate for oneself. Student has increased ability to remain calm and breathe deeply under duress, avoid making critical or sarcastic comments. However, according to the incident that occurred on January 26<sup>th</sup>, Student has demonstrated difficulty with following school rules, being respectful to staff and peers, refraining from displaying unacceptable school behaviors and limiting campus disruptions. Student has demonstrated the need to improve ability to use social and self-awareness, self-management, relationship-making, and responsible decision-making skills during unstructured events.<sup>83</sup>
45. The 2/3/2023 IEP contained the following information under present levels for prevocational skills: teacher observations indicate that Student has the ability to respond to the student’s name being called throughout different settings; recognizes names of others; responds appropriately to name being called; smiles, makes eye contact, changes expressions, and uses expressive body movements; communicates wants/needs; demonstrates functional use of

<sup>82</sup> P-21, page 5

<sup>83</sup> P-21, page 5

objects in environment; indicates preference; complies with requests in different settings; travels to and from school or in the community safely; remains seated during a task or activity; follows directions of teacher or superior; appropriate personal space and hands to self; shows positive attitude when engaged in a task; takes turns speaking during a conversation; makes a choice from several activities/choices; career role play; understands time cues to change activities; moves quietly from place to place within an allotted time; transitions from preferred activity to a non-preferred activity; uses appropriate ways to greet unfamiliar people; states solutions to frustrating situations; states appropriate times to talk, listen, and work quietly; introduces self to others; asks social questions; participates in group activities/projects; expresses need for a break; completes task without disturbing others; responds appropriately to criticism; utilizes chain of command for requesting information or asking for help; demonstrates ability to receive and deliver a message; identifies consequences or inappropriate anger management; greets people entering an area/room; uses appropriate voice levels according to situations/areas; works cooperatively and shares with other peers; respects property of others; appropriately gains attention; waits for acknowledgment before requesting something; and asks for assistance in appropriate tone. At this time, Student needs to increase skills with face-to-face interview skills, searching for employment opportunities short and long term.<sup>84</sup>

46. The 2/3/2023 IEP documented Student's strengths in word reading and math computation; Parent's concern about Student's progress in school; and Student's interest in working in retail with a long-term goal to become an attorney.<sup>85</sup>
47. Under the "Consideration of Special Factors" of the 2/3/2023 IEP the only box that is marked is the one that indicates the student's behavior impedes the student's learning or the learning of others.<sup>86</sup>
48. The "Diploma Option Selected for Graduation" on the 2/3/2023 IEP indicates a "standard or advanced high school diploma."<sup>87</sup> The "Statement of Transition Services: Course of Study" states Student is on a standard course of study. The "Statement of Measurable Postsecondary

<sup>84</sup> P-21, pages 5-6

<sup>85</sup> P-21, page 7

<sup>86</sup> P-21, page 7

<sup>87</sup> P-12, page 8

Goals” and “Statement of Transition Services: Coordinated Activities” have the same information as the 2/2/2022 Amended IEP.<sup>88</sup>

49. The 2/3/2023 IEP contains goals in reading, written expression, math, pre vocational skills, behavior skills, and social/emotional skills.<sup>89</sup>
50. While goals cannot be written without present levels, SPED Teacher 1 believes that numeric scores from standardized tests by themselves are not as important as the detailed information written under present levels by first-hand teacher observations.<sup>90</sup>
51. Student’s Reading Goal in the 2/3/2023 IEP was to fluently read and comprehend ability-level text independently by identifying the cause/effect & the main idea, making inferences & predictions, sequencing & summarizing, comparing & contrasting, using evidence & context clues, and drawing conclusions achieving a criterion of 80% accuracy. The goal is marked as supporting the student’s postsecondary goal of Training/Education and to be addressed during Extended School Year Services (ESY). The goal contains four short-term objectives: (1) identify the cause-effect & the main idea from a text read achieving a criterion of 80%; (2) make inferences & predictions from a text read achieving a criterion of 80% accuracy; (3) sequence & summarize information from a text read achieving a criterion of 80% accuracy; and (4) compare & contrast (using evidence & context clues) and draw conclusions from a text read achieving a criterion of 80% accuracy.<sup>91</sup> This goal was not written for the average student in high school, it was tailored to Student and what the student needed to work on.<sup>92</sup>
52. Student’s Written Expression Goal in the 2/3/2023 IEP was to increase written expression skills by writing a 3 sentence one paragraph email making a request for something, explaining something, or asking a question, and identify and correct errors with 80% accuracy. The goal is marked as supporting the student’s postsecondary goal of Training/Education and to be addressed during ESY. The goal contains seven short-term objectives: (1) log into email account; (2) identify and click on the compose icon in order to begin writing an email; (3) type or copy and paste the recipients email address; (4) type the subject of the email on the subject

<sup>88</sup> P-21, pages 9-10

<sup>89</sup> P-21

<sup>90</sup> SPED Teacher 1’s testimony

<sup>91</sup> P-21, pages 10-11

<sup>92</sup> SPED Teacher 1’s testimony

line; (5) type Dear and the persons name on a line followed by a comma; (6) type the body of the email; and (7) end the email with an appropriate salutation.<sup>93</sup>

53. Student's Math Goal in the 2/3/2023 IEP was to increase the ability to solve math problems involving comparing fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80%. The goal is marked as supporting the student's postsecondary goal of Training/Education and to be addressed during ESY. The goal contains four short-term objectives: (1) solve problems that involve converting fractions into percentages; (2) solve addition problems that involve numbers with a decimal point; (3) solve subtraction problems that involve numbers with a decimal point; and (4) solve two-digit number multiplication problems.<sup>94</sup>
54. Student's Pre Vocational Skills Goal in the 2/3/2023 IEP was to increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long term, achieving a criterion of 80%. The goal is marked as supporting the student's postsecondary goal of Training/Education. The goal contains three short-term objectives: (1) research prospective jobs to work during high school; (2) research prospective jobs to work post high school; and (3) complete a job application independently.<sup>95</sup>
55. Student's Behavior Skills Goal in 2/3/2023 IEP was to follow school district rules, be respectful to staff and peers, refrain from displaying unacceptable school behaviors, and limit campus disruptions achieving a criterion of 4 out of 5 trials. The goal is marked as supporting the student's postsecondary goal of Training/Education. The goal contains four short-term objectives: (1) follow all school district rules achieving a criterion of 4 out of 5 trials; (2) be respectful to staff and peers achieving a criterion of 4 out of 5 trials; (3) refrain from displaying unacceptable school behaviors during structured and unstructured settings achieving a criterion of 4 out of 5 trials; and (4) voice frustrations, wants, or needs before engaging in aggressive behavior achieving a criterion of 4 out of 5 trials.<sup>96</sup>
56. Student's Social/Emotional Skills Goal in the 2/3/2023 IEP was to use social and self-awareness, self-management, relationship-making, and responsible decision-making skills

<sup>93</sup> P-21, page 11

<sup>94</sup> P-21, pages 11-12

<sup>95</sup> P-21, page 12

<sup>96</sup> P-21, page 12

during unstructured events in 4 out of 5 trials. The goal is marked as supporting the student's postsecondary goal of Training/Education. The goal contains four short-term objectives: (1) use self-awareness skills by recognizing the student's own actions in 4 out of 5 trials; (2) exercise self-management skills by maintaining a calm voice and body in 4 out of 5 trials; (3) demonstrate positive social interactions and social awareness by using appropriate language in 4 out of 5 trials; and (4) make responsible decisions by identifying consequences for the student's actions in 4 out of 5 trials.<sup>97</sup>

57. The following behavioral supports are listed under the "Supplementary Aids and Services/Modification, Accommodation, or Support for Student or Personnel" in the 2/3/2023 IEP: remind Student that the student can visit the guidance counselor when the student exhibits signs of frustration; a pressure pass can be utilized for Student to use when frustrated; and provide positive reinforcement/praise when the student is exhibiting appropriate learning behaviors.<sup>98</sup>

58. A Manifestation Determination meeting was held on February 3, 2023 and it was determined that the conduct in question was not caused by or have a direct and substantial relationship to the student's disability and was not a direct result of the LEA's failure to implement the IEP. Student was suspended for 10 days with alternative instructional arrangements.<sup>99</sup> SPED Teacher 1 was not invited to the manifestation determination meeting. SPED Teacher 1 had concerns about the determination because Student had social skill deficits, which is required to be in SPED Teacher 1's social skills class. This information was not pointed out to the manifestation determination team and SPED Teacher 1 tried to reschedule the meeting without success.<sup>100</sup>

59. SPED Teacher 2 began teaching Student in April of 2023.<sup>101</sup> On May 18, 2023, Student's 2/3/2023 IEP was amended by SPED Teacher 1 to provide new information from the parent and the student's psychologist in the present levels and additional information from an individualized student safety plan under the supplementary aids and services. The additional information included that Student was diagnosed in February of 2023 with Post Traumatic

<sup>97</sup> P-21, page 13

<sup>98</sup> P-21, page 14

<sup>99</sup> P-24

<sup>100</sup> SPED Teacher 1's testimony

<sup>101</sup> SPED Teacher 2's testimony

Stress Syndrome (PTSD), Major Depressive Disorder and Generalized Anxiety Disorder Behavior; symptomatic behaviors related to the aforementioned diagnosed psychological disorders appear when the student is under increased stress; one symptom exhibited most frequently is shutting down emotionally; the student is receiving treatment in the form of medication and monthly therapy services; additionally, the student has been enrolled in Social Skills Behavior class for the past 3 school years to address social skill deficits.<sup>102</sup> The following additional supports were added for both the general education and special education locations: due to safety concerns, Student will be escorted around school campus (including to and from the bus) by an adult per the Individualized Student Safety Plan. The participants listed included Parent, Student, LEA representative, special education teacher, and a regular education teacher, and were the same individuals listed at the 2/3/2023 meeting. However, the Amendment was entered by SPED Teacher 1, who was not listed as a participant.<sup>103</sup> The IEP meeting is not noted in Student's Confidential Status Record and neither party solicited any testimony from SPED Teacher 1 about the May 2023 meeting or amended IEP.<sup>104</sup>

60. Student completed courses in the following subjects during the second half of the school year: English 3, Reas. & Sense-Make: Num & Fin, Principles of Physical Science, the Study of the U.S. Govt & Econ, Functional Fitness, Drawing I, Film Studies I, Pre Vocational Skills, and Soc Living/Indep Living Skills.<sup>105</sup> Student earned a grade of "D" in Drawing I and Film Studies I, a grade of "B" in Pre Vocational Skills, and a grade of "A" in all other subjects.<sup>106</sup>
61. On June 27, 2023, through Parent's counsel at the time, a request for student's records was made with an Authorization for Release of Information and Records signed by Parent. The request for records included all evaluations; all IEPs, including drafts; notice of procedural safeguards; all confidential status records or logs; all test protocols; all emails relating to the student; all health and immunization records; all cumulative records; all grades, progress reports and teacher comments; all disciplinary records; all standardized test results; all attendance records and all logs of service for students by service providers; and any and all other records directly related to the student and maintained by the school district.<sup>107</sup>

<sup>102</sup> P-23, page 7

<sup>103</sup> P-23, page 15

<sup>104</sup> R-6

<sup>105</sup> R-5

<sup>106</sup> R-5

<sup>107</sup> P-28; P-29

62. On June 28, 2023, a Declaration of Custodian of Records was executed by the Data Systems Operator in the Student Records Services Department of the District and stated that a true and exact copy of the education records for Student was reproduced in connection with the declaration.<sup>108</sup> No other evidence was offered or admitted related to the request for Student's educational records.

***Twelfth Grade 2023-2024 School Year***

63. Student remained enrolled in School for the twelfth grade during the 2023-2024 school year, from August 7, 2023 through May 20, 2024. Student demonstrated the ability to self-calm during the entirety of the twelfth-grade year. Assistant Principal got called if Student got highly agitated and the instructor or the aid in the room was not successful calming the student. Assistant Principal was able to speak with Student, and after a safe place was created for the student, the student would calm down. Assistant Principal was made aware of Student's safety plan, part of which included having a Specialized Programs Teacher Assistant (SPTA) walk Student to and from class, or to the bathroom during the school day. Student did not like having someone follow the student and often wove in and out of other students in the hallway to purposely lose the SPTA. When that happened the SPTA would go to Student's next classroom to ensure that the student was there and then would report it to Assistant Principal.<sup>109</sup>

64. SPED Teacher 2 remained one of Student's teachers for the twelfth grade. SPED Teacher 2 was aware of the safety plan because it was contained in Student's IEP and knows that it was implemented. SPED Teacher 2 described Student as follows: very conscientious academically; the student likes everything to be just right where the student's work is concerned; very nice; willful; good at advocating for oneself; social and had friends; the student had a positive attitude. The IEP that SPED Teacher 2 implemented in the twelfth grade for Student was the 2/3/2023 Amended IEP. SPED Teacher 2 did not think that the IEP was inappropriate or that the present levels were inaccurate for Student.<sup>110</sup>

65. On September 19, 2023, SPED Teacher 2 sent an email out with the subject line "Pre-ETS Packet" to all parents of the students in SPED Teacher 2's caseload letting the parents know that a packet was sent home with the students regarding a program to potentially implement

<sup>108</sup> P-32

<sup>109</sup> Assistant Principal's testimony; R-1

<sup>110</sup> SPED Teacher 2's testimony

during Pre Vocational Skills class. Parents were directed to complete the packet and return it to the school if they consent to the implementation of the program or to reply to the email if they did not consent to the program. A reminder email was sent out on September 24, 2023 to Parent asking that the packet be completed and returned or that Parent respond to the email and again on October 1, 2023.<sup>111</sup> On January 4, 2024 SPED Teacher 2 sent Parent another email letting Parent know that SPED Teacher 2 re-sent the packet home with Student that day and against asked for the packet to be completed and returned or for a reply to the email if Parent did not consent.<sup>112</sup>

66. On October 1, 2023, SPED Teacher 2 sent an email out with the subject line “32<sup>nd</sup> Annual Disability Awareness Day Event” to all parents of the students in SPED Teacher 2’s caseload letting them know about an event where families could meet and learn from over 60 disability service providers in the community. Attached to the email was the flyer for the event.<sup>113</sup>
67. Student’s 10/6/2023 Progress Report is marked “Satisfactory” for all six of Student’s 2/3/2023 IEP Goals. There is no additional information related to any of the short-term objectives and no information under the “Comments” section of the progress report.<sup>114</sup>
68. On October 10, 2023, SPED Teacher 2 sent an email with the subject line “BVR and DRC Applications” to all parents of the students in SPED Teacher 2’s caseload. The email provided parents with links to complete the applications which were one-time applications for additional optional resources available outside of the school district to assist with transitioning from high school. Parents were directed to reach out with any questions.<sup>115</sup>
69. On October 10, 2023 SPED Teacher 2 sent an email with the subject line “CBI Field Trips: Permission Slips” to all parents of the students in SPED Teacher 2’s caseload announcing plans to go on a community-based instruction field trip as part of the SLD program. The email notified parents that two paper community-based instruction permission slips went home with students that day and one set of permission slips were good for the entire school year of field trips. Parents were directed to reach out with any questions. On October 17, 2023, a follow up

<sup>111</sup> SPED Teacher 2’s testimony; R-18, pages 1-6

<sup>112</sup> SPED Teacher 2’s testimony; R-18, page 7

<sup>113</sup> R-18, pages 8-10

<sup>114</sup> P-34

<sup>115</sup> SPED Teacher 2’s testimony; R-18, pages 11-47

email was sent by SPED Teacher 2 to Parent because Student's permission slip had not been turned in yet.<sup>116</sup>

70. On October 19, 2023, Student turned 18 and became an adult student.<sup>117</sup>

71. On November 19, 2023 SPED Teacher 2 scheduled an annual IEP meeting with Parent and Student for January 24, 2024. On November 20, 2023, SPED Teacher 2 was informed that the student agreed to sign the consent for formal testing but wanted Parent's input before doing so. Parent informed SPED Teacher 2 that they had a bad experience with the previous SLD teacher and special education instructional facilitator regarding the IEP process causing Parent to be hesitant about current testing, and Parent asked that the current special education instructional facilitator call the parent to discuss the same. The consent was never signed.<sup>118</sup>

72. On November 20, 2023, SEIF received an email from SPED Teacher 2 about Parent and Student's concerns and bad experiences in the past. On November 21, 2023, SEIF followed up with Parent related to the consent for testing and transition support and left a voicemail for Parent requesting a return call. On November 28, 2023, SEIF attempted to contact Parent again to discuss the parent's concerns but had to leave another message requesting a return call. On December 1, 2023, SEIF contacted Parent to discuss any concerns. At that time, Parent stated that they wanted to keep the IEP the same because the student was a senior and was about to graduate. SEIF informed Parent that they could keep the services the same but that at a minimum, they had to update the student's present levels and goals. Consent was not received to conduct further testing. They discussed the ACT as a final graduation requirement because the student did not take the ACT the prior school year and SEIF informed Parent that if they wanted the student to have testing accommodations for the ACT, they needed a signed release of information before the December deadline. SEIF concluded the conversation by informing Parent that they would proceed with IEP development with just classroom data and any district testing (MAP) available. SEIF then instructed SPED Teacher 2 to proceed with the IEP development using the above-mentioned sources.<sup>119</sup>

73. SPED Teacher 2 gave Student coursework for assignments and assessments and constantly tested Student after activities and lessons to determine how Student was doing learning the

<sup>116</sup> SPED Teacher 2's testimony; P-35; R-18, pages 48-49

<sup>117</sup> HO-1

<sup>118</sup> SPED Teacher 2's testimony; R-6, page 8

<sup>119</sup> SEIF's testimony, R-6, pages 6-7

skills being taught by SPED Teacher 2. SPED Teacher 2 did not complete any formal testing on Student because no written consent was ever received. Without consent, SPED Teacher 2 could not prepare for the process to attend an IEP meeting for Student. SPED Teacher 2 was informed that Parent and Student did not want to change any of Student's present levels, did not want Student to have any testing, and did not want any of Student's goals to change. The testing was necessary to determine if Student needed other goals in the IEP.<sup>120</sup>

74. On December 5, 2023, SPED Teacher 2 sent an email with the subject line "December GAP Workshop" to all parents of the students in SPED Teacher 2's caseload with an attachment for the workshop being provided by the school district.<sup>121</sup>
75. Student took courses in the following subjects during the first half of the school year: English 4, Principles of Algebra, Principles of Physical Science, the Study of American Govt, Lifetime Spts Rec, Theatre Tech I, Pre Vocational Skills, and Soc Living/Indep Living Skills. Student earned a grade of "A" in all subjects.<sup>122</sup>
76. On January 2, 2024, SPED Teacher 2 sent an email with the subject line "FAFSA Changes Workshop" to all parents of the students in SPED Teacher 2's caseload with an attachment related to the workshop details regarding changes to FAFSA (Free Application for Federal Student Aid).<sup>123</sup>
77. On January 5, 2024, a *Parental Prior Notice of District Proposal*, written notice 1 was sent proposing to develop the annual IEP and develop transition services and/or postsecondary goals based on academic concerns and IEP development review. A *Parental Prior Notice – Proposed Meeting Arrangements* with the tentative meeting date of January 24, 2024 was also provided.<sup>124</sup> A second written notice was sent on January 10, 2024. On January 17, 2024, SPED Teacher 2 emailed a draft of the 1/24/2024 Annual IEP to Parent and hand-delivered a copy to Student the following day. On January 19, 2024, a third written notice was sent. On January 23, 2024, per Parent and Student's request the IEP meeting was rescheduled for February 1, 2024.<sup>125</sup>

<sup>120</sup> SPED Teacher 2's testimony

<sup>121</sup> R-18, pages 50-51; P-38

<sup>122</sup> R-5

<sup>123</sup> R-18, pages 52-53

<sup>124</sup> P-40; R-6, page 8

<sup>125</sup> P-43; R-6, page 8

78. On January 25, 2024, a *Parental Prior Notice*, written notice 1, was sent. A second notice was sent on January 30, 2024 and a third notice was sent on January 31, 2024. On February 1, 2024, the IEP Team met as planned, but Parent asked to reconvene the meeting so that Student could select a general education teacher that the student was comfortable with to attend the meeting and Parent wanted to incorporate Nevada PEP in the meeting.<sup>126</sup>
79. Attempts to coordinate the rescheduled IEP meeting were made by SEIF on February 6<sup>th</sup>, February 12<sup>th</sup>, February 20<sup>th</sup>, February 26<sup>th</sup>, March 20<sup>th</sup> and March 25<sup>th</sup>. The IEP meeting was finally rescheduled for March 28, 2024.<sup>127</sup>
80. On February 18, 2024, SPED Teacher 2 sent an email with the subject line “6/17-6/28 On the Right Track College and Career Exploration Camp” to all parents of the students in SPED Teacher 2’s caseload with a flyer for even taking place in June 2024. The flyer states that the camp teaches students what it takes to be the best employee possible and that they provide college and employment training with fun hands-on activities.<sup>128</sup>
81. On March 4, 2024, SEIF was called into Student’s classroom because the student refused to take the ACT. SEIF attempted to speak with Student, but the student refused to remove the student’s headphones or acknowledge SEIF. SEIF tried to explain that the ACT was a graduation requirement and received no response from the student. SEIF then contacted Parent to ask for help getting the student to take the test and Parent offered to call the student. Student exited the classroom, without informing the instructor, to take the parent’s phone call. The SPTA followed the student in compliance with Student’s safety plan, but Student told the SPTA to stop following the student. After a few minutes of speaking with the parent, Student brought the phone to SEIF while the parent was still on, and Parent told SEIF that they should not be forcing Student to test when the student does not want to. SEIF explained that they were not forcing Student to test, but that it is a required test for graduation. Parent told Student to take the test and asked SEIF about having the safety plan removed because it was causing Student more anxiety and stress. SEIF told Parent that it would need to be investigated why it was in place and for what duration and would follow up with the parent as soon as possible.<sup>129</sup>

<sup>126</sup> SEIF’s testimony; P-44; P-45; P-46; R-6, page 8

<sup>127</sup> SEIF’s testimony; R-6, pages 9 & 14

<sup>128</sup> R-18, pages 56-57; P-47

<sup>129</sup> R-6, pages 12 & 11

82. On March 5, 2024, SEIF spoke with administration in charge of discipline regarding Student's safety plan. SEIF was informed that the safety plan was initially put in place after a physical altercation with a staff member. SEIF asked about the duration of the safety plan as it is not something typically found in the IEP and was informed that a safety plan is in place for a single school year and can be removed. SEIF contacted Parent to confirm the removal of the safety plan and Parent confirmed that both the parent and Student agreed. SEIF then emailed SPED Teacher 2 advising that Student no longer needed to be escorted around campus.<sup>130</sup>
83. On March 28, 2024, SEIF attempted to hold the annual IEP meeting, but Student did not attend the meeting. Parent was informed that the IEP Team could not hold the meeting without the attendance of the student because the student was legally an adult. Parent produced a document stating that Parent had power of attorney to make educational decisions for Student. SEIF asked to make a copy of the document, but Parent refused. SEIF then called the Office of Compliance and Monitoring for guidance on how to proceed and was directed to speak with the district's General Counsel. General Counsel informed SEIF that they needed a copy of the power of attorney to verify the authenticity and legal admissibility of the same. SEIF discussed this information with Parent and again asked to copy the power of attorney, but Parent refused and stated that the parent wanted to contact legal counsel for advice. Shortly thereafter, Parent returned with a representative from Nevada PEP and requested the contact information for General Counsel so the power of attorney could be provided directly to their office. Parent then asked if they could still move forward with the IEP meeting and SEIF informed Parent that they either had to have Student in attendance by phone or in person, but it was past contract time for staff, so the meeting could not proceed.<sup>131</sup>
84. SPED Teacher 3 met Student as a freshman and, at the student's request, transferred into SPED Teacher 3's classroom on April 2, 2024. SPED Teacher 3 taught Student English, math, social living and science. Prior to becoming one of SPED Teacher 3's students, Student was helpful, volunteered and was very compliant, but after becoming one of the students, that behavior was not consistent. Student was defiant and refused to follow directions such as after being told to sit down, write your name, or complete assignments. SPED Teacher 3 saw Student outside of the school at the student's place of employment during two different periods of employment.

<sup>130</sup> R-6, page 13

<sup>131</sup> SEIF's testimony; R-6, pages 16 and 15

Student would sometimes offer details to other students about the student's job. Standard practice when a student comes into SPED Teacher 3's class is to provide baseline testing, and then SPED Teacher 3 usually tests every 3-4 weeks after to determine whether the baseline has moved and if the student is making progress. Student refused to complete any of the testing and told SPED Teacher 3 that Parent told Student not to complete any testing. SPED Teacher 3 documented this in Student's Confidential Status Record. Student also refused to use the in-class chrome book to complete assignments.<sup>132</sup>

85. On April 1, 2024, SEIF reached out to Parent requesting an update on whether the power of attorney was sent to General Counsel's office, but Parent did not answer the phone and SEIF had to leave a message. SEIF followed up again on April 8, 2024 and had to leave a message requesting a return call. On April 16, 2024, SEIF was contacted by the Office of Compliance and Monitoring and informed that they would reach out to Parent about the power of attorney. On April 17, 2024, the Office of Compliance and Monitoring contacted SEIF to advise that General Counsel received the power of attorney and it was sufficient to establish the same for educational decision making. On April 18, 2024, SEIF reached out to Parent to schedule the IEP meeting but had to leave a message requesting a return phone call.<sup>133</sup>
86. On April 22, 2024, Parent contacted SEIF and stated that the parent wanted the current SLD teacher and SEIF to attend the IEP meeting along with a representative from Nevada PEP. Discussions ensued about possible dates and availability. SEIF also advised Parent that they would need to discuss completing an Exit IEP as Student would be graduating with a standard diploma and would no longer qualify for services at that point. A standard diploma is for students that are considered college and career ready while an adjusted diploma is for students that have met their IEP goals, but not the requirements to be college and career ready.<sup>134</sup>
87. On May 2, 2024, SEIF attempted to reach Parent to set up the annual IEP and finalize Student's diploma path as they were running up against the graduation deadline if Student wanted to remain in school. SEIF had to leave a voicemail requesting a return call as soon as possible. On May 3, 2024, SEIF received a voicemail from Parent stating that the parent and Nevada PEP wanted to schedule the meeting for May 15<sup>th</sup> in the afternoon. SEIF returned the call and

<sup>132</sup> SPED Teacher 3's testimony; R-6, pages 17, 22

<sup>133</sup> R-6, page 18

<sup>134</sup> SEIF's testimony; R-6, page 19

scheduled the meeting for the requested date and asked Parent if a decision was made about whether to keep Student in school for an additional year. Parent informed SEIF that the parent still needed to speak to Student and Nevada PEP and would get back to SEIF. On May 7, 2024, SEIF attempted to reach Parent to discuss the diploma path but had to leave a message. Parent returned the call on May 8, 2024 and informed SEIF that a decision would be made at the meeting.<sup>135</sup>

88. Student took courses in the following subjects during the second half of the school year: English 4, Principles of Algebra; Principles of Physical Science, the Study of Economics, Lifetime Spts Rec, Theatre Tech I, Pre Vocational Skills, and Soc Living/Indep Living Skills.<sup>136</sup>

### ***Post Filing of the Due Process Complaint***

89. On May 15, 2024, SEIF attempted to convene the IEP meeting for consideration of the Exit IEP, and to consider the diploma track. All required IEP members were in attendance and a Nevada PEP representative also attended. The two different diploma track options were explained to Parent and the Nevada PEP representative and an explanation of “Stay Put” was provided due to the filing of the due process complaint on May 7, 2024. Parent wanted Student to attend school the following year and continue working on IEP goals and did not want to change any of the goals while the due process proceeding. SEIF informed Parent that the “Stay Put” plan in place was for Student to receive a standard diploma and could possibly result in Student being exited involuntarily, but SEIF would take the administrative steps necessary to provide Student with an adjusted diploma to ensure Student could return and have the same services. No changes to the IEP were made and the team agreed to reconvene to develop an IEP that adequately meets Student’s needs and respond to the outcome of the due process hearing. Parent did not believe that Student was prepared to exit high school and enter the daily world.<sup>137</sup> Student received the required credits and met all of the requirements to graduate and receive a standard diploma. A standard diploma was printed for Student but has never been picked up by either Parent or Student.<sup>138</sup>

<sup>135</sup> R-6, pages 21 and 20

<sup>136</sup> R-5

<sup>137</sup> SEIF’s testimony; R-6, pages 25 and 24

<sup>138</sup> Assistant Principal’s testimony; R-5

### *Independent Educational Evaluation*

90. An IEE paid for by the District was completed by Private Psychologist on Student on August 29, 2025 and the IEE Report was issued on September 17, 2025. The information contained at the very top of the Report states in pertinent part: The information contained in this evaluation is intended to assist in developing a **clinical diagnosis** and treatment recommendations. The Reason for Referral states: Student was referred for an evaluation by the student's parent and the District due to not having updated assessments and testing data since 2014, approximately 10 years. Student was scheduled to graduate in May 2025, although without an updated evaluation, appropriate recommendations and supports could not be put in place. The purpose of this evaluation was to determine diagnostic clarity and appropriate resources prior to Student transitioning into further adulthood and independence.<sup>139</sup>
91. Evaluation procedures included: clinical interview with Student; clinical interview with Parent; review of records, Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV); Woodcock Johnson Test of Achievement, Fourth Edition (WJ-IV-Ach); and Behavior Assessment System for Children, Third Edition (BASC-3) – Parent.<sup>140</sup>
92. The WAIS-IV is a cognitive assessment. A cognitive assessment is a norm-referenced assessment looking at how people may process information verbally and nonverbally, similar to an IQ test. This test can help in understanding how a student may learn, strengths and weaknesses in a student's profile, and how students process verbal and nonverbal information. This assessment was appropriate to conduct for this Student and is also used by the district, when age appropriate. The results of this WAIS-IV in the IEE Report indicated that the student's intelligence was moderately in the intellectually disabled range which means Student struggled with academics and might have difficulty in other parts of the student's life. This result, by itself, is not enough to determine if Student meets the criteria under the NAC as an educational disability.
93. District does not rely on just one cognitive assessment to determine a student's intellectual abilities because they want to ensure that they have the student's performance on two different measures, so that way if a student is having a problem one day, they can make sure that the student's performance from that particular day will not affect overall potential ability. This

<sup>139</sup> R-19

<sup>140</sup> Director's testimony; Private Psychologist's testimony; R-19

IEE Report does not contain the sections on adaptive behavior and speech and language that the District would include. Adaptive behavior looks at various functions looking at how a student may utilize their community, access their community, ability to work, various parts of language, whether written or oral expression, daily living-at-home skills, and how they take care of themselves. If a person has ID, then the adaptive behavior assessment looks at whether their ID is going to impact their work.<sup>141</sup>

94. This IEE Report does not contain school-related information which is important because eligibility for special education and related services should be educationally relevant. Just because a student has a disability in the community and a clinical diagnosis does not mean that they need specially designed instruction and special education services. The District needs to see behaviors across settings, not just in this one setting. A clinical diagnosis of ED is different from an eligibility determination under the IDEA.<sup>142</sup>
95. This IEE Report evaluated Student's behavioral deficits through observations during the evaluations along with a BASC-3 rating scale provided only to Parent. The results of this BASC-3 showed Student in the average range for the following: externalizing problems; internalizing problems; and behavior symptoms scale. For the adaptive skills category, most fell in the at-risk range.
96. The IEE Report includes the following diagnostic impressions: Intellectual Development Disability (Intellectual Disability), Moderate, and Unspecified Trauma- or Stressor-Related Disorder. The Unspecified Trauma- or Stressor-Related Disorder does not fall within a special education eligibility category.<sup>143</sup>
97. The IEE Report placed Student in the Exceptionally Low to Below Average range, with skills comparable to those of a 7- to 8-year-old child. The results indicate that Student faces significant challenges in intellectual functioning, reading, writing, and math compared to same age peers, working much more slowly and struggling with comprehension and application of skills. Despite these difficulties, Student demonstrates personal strengths in working memory, basic math fact fluency, and producing simple written sentences when prompted, but will

<sup>141</sup> Director's testimony

<sup>142</sup> Director's testimony

<sup>143</sup> Director's testimony

require ongoing support and accommodations such as step-by-step instructions, extended time, and alternative ways to demonstrate knowledge.<sup>144</sup>

98. In preparation for this hearing, SPED Teacher 1 was provided a copy of the IEE and had the opportunity to review the same. SPED Teacher 1 did not think that Student had an intellectual disability during the three years Student was in the classroom. Although some of the student's testing was low, the student stood out during face-to-face interactions as one of the few students that would regularly answer questions without being called on. With 15 years of experience, SPED Teacher 1 could not believe Student's IQ score from the IEE.<sup>145</sup>

### ***Student's Testimony***

99. Student has not gone back to school because it was too much for the student, and often the student would end up in the bathroom crying. Student constantly called Parent from the bathroom crying and told Parent that Student was not given the pressure pass or accompanied to the bathroom. Student was bullied and harassed at School. Student also heard SPED Teachers 2 and 3 talking about the student after the filing of the due process complaint, making comments that the student no longer belonged at School. Student would like to be able to go back to school at College or attend a particular Program for people with disabilities and get supports such as counseling for depression. Student would like to be able to audit classes rather than earn grades, work on obtaining skills to obtain a job, work on the ability to grocery shop and budget, be able to pay bills and eventually get an apartment.

## **V.**

### **CONCLUSIONS OF LAW**

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

#### **ISSUE ONE**

***Whether District failed to complete Student's triennial evaluation in February 2023, failed to timely and appropriately assess Student in the areas of reading, writing, speech and language, for characteristics of Dyslexia, for Occupational Therapy, for social skills, and for emotional***

<sup>144</sup> R-19, page

<sup>145</sup> SPED Teacher 1's testimony

*and educationally related mental health needs? If so, did this constitute a denial of a Free Appropriate Public Education (FAPE) from May 6, 2022 to May 6, 2024?*

## LEGAL AUTHORITY

### *i. Parental Consent*

The school district must obtain parental consent prior to conducting any reevaluation of a child with a disability.<sup>146</sup> If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures.<sup>147</sup> The school district does not violate its obligations under 34 C.F.R § 300.11 and SS 300.301 through 300.111 if it declines to pursue the reevaluation.<sup>148</sup> The informed parental consent need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the child's parent has failed to respond.<sup>149</sup> Parental consent is not required before reviewing existing data as part of a reevaluation or administering a test or other evaluation that is administered to all children, unless, before administration of that test or evaluation, consent is required of all parents of all children.<sup>150</sup>

### *ii. Reevaluation*

A school district must ensure that a reevaluation of each child with a disability is conducted if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation.<sup>151</sup> A reevaluation must occur at least once every 3 years, unless the parent and the school district agree that it is unnecessary.<sup>152</sup>

As part of any reevaluation, the IEP Team must review existing evaluation data on the child including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers.<sup>153</sup> On the basis of that review, and input from the child's parents, the IEP Team must identify what additional data, if any, are needed to determine whether the child

<sup>146</sup> 20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(i); NAC 388.300(1)

<sup>147</sup> 34 C.F.R. § 300.300(c)(1)(ii); NAC 388.300(1)

<sup>148</sup> 34 C.F.R. § 300.300(c)(1)(iii); NAC 388.300(2)

<sup>149</sup> 34 C.F.R. § 300.300(c)(2); NAC 388.300(2)

<sup>150</sup> 34 C.F.R. § 300.300(d)(1); NAC 388.300(6)

<sup>151</sup> 20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a); NAC 388.440(1)

<sup>152</sup> 20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); NAC 388.440(1)(b)

<sup>153</sup> 20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1); NAC 388.336(1)

continues to have a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.<sup>154</sup> The IEP team may conduct its review without a meeting.<sup>155</sup>

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of that determination and the reasons for the determination; and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. The school district is not required to conduct the assessment unless requested to do so by the child's parents.<sup>156</sup>

#### ANALYSIS

Here, District provided Parent with the *Parental Prior Notice of District Proposal, Student Services Referral*, and *Parent Notification of No Additional Assessment Information Needed and Status of Reevaluation* on December 8, 2022. Student was not yet an adult at that time. The District proposed that no formal reevaluation was warranted based on review of existing evaluation data, no identified new assessment questions, and recognition that the current eligibility was still appropriate. Parent was informed of the right to request further assessment, the deadline by which to request the same, and that if the request was not made, that the failure to do so would equate to agreement that no additional data was needed and that the IEP Team meeting would be scheduled. Parent did not sign and return this form. Parent did not refute the lack of signature, did not reach out to School, as directed on the form, with any questions or concerns, and did not request any assessments in the additional areas of speech and language, for characteristics of Dyslexia, for occupational therapy, or for emotional and educationally related mental health needs.<sup>157</sup>

<sup>154</sup> 20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 300.305(a)(2); NAC 388.336(2)

<sup>155</sup> 34 C.F.R. § 300.305(b); NAC 388.336

<sup>156</sup> 20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305((d)

<sup>157</sup> FOF 35; FOF 39

The *Statement of Need for Reevaluation* Parent received notified the parent that District determined further reevaluation was unwarranted because Student had two or more prior, consecutive evaluations confirming the current disability classification; Student's identified disability continued to adversely impact achievement; no other disability was suspected of adversely impacting achievement; no additional assessments were needed or requested by a parent or teacher; and Student's progress toward IEP goals demonstrated a continuing need for specialized instruction.<sup>158</sup> Parent received two additional prior written notices, one dated January 26, 2023 and one dated February 2, 2023. Parent was also contacted by phone for each of the three notices. Parent virtually attended the IPE meeting on February 3, 2023 and agreed to the IEP.<sup>159</sup>

According to SPED Teacher 2, SEIF, and SPED Teacher 3, Parent did not want Student to complete any additional testing, and Student refused to complete even normal testing that was given to all students which did not need parent consent.<sup>160</sup> The District's hands were tied and they had to rely mostly on Student's work samples and first-hand observations of Student, which they did and documented under the present levels in the 2/3/2023 IEP.<sup>161</sup>

***Therefore, District did not fail to complete Student's triennial evaluation in February 2023, as it timely issued written notices to Parent, provided Parent the opportunity to request new assessments which Parent did not request, and the Parent not only attended the IEP meeting but also agreed to the IEP. Furthermore, based on Student's refusal to complete formal testing, and without parental consent to conduct the same, District did not fail to appropriately assess Student in the areas of reading, writing, speech and language, for characteristics of Dyslexia, for Occupational Therapy, for social skills, and for emotional and educationally related mental health needs. While District chose not to pursue reevaluation by using consent override procedures, that was not a violation of the IDEA and therefore Student was not denied a FAPE.***

## ISSUE TWO

***Whether District failed to design appropriate reading, writing, math goals and services and failed to provide behavior and mental health goals, executive functioning, language pragmatics,***

<sup>158</sup> FOF 36

<sup>159</sup> FOF 38; FOF 39

<sup>160</sup> FOF 71; FOF 72; FOF 73; FOF 81; FOF 84

<sup>161</sup> FOF 41; FOF 42; FOF 43; FOF 44; FOF 45

***and fine motor goals in Student's February 2, 2022, and February 3, 2023 IEPs? Did the District fail to identify and provide services for "possible needs" in the areas of executive functioning, language pragmatics and fine motor skills? If so, was there a denial of a FAPE from May 6, 2022 to May 6, 2024?***

#### LEGAL AUTHORITY

An IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability.<sup>162</sup> The description of annual goals should be specific enough to allow the district to determine whether the student made progress and also make clear which specific skills will be required to achieve those goals.<sup>163</sup> The IEP team must write IEP goals in a way that allows for an objective measurement of the child's progress toward achieving the annual goals.<sup>164</sup>

In developing the IEP, the IEP Team must consider several factors, including the strengths of the child, the concerns of the parents for enhancing the education of the child, the results of the initial or most recent evaluation of the child, and the academic achievement, developmental, and functional needs of the child.<sup>165</sup>

The basic nature and meaning of a statute does not change when an agency happens to be involved. Nor does it change just because the agency has happened to offer its interpretation through the sort of procedures necessary to obtain deference.<sup>166</sup> Although courts are not bound by agency interpretations of statutes and regulations, they generally give them deferential consideration. An IEP for an eligible child with a disability under the IDEA must be aligned with the State's academic content standards for the grade in which the child is enrolled. Research has demonstrated that children with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate

<sup>162</sup> 34 C.F.R. § 300.320(a)(2)

<sup>163</sup> 64 Fed. Reg. 12,471 (1999). *See D.S. and A.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3d Cir. 2010).

<sup>164</sup> 71 Fed. Reg. 46,662 (2006). *See, e.g., Jefferson County Sch. Dist. RI*, 110 LRP 22618 (SEA CO 12/01/09) (finding that the student's postsecondary goal, which called for him to "explore careers that involve physical movements, such as construction, delivering, sorting, etc.," was neither measurable nor based on age-appropriate transition assessments).

<sup>165</sup> 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a)(1)

<sup>166</sup> *Loper Bright Enter. v. Raimondo*, 144 S.Ct. 2244, 2271, 219 L.Ed.2d 832 (2024)

instruction, services, and supports are provided. Conversely, low expectations can lead to children with disabilities receiving less challenging instruction that reflects below grade-level content standards, and thereby not learning what they need to succeed at the grade in which they are enrolled.<sup>167</sup>

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a FAPE that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. An IEP must consider a child's present levels of academic achievement and functional performance, and the impact of that child's disability on his or her involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities.<sup>168</sup>

The IDEA requires an education to all eligible children. This requirement is satisfied, and a child has received a FAPE, if the child's IEP sets out an educational program that is "reasonably calculated" to enable the child to receive educational benefits and to make progress appropriate in light of the child's circumstances. The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. This fact-intensive exercise will be informed not only by the expertise of school officials but also by the input of the child's parent or guardians. Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether it is ideal. The IEP must aim to enable the child to make progress. A focus on the particular child is at the core of the IDEA. The instruction offered must be "specially designed" to meet a child's "unique needs" through an IEP, which is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth.<sup>169</sup> If, however, the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.<sup>170</sup>

<sup>167</sup> *Dear Colleague Letter*, 66 IDELR 227 (November 16, 2015, OSEP)

<sup>168</sup> *Dear Colleague Letter*, 66 IDELR 227 (November 16, 2015, OSEP)

<sup>169</sup> *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 37 S.Ct. 988, 995-996, 999 (2017).

<sup>170</sup> *Los Angeles Unified Sch. Dist. v. A.O. by & through Owens*, 92 F.4th 1159, 1175 (9th Cir. 2024)

*Rowley* sheds light on what appropriate progress will look like in many cases. The Court recognized that the IDEA requires that children with disabilities receive education in the regular classroom "whenever possible." When this preference is met, "the system itself monitors the educational progress of the child." "Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material." Progress through this system is what our society generally means by an "education." And access to an education is what the IDEA promises.<sup>171</sup>

*Rowley* had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. A child's IEP need not aim for grade-level advancement if that is not a reasonable prospect. But that child's educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.<sup>172</sup>

When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly ... awaiting the time when they were old enough to 'drop out.'" The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>173</sup> The program must be designed to convey a "meaningful benefit" to the student.<sup>174</sup>

## ANALYSIS

### *i. February 2, 2022 IEP*

Prior to the development of Student's 2/2/2022 IEP, Student's January 25, 2022 progress report showed that Student was making satisfactory progress on the student's prior goals and objectives in Written Expression, Pre Vocational and Social/Emotional/Behavioral Goals. The progress reports also showed that Student met the Reading and Math Goals.<sup>175</sup> All of Student's

<sup>171</sup> *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 400-401, 37 S.Ct. 988, 995-996, 999-1000 (2017).

<sup>172</sup> *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 402, 137 S.Ct. 988, 1000 (2017).

<sup>173</sup> *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 402-03, 137 S. Ct. 988, 1001 (2017)

<sup>174</sup> *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999)

<sup>175</sup> FOF 5; FOF 6; FOF 7; FOF 8; FOF 9; FOF 10

goals in the 2/2/2022 IEP were updated and written by SPED Teacher 1, based in part on assessments that Student completed, as well as classroom work and SPED Teacher 1's observations of what the student had the capability to learn.<sup>176</sup> For ease of comparison, the goals are set forth next to one another herein below:

2021 IEP

2022 IEP

<p><b>Written Expression Goal:</b> use all available tools to increase ability to produce clear and coherent writing in which the development, organization, and style are appropriate to task purpose, and audience, achieving a criteria of 80%<sup>177</sup></p>	<p><b>Written Expression Goal:</b> increase written expression skills by writing a 3-5 paragraph essay using an outline which will include an introduction, supporting details, and conclusion, as well as identify and correct errors with 80% accuracy<sup>178</sup></p>
<p><b>Reading Goal:</b> increase decoding skills by reading 70 words with consonant blends achieving a criteria of 4 out of 5 trials<sup>179</sup></p>	<p><b>Reading Goal:</b> read fiction and non-fiction texts to make inferences based on reading material and answer comprehension questions after reading grade level material with 80% accuracy<sup>180</sup></p>
<p><b>Math Goal:</b> solve word problems involving dollar bills, dimes, nickels, and use symbols appropriately achieving a criteria of 4 out of 5 trials<sup>181</sup></p>	<p><b>Math Goal:</b> increase ability to solve math problems involving comparing fractions, adding and subtracting fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80%<sup>182</sup></p>
<p><b>Pre Vocational Skills Goal:</b> demonstrate an understanding of behaviors appropriate during an interview<sup>183</sup></p>	<p><b>Pre Vocational Skills Goal:</b> increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long-term achieving a criterion of 80%<sup>184</sup></p>
<p><b>Social/Emotional/Behavioral Goal:</b> demonstrate appropriate interpersonal behavior skills toward staff and peers, achieving a criteria of 4 out of 5 trials<sup>185</sup></p>	<p><b>Social/Emotional/Behavioral Goal:</b> when the student or others are angry, Student will increase ability to remain calm and breathe deeply, use a neutral voice and facial expression, avoid critical or sarcastic comments, listen to what the other person is</p>

<sup>176</sup> FOF 24

<sup>177</sup> FOF 6

<sup>178</sup> FOF 25

<sup>179</sup> FOF 7

<sup>180</sup> FOF 26

<sup>181</sup> FOF 8

<sup>182</sup> FOF 27

<sup>183</sup> FOF 9

<sup>184</sup> FOF 29

<sup>185</sup> FOF 10

	saying, and report the incident to an adult achieving a criterion of 80% <sup>186</sup>
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When viewing the 2022 goals, in isolation from the present levels, two of the goals stand out from the previous year: written comprehension and reading. While Student met the reading goal to increase decoding skills by reading 70 words with consonant blends, the new goal to increase written expression skills by writing a 3-5 paragraph essay using an outline which will include an introduction, supporting details, and conclusion, as well as identify and correct errors with 80% accuracy is questionable without more information. The new goals in math, pre vocational, and social/emotional/behavioral are appropriate considering the progress Student made and appear to be the logical next steps for those goals.

For the two goals that are questionable, the next step in this analysis is to compare Student's present levels at the time of the 2/2/2022 IEP meeting with the goals written to determine whether there was information that supported the new goals:

<p><b>Written Expression Present Level:</b>  WRAT 5 Average Score is 90-110  WRAT 5 spelling score 62  Teacher observations: needs to improve ability to produce written work which is legible, properly spaced, capitalized, and punctuated; needs to improve ability to express a complete thought in a mature sentence structure; and needs to improve ability to write essays/paragraphs which are well organized and grammatically correct.  Student can complete writing portions of assignments but still needs to work on the writing skills listed above. Student can access text to voice features and voice to text features on the chrome book when needed, an accommodation is listed under supplementary aids and services section of this IEP<sup>187</sup></p>	<p><b>Written Expression Goal:</b> increase written expression skills by writing a 3-5 paragraph essay using an outline which will include an introduction, supporting details, and conclusion, as well as identify and correct errors with 80% accuracy<sup>188</sup></p>
<p><b>Reading Present Level:</b>  WRAT 5 Average Score is 90-110  WRAT 5 Word Reading Score: 95  Sentence Comprehension Score: 66  Teacher observations:</p>	<p><b>Reading Goal:</b> read fiction and non-fiction texts to make inferences based on reading material and answer comprehension questions</p>

<sup>186</sup> FOF 28

<sup>187</sup> FOF 20

<sup>188</sup> FOF 25

<p>“Basic Reading Skills” – can decode unfamiliar words; can read fluently using grade level material; and can read grade level material independently.</p> <p>“Reading Comprehension” – can follow written instructions to complete a project/assignment; needs to improve ability to answer comprehension questions after reading grade level material; needs to improve ability to use context clues to derive word meanings; and needs to improve ability to make inferences based on reading material<sup>189</sup></p> <p>Student could read at a second or third grade level at that time<sup>190</sup></p>	<p>after reading grade level material with 80% accuracy<sup>191</sup></p>
<p><b>Math Present Level:</b>  WRAT 5 Average Score 90-110  WRAT 5 Math Score 77</p> <p>Student was able to solve the following: single addition and subtraction problems, sequencing problems, 2-digit addition and subtraction problems, 3-digit addition and subtraction problems, division problems that involve dividing a two-digit number by a one-digit number, multiplication problems that involve multiplying 2- and 3-digit numbers by one number, substituting variables with numbers. Some concepts that Student needs to work on include comparing fractions, adding and subtracting fractions, solving problems that involve numbers that need to be squared and cubed, converting fractions into percentages and problems that involve converting percentages into fractions<sup>192</sup></p>	<p><b>Math Goal:</b> increase ability to solve math problems involving comparing fractions, adding and subtracting fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80%<sup>193</sup></p>
<p><b>Pre Vocational Skills Present Level:</b>  Student is able to develop and write a resume and complete a job application; able to decipher between appropriate and not appropriate ways to dress for job interviews and for the student’s job; knows to ask employer for explanations on the dress code if</p>	<p><b>Pre Vocational Skills Goal:</b> increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long-term achieving a criterion of 80%<sup>195</sup></p>

<sup>189</sup> FOF 19

<sup>190</sup> FOF 16

<sup>191</sup> FOF 26

<sup>192</sup> FOF 19

<sup>193</sup> FOF 27

<sup>195</sup> FOF 29

<p>there are questions and is aware of how to conduct oneself during a job interview; one of the things I would help is improving face to face interview skills and to research more prospective jobs for the near and distant futures<sup>194</sup></p>	
<p><b>Social/Emotional/Behavioral Present Level:</b> Student has a good sense of humor and engages in conversation and participates with peers; has good attendance and completes assignments on time; needs to be more consistent when it comes to thinking before reacting to adverse situations as well as being polite and respectful to teachers and peers during class<sup>196</sup></p>	<p><b>Social/Emotional/Behavioral Goal:</b> when the student or others are angry, Student will increase ability to remain calm and breathe deeply, use a neutral voice and facial expression, avoid critical or sarcastic comments, listen to what the other person is saying, and report the incident to an adult achieving a criterion of 80%<sup>197</sup></p>

Student’s WRAT 5 scores in spelling, word reading, and sentence comprehension do not align with one another. Student’s spelling and sentence comprehension are well below average, but the word reading score fell in the average range. While the reading and written expression goals were “probably pushing it” had Student been in school consistently during the second half of the school year, they were achievable for Student.<sup>198</sup>

In reviewing Student’s present levels for math, pre vocational skills and social/emotional/behavior compared to the goals crafted for Student, the goals are appropriate in light of Student’s circumstances and consider Student’s academic achievement and functional performance.

No evidence was offered or admitted that Parent or any teacher had concerns about Student in the areas of executive functioning, language pragmatics or fine motor skills.<sup>199</sup>

*While Student’s 2022 Reading and Written Expression Goals appeared at first glance to be questionable compared to the prior year, when considering Student’s present levels of academic achievement and functional performance, the goals, while ambitious, were appropriate for Student and are reasonably calculated to enable Student to receive educational benefits and to make progress appropriate in light of Student’s circumstances. Student’s 2022 Math, Pre Vocational*

<sup>194</sup> FOF 18

<sup>196</sup> FOF 17

<sup>197</sup> FOF 28

<sup>198</sup> FOF 16; FOF 20; FOF 24

<sup>199</sup> FOF 21

*and Social/Emotional/Behavioral Goals were appropriate considering Student’s prior goals, progress on those goals, and Student’s present levels and are therefore reasonably calculated to enable Student to receive educational benefits and to make progress appropriate in light of Student’s circumstances.*

*ii. February 3, 2023 IEP*

Prior to the development of Student’s 2/3/2023 IEP, Student’s April 26, 2022 progress report showed that Student was making satisfactory progress on all five of Student’s IEP Goals including all short-term objectives under each goal.<sup>200</sup> Student’s 10/13/2022 Progress Report for Student’s 2/2/2022 Amended IEP was marked “Goal Achievement” for the Social/Behavioral Skills goal and “Satisfactory” for the remaining four goals including all short-term objectives under each goal.<sup>201</sup> While Student did have an incident that led to a 10-day suspension with alternative instruction, no other disciplinary incidents were noted for the remainder of the 2022-2023 school year.<sup>202</sup> For ease of comparison, the goals are set forth next to one another herein below:

2022 IEP	2023 IEP
<b>Written Expression Goal:</b> increase written expression skills by writing a 3-5 paragraph essay using an outline which will include an introduction, supporting details, and conclusion, as well as identify and correct errors with 80% accuracy <sup>203</sup>	<b>Written Expression Goal:</b> increase written expression skills by writing a 3 sentence one paragraph email making a request for something, explaining something, or asking a question, and identify and correct errors with 80% accuracy <sup>204</sup>
<b>Reading Goal:</b> read fiction and non-fiction texts to make inferences based on reading material and answer comprehension questions after reading grade level material with 80% accuracy <sup>205</sup>	<b>Reading Goal:</b> fluently read and comprehend ability-level text independently by identifying the cause/effect & the main idea, making inferences & predictions, sequencing & summarizing, comparing & contrasting, using evidence & context clues, and drawing conclusions achieving a criterion of 80% accuracy <sup>206</sup>

<sup>200</sup> FOF 31  
<sup>201</sup> FOF 34  
<sup>202</sup> FOF 44; FOF 58  
<sup>203</sup> FOF 25  
<sup>204</sup> FOF 52  
<sup>205</sup> FOF 26  
<sup>206</sup> FOF 51

<b>Math Goal:</b> increase ability to solve math problems involving comparing fractions, adding and subtracting fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80% <sup>207</sup>	<b>Math Goal:</b> increase the ability to solve math problems involving comparing fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80% <sup>208</sup>
<b>Pre Vocational Skills Goal:</b> increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long-term achieving a criterion of 80% <sup>209</sup>	<b>Pre Vocational Skills Goal:</b> increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long term, achieving a criterion of 80% <sup>210</sup>
<b>Social/Emotional/Behavioral Goal:</b> when the student or others are angry, Student will increase ability to remain calm and breathe deeply, use a neutral voice and facial expression, avoid critical or sarcastic comments, listen to what the other person is saying, and report the incident to an adult achieving a criterion of 80% <sup>211</sup>	<b>Social/Emotional/Behavioral Goal:</b> follow school district rules, be respectful to staff and peers, refrain from displaying unacceptable school behaviors, and limit campus disruptions achieving a criterion of 4 out of 5 trials <sup>212</sup>

Upon initial review of the 2023 goals compared to the 2022 goals, the reading and written expression goals, which were quite ambitious, were pared back to goals that appeared to be more appropriate in light of where the student was at the time of the IEP meeting, which coincided with the manifestation determination meeting.<sup>213</sup> The math and pre vocational goals are the same goals from the previous IEP even though Student’s prior two progress reports note that Student was making satisfactory progress for these goals.<sup>214</sup> The IEP does not contain an explanation of why these goals were not changed from the previous year. Therefore, the next step in the analysis is to compare the present levels with the goals:

<b>Written Expression Present Level:</b> Student did not complete the WRAT 5 test. Teacher observations: “Written Expression” – needs to improve ability to produce written work which is legible, properly spaced,	<b>Written Expression Goal:</b> increase written expression skills by writing a 3 sentence one paragraph email making a request for something, explaining something, or asking a
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<sup>207</sup> FOF 27  
<sup>208</sup> FOF 53  
<sup>209</sup> FOF 29  
<sup>210</sup> FOF 54  
<sup>211</sup> FOF 28  
<sup>212</sup> FOF 56  
<sup>213</sup> FOF 58  
<sup>214</sup> FOF 31; FOF 34

<p>capitalized, and punctuated; needs to improve ability to express a complete thought in a mature sentence structure; and needs to improve ability to write essays/paragraphs which are well organized and grammatically correct. Student is able to complete writing portions of assignments but still needs to work on the writing skills listed above. Student is able to access text to voice features and voice to text features on the chrome book when needed, an accommodation is listed under supplementary aids and services section of this IEP<sup>215</sup></p>	<p>question, and identify and correct errors with 80% accuracy<sup>216</sup></p>
<p><b>Reading Present Levels:</b>  Student did not complete the WRAT 5 test.  “Basic Reading Skills” – can decode unfamiliar words; can read fluently using grade level material; and can read grade level material independently.  “Reading Comprehension” – can follow written instructions to complete a project/assignment; needs to improve ability to answer comprehension questions after reading grade level material; needs to improve ability to use context clues to derive word meanings; and needs to improve ability to make inferences based on reading material<sup>217</sup></p>	<p><b>Reading Goal:</b> fluently read and comprehend ability-level text independently by identifying the cause/effect &amp; the main idea, making inferences &amp; predictions, sequencing &amp; summarizing, comparing &amp; contrasting, using evidence &amp; context clues, and drawing conclusions achieving a criterion of 80% accuracy<sup>218</sup></p>
<p><b>Math Present Levels:</b>  Student took the WRAT 5 assessment in math – but no score is listed.  Student was able to solve the following: single addition and subtraction problems, sequencing problems, 2-digit addition and subtraction problems, 3-digit addition and subtraction problems, division problems that involve dividing a two-digit number by a one-digit number, multiplication problems that involve multiplying 2- and 3-digit numbers by one number, substituting variables with numbers. Some concepts that Student needs to work on include comparing fractions, adding and</p>	<p><b>Math Goal:</b> increase the ability to solve math problems involving comparing fractions, solving problems that involve converting fractions into percentages and problems that involve converting percentages into fractions achieving a criterion of 80%<sup>220</sup></p>

<sup>215</sup> FOF 43

<sup>216</sup> FOF 52

<sup>217</sup> FOF 41

<sup>218</sup> FOF 51

<sup>220</sup> FOF 53

<p>subtracting fractions, solving problems that involve numbers that need to be squared and cubed, converting fractions into percentages and problems that involve converting percentages into fractions.<sup>219</sup></p>	
<p><b>Pre Vocational Skills Present Levels:</b>  Student has the ability to respond to the student's name being called throughout different settings; recognizes names of others; responds appropriately to name being called; smiles, makes eye contact, changes expressions, and uses expressive body movements; communicates wants/needs; demonstrates functional use of objects in environment; indicates preference; complies with requests in different settings; travels to and from school or in the community safely; remains seated during a task or activity; follows directions of teacher or superior; appropriate personal space and hands to self; shows positive attitude when engaged in a task; takes turns speaking during a conversation; makes a choice from several activities/choices; career role play; understands time cues to change activities; moves quietly from place to place within an allotted time; transitions from preferred activity to a non-preferred activity; uses appropriate ways to greet unfamiliar people; states solutions to frustrating situations; states appropriate times to talk, listen, and work quietly; introduces self to others; asks social questions; participates in group activities/projects; expresses need for a break; completes task without disturbing others; responds appropriately to criticism; utilizes chain of command for requesting information or asking for help; demonstrates ability to receive and deliver a message; identifies consequences or inappropriate anger management; greets people entering an area/room; uses appropriate voice levels according to situations/areas; works cooperatively and shares with other peers;</p>	<p><b>Pre Vocational Skills Goal:</b> increase vocational skills in the following areas: face to face interview skills, searching for employment opportunities short and long term, achieving a criterion of 80%<sup>222</sup></p>

<sup>219</sup> FOF 42

<sup>222</sup> FOF 54

<p>respects property of others; appropriately gains attention; waits for acknowledgment before requesting something; and asks for assistance in appropriate tone. At this time, Student needs to increase skills with face-to-face interview skills, searching for employment opportunities short and long term<sup>221</sup></p>	
<p><b>Social/Emotional/Behavioral Present Levels:</b> Student enjoys the company of peers. Student is helpful with peers and teachers and is comfortable with students who are from different backgrounds and cultures. Student responds appropriately to adults and peers. Student is never disruptive in class, is very observant, aware of the environment, and responds appropriately to instruction. Additionally, the student has good verbal skills, is expressive, and able to advocate for oneself. Student has increased ability to remain calm and breathe deeply under duress, avoid making critical or sarcastic comments. However, according to the incident that occurred on January 26<sup>th</sup>, Student has demonstrated difficulty with following school rules, being respectful to staff and peers, refraining from displaying unacceptable school behaviors and limiting campus disruptions. Student has demonstrated the need to improve ability to use social and self-awareness, self-management, relationship-making, and responsible decision-making skills during unstructured events<sup>223</sup></p>	<p><b>Social/Emotional/Behavioral Goal:</b> follow school district rules, be respectful to staff and peers, refrain from displaying unacceptable school behaviors, and limit campus disruptions achieving a criterion of 4 out of 5 trials<sup>224</sup></p>

The present levels for the Written Expression and Reading Goals are the same from the prior IEP, and Student did not take the WRAT 5 assessment, so there are no scores listed to determine whether Student made progress from the previous year. The present levels were updated for math, pre vocational and social/emotional/behavioral goals. Because the present levels for both math and pre vocational skills were updated in detail, and both goals call for Student to increase abilities in those areas, it was not unreasonable for the IEP Team to adopt the same goals. The

<sup>221</sup> FOF 45

<sup>223</sup> FOF 44

<sup>224</sup> FOF 56

present levels indicated precisely where Student had room to grow for each of those goals. While it is concerning that Student's present levels for reading and writing were not updated in the 2023 IEP, no evidence was offered or provided that the present levels for reading and writing were incorrect at that time. The fact that the present levels for the three other goals were updated in detail, that Student refused to comply with even regular classroom testing, that Student had attendance issues, and that both the reading and written expression goals were pared down, it can be discerned that Student's present levels in those two areas did not change from the previous year's IEP team meeting.<sup>225</sup>

No evidence was offered or admitted that Parent or any teacher had concerns about Student in the areas of executive functioning, language pragmatics or fine motor skills.<sup>226</sup>

*While Student's 2023 Math and Pre Vocational Goals are the same as the prior year, when considering Student's present levels of academic achievement and functional performance, the goals, are appropriate for Student and are reasonably calculated to enable Student to receive educational benefits and to make progress appropriate in light of Student's circumstances. While Student's present levels in Reading and Written Expression did not change from the prior year, the fact that the present levels for the three other goals were updated in detail, that Student refused to comply with even regular classroom testing, that Student had attendance issues, and that both the reading and written expression goals were pared down, the goals were reasonably calculated to enable Student to receive educational benefits and to make progress appropriate in light of Student's circumstances. Due to the isolated incident that occurred prior to the IEP meeting, Student's Social/Emotional/Behavioral Goal was appropriate considering Student's prior goal, progress on that goal, and Student's present levels and was therefore reasonably calculated to enable Student to receive educational benefits and to make progress appropriate in light of Student's circumstances.*

***Therefore, District did not fail to design appropriate reading, writing, math goals and services, or fail to include behavior and mental health goals, executive functioning, language pragmatics, and fine motor goals in Student's February 2, 2022, and February 3, 2023 IEPs based on***

<sup>225</sup> FOF 16; FOF 41; FOF 20; FOF 43; FOF 71; FOF 72; FOF 73; FOF 81; FOF 84; FOF 24

<sup>226</sup> FOF 39

*Student's previous IEP goals, progress, and present levels of academic achievement and function at the time they were created and were reasonably calculated to enable Student to receive educational benefits and to make progress in light of Student's circumstances.*

### ISSUE THREE

*Whether District failed to provide appropriate transition assessments, goals, services, and independent living skills related to obtaining an education with non-disabled peers, designed to facilitate Student's movement from school to post-secondary life in Student's February 2, 2022 and February 3, 2023 Annual IEPs? If so, was there a denial of a FAPE from May 6, 2022 to May 6, 2024?*

### LEGAL AUTHORITY

Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, the transition services (including courses of study) needed to assist the child in reaching those goals.<sup>227</sup>

The IDEA defines transition services as a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.<sup>228</sup> Therefore, the only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. It is up

<sup>227</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b); NAC 388.281(2)(f)(2); NAC 388.284(1)(f)

<sup>228</sup> 34 C.F.R. § 300.43; NAC 388.133

to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE.<sup>229</sup>

## ANALYSIS

Student was on a standard course of study, intended to attend college to study in the career field of choice, was going to seek employment in an area that interested the student and planned to continue living with family after high school. Student's transition services included specially designed instruction in the areas of reading, written expression, math, science and social studies; and the District was to provide Student with the opportunity to attend college and career fairs virtually and/or on school campus.<sup>230</sup>

The District was also to discuss post-secondary goals with the transition specialist, filled by SPED Teacher 2, as the student advanced throughout high school. Student's post-secondary goals included Student attending college to study in the career field of choice and employment in an area that Student was interested in.<sup>231</sup> During the eleventh-grade school year, Student took courses in the following subjects during the first half of the school year: English 3, Reas. & Sense-Make: Num & Fin; Principles of Physical Science, the Study of the U.S. Govt & Econ; Functional Fitness, Drawing I, Pre Vocational Skills, and Soc Living/Indep Living Skills, receiving a grade of "B" in Functional Fitness and Drawing I, and a grade of "A" in all other subjects.<sup>232</sup> Student completed courses in the following subjects during the second half of the school year: English 3, Reas. & Sense-Make: Num & Fin, Principles of Physical Science, the Study of the U.S. Govt & Econ, Functional Fitness, Drawing I, Film Studies I, Pre Vocational Skills, and Soc Living/Indep Living Skills earning a grade of "D" in Drawing I and Film Studies I, a grade of "B" in Pre Vocational Skills, and a grade of "A" in all other subjects.<sup>233</sup>

During Student's twelfth grade school year, Student's post-secondary goals remained the same. Student took courses in the following subjects during the first half of the school year: English 4, Principles of Algebra; Principles of Physical Science, the Study of American Govt, Lifetime Spts Rec, Theatre Tech I, Pre Vocational Skills, and Soc Living/Indep Living Skills with Student

<sup>229</sup> *Questions and Answers on Secondary Transition*, 111 LRP 63322 (OSEP September 1, 2011)

<sup>230</sup> FOF 23; FOF 48

<sup>231</sup> FOF 23; FOF 48

<sup>232</sup> FOF 33

<sup>233</sup> FOF 60

earning a grade of “A” in all subjects. Student was taking the following subjects during the second half of the school year: English 4, Principles of Algebra; Principles of Physical Science, the Study of Economics, Lifetime Spts Rec, Theatre Tech I, Pre Vocational Skills, and Soc Living/Indep Living Skills.<sup>234</sup>

SPED Teacher 2 also provided Student with opportunities to engage in transition services including a pre vocational skills program that would be implemented during class if agreed to, which Student and/or Parent did not; to attend a community event where over 60 disability service providers were available to meet with and discuss services; to apply for optional resources outside of the school district to assist with transitioning from high school; to attend field trips; to attend workshops, including informational workshops on completing the financial aid forms to qualify for federal student aid; and to attend a camp that teaches students what it takes to be the best employee possible and/or obtain additional training for college or employment.<sup>235</sup>

While Student did not want to take the ACT test, after it was explained to Parent that it was required graduation requirement, Parent told Student to take the test.<sup>236</sup> If Student or Parent and Student chose not to (1) sign consents to implement the pre vocational skills program during class; (2) not to attend and/or participate in the opportunities provided; or (3) consent to testing that could help Student prepare for college, the District cannot be held responsible for those choices.

Student earned more than enough credits to graduate and met all requirements to receive a standard diploma to attend college.<sup>237</sup> Student even had employment for a period while attending School and offered details to other students about that job during class.<sup>238</sup> Student did not express a desire to have an apartment and no longer live with Parent until this due process hearing, but was in independent living skills classes and earned an “A” in those classes.<sup>239</sup> Student attended the 2022 and 2023 IEP meetings and did not inform the District that Student no longer intended to remain living at home.<sup>240</sup>

<sup>234</sup> FOF 75; FOF 88

<sup>235</sup> FOF 65; FOF 66; FOF 68; FOF 69; FOF 74; FOF 76; FOF 80

<sup>236</sup> FOF 81

<sup>237</sup> FOF 89

<sup>238</sup> FOF 84

<sup>239</sup> FOF 23; FOF 48; FOF 33; FOF 60; FOF 75

<sup>240</sup> FOF 13; FOF 39

*Therefore, District did not fail to provide appropriate transition assessments, goals, services, and independent living skills related to obtaining an education with non-disabled peers, designed to facilitate Student's movement from school to post-secondary life in Student's February 2, 2022 and February 3, 2023 Annual IEPs.*

#### ISSUE FOUR

*Whether District failed to implement Student's Individual Safety Plan, incorporated into the student's May 18, 2023 Amended IEP, exacerbating Student's social and emotional deficits causing a regression? If so, did this constitute a material failure in implementing the IEP denying Student a FAPE?*

#### LEGAL AUTHORITY

The school district must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation and each teacher and provider is informed of his or her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.<sup>241</sup> a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.<sup>242</sup>

It is incumbent upon IEP Teams to implement IDEA's procedural and substantive requirements to ensure that children with disabilities receive the behavioral supports they need to enable them to advance appropriately toward attaining the annual goals specified in their IEPs and to be involved in and make progress in the general education curriculum. Failure to implement these procedural requirements or provide needed behavioral supports to a child with a disability

<sup>241</sup> 34 C.F.R. § 300.323(d)

<sup>242</sup> *Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182 (9th Cir. 2007), *reprinted as amended*, 107 LRP 51958, 502 F.3d 811 (9th Cir. 2007)

could result in the child not receiving a meaningful educational benefit and therefore constitute a denial of FAPE. A determination of whether there is a denial of FAPE is a fact-based determination, to be made on a case-by-case basis. Factors to consider include: whether the public agency has failed to follow the procedures IDEA requires when developing, reviewing, or revising the child's IEP, or has failed to consider and/or provide a child with a disability with necessary behavioral supports when the child's behavior impedes his or her learning or that of others; or whether the child's IEP is reasonably calculated to provide a meaningful educational benefit in the absence of behavioral supports.<sup>243</sup>

### ANALYSIS

Both the Assistant Principal and SPED Teacher 2 had knowledge about the existence of, and the implementation, of Student's safety plan as set forth in the Student's May 18, 2023 Amended IEP. Particularly, Assistant Principal's recollection of Student's dislike to be followed, weaving in and out of students in the hallways to purposely lose the SPTA, the reports from the SPTAs to the Assistant Principal related to the same and the requirement that they report whether Student safely made it to the classrooms, along with the Assistant Principal's relationship with Student to help create safe spaces for the student was especially helpful in making this determination.<sup>244</sup> Student's Status Record shows that on March 4, 2024 Parent asked SEIF if the safety plan could be removed because it was causing Student more anxiety and stress. After confirming it could be removed, Parent and Student agreed to have it removed on March 5, 2024.<sup>245</sup> If the safety plan was not implemented, then Parent and Student would not have requested that it be removed.

***Therefore, District did not fail to implement Student's Individual Safety Plan, incorporated into the student's May 18, 2023 Amended IEP, and in fact, the implementation of the same was reported as causing additional anxiety and stress to the student which led to the removal of the same at the Petitioner's request.***

<sup>243</sup> *Dear Colleague Letter*, 68 IDELR 76 (OSEP August 1, 2016).

<sup>244</sup> FOF 59; FOF 63; FOF 64

<sup>245</sup> FOF 81; FOF 82

## ISSUE FIVE

*Whether District failed to provide Student's complete educational records in response to the parent's request, and/or failed to have the required participants at the IEP team meetings on February 3, 2023 and May 18, 2023? If so, did this significantly impede Petitioners' ability to participate in the decision-making process from February 3, 2023 to May 6, 2024, thereby denying Student a FAPE?*

### LEGAL AUTHORITY

#### *i. Educational Records*

The parents of a child with a disability must be afforded an opportunity to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.<sup>246</sup> The parents of a pupil must be allowed to inspect and review any education records relating to their child which are collected, maintained or used by an agency with personally identifiable information. The agency with personally identifiable information shall comply with such a request for inspection and review without unnecessary delay and in any event: (a) Before any meeting regarding the pupil's individualized educational program or any hearing or resolution meeting pursuant to NAC 388.306 to 388.310, inclusive, as applicable; and (b) Not later than 45 days after the request has been made.<sup>247</sup>

#### *ii. Required Participants in IEP Meetings*

IEP Team means a group of individuals composed of the parents of a child with a disability; not less than 1 regular education teacher of such child; not less than 1 special educational teacher of such child; a representative of the local education agency who is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the local educational agency; an individual who can interpret the instructional implications of evaluation results, who may be a member of the team as already set forth; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever

<sup>246</sup> 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a)

<sup>247</sup> NAC 388.287(1)

appropriate, the child with a disability.<sup>248</sup> Additionally, if the Team is meeting to develop an individualized educational program with postsecondary goals and transition services for a student who is 16 years of age or older, then the student should also be in attendance.<sup>249</sup>

### ***iii. Meaningful Parental Participation***

The importance of parental participation in the IEP process is evident. Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. As the Supreme Court made clear in *Board of Education v. Rowley*: “It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard.<sup>250</sup>” Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE.<sup>251</sup>

The critical nature of the provisions protecting parental involvement is highlighted when they are considered in light of the stated purposes of the IDEA. To accomplish the IDEA's goal of ensuring that "all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, those individuals who have first-hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process. The procedural safeguards facilitate this objective. They also help to ensure that the rights of children with disabilities and their parents or guardians are protected.<sup>252</sup>

## ANALYSIS

### *i. Educational Records*

The only evidence offered and admitted during the hearing related to the student's educational records shows that after an initial request for records was made by Petitioners' counsel

<sup>248</sup> 20 U.S.C. § 1414 (d)(1)(B); 34 C.F.R. § 300.321(a); NAC 388.281(2)

<sup>249</sup> NAC 388.281(2)

<sup>250</sup> *Shapiro ex rel. Shapiro v. Paradise Valley Unified*, 317 F.3d 1072 (9th Cir. 2003)

<sup>251</sup> *Shapiro ex rel. Shapiro v. Paradise Valley Unified*, 317 F.3d 1072, 1079 (9th Cir. 2003)

<sup>252</sup> *Amanda J. v. Clark County School Dist.*, 267 F.3d 877, 891 (9th Cir. 2001)

on June 27, 2023, the District produced a copy of the same the very next day with a Declaration of Custodian of Records.<sup>253</sup> Without any testimony from Parent stating what, if any records, were not received in response to that request, there is not sufficient evidence to make a determination to the contrary.

***Therefore, District did not fail to provide Student's complete educational records in response to Petitioners' request.***

*ii. Required Participants at the IEP Team Meetings*

Petitioner's Complaint contains one generalized statement that the District failed to have the proper persons at the IEP team meetings that would be able to give insights as to Student's deficits and the appropriate supports.<sup>254</sup> The only testimony elicited about a preferred teacher attending the February 3, 2023 meeting was related to the manifestation determination meeting held the same day as the IEP meeting. While SPED Teacher 1 thought it would be appropriate to have been invited to weigh in on the determination, and subsequently unsuccessfully attempted to set aside the determination, no evidence was given related to any other concerns about the IEP team members present during the meeting.<sup>255</sup> The manifestation determination decision is not one of the issues before this Hearing Officer and therefore will not be addressed. The evidence shows that the required IEP Team members were present at the February 3, 2023 meeting, including Student, Parent, the LEA representative, a special education teacher and a regular education teacher.<sup>256</sup>

The participants at the May 18, 2023 Amended IEP meeting included Parent, Student, LEA representative, special education teacher, and a regular education teacher, and were the same individuals at the 2/3/2023 meeting. Additionally, the present levels were updated by an additional participant, SPED Teacher 1. Neither party solicited any testimony from SPED Teacher 1 about the May 2023 meeting or amended IEP.<sup>257</sup> No additional evidence was offered or admitted explaining why any of the participants did not qualify as required members of the IEP Team.

<sup>253</sup> FOF 61; FOF 62

<sup>254</sup> HO-1, page 27 of 30 as noted on the top of the pages

<sup>255</sup> FOF 58

<sup>256</sup> FOF 39

<sup>257</sup> FOF 59

*Therefore, District did not fail to have the required participants at the IEP team meetings on February 3, 2023 and May 18, 2023.*

*As a result of the determination that (1) the District did not fail to provide Student's complete educational records and (2) did not fail to have the required participants at the IEP team meetings, Petitioner's ability to participate in the decision-making process was not significantly impeded.*

### **NOTICE OF RIGHT TO APPEAL**

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision by filing with the Nevada Department of Education, Superintendent of Public Instruction, a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within 30 days after receiving the decision. A party to the hearing may file a cross appeal by filing a notice of cross appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within 10 days after receiving notice of the initial appeal. At the parties' request, this decision is being delivered to the parties electronically by e-mail. Receipt of this Decision and Order will be determined by the date of actual delivery of the email noted by the 'delivery receipt' this Hearing Officer receives and provides to the parties after issuance of the decision.

Dated: January 2, 2026

/s/ Audrey J. Beeson  
Hearing Officer

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