

STATE OF NEVADA DEPARTMENT OF EDUCATION
REVIEW OFFICER DECISION

In the matter of

STUDENT by and through his¹ PARENTS,²
Petitioner-Appellant

v.

Perry A. Zirkel, State Review Officer

DISTRICT,
Respondent-Appellee

I. GLOSSARY OF ACRONYMS

As a prefatory matter, the acronyms that appear in this decision are as follows: FAPE = free appropriate public education; IDEA = Individuals with Disabilities Education Act; IEE = independent educational evaluation; IEP = individualized education program; IHO = impartial hearing officer; OT = occupational therapy; SDI = specially designed instruction; SLP= speech/language pathologist; SLT = speech/language therapy; and SRO = state review officer. Moreover, for clarity, this decision uses “District” in place of “Petitioner” and “Parents” in place of “Respondent.” Finally, for simplicity, this decision refers to a “two-step” analysis for procedural claims.³

¹ The terms “he,” “his,” and “him” are used generically herein instead of designating the actual gender of Student or the Parent.

² “Parents” is also used generically herein and, except when necessary for clarity, without differentiation of father or mother and, thus, as to singular or plural.

³ The basis is the following applicable provision of the IDEA:

[A] hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies ... [s]ignificantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or ... [c]aused a deprivation of educational benefit [to the child].

II. PROCEDURAL BACKGROUND⁴

On May 20, 2024, the District received the Parents' complaint in this matter (HO-1) under the IDEA⁵ and Nevada's corresponding state statute and regulations.⁶ After various prehearing communications before and after a prehearing conference, the IHO conducted two hearing sessions on August 14 and 16, 2024. The agreed upon issues were as follows:

- A. Whether a Student, who reaches the age of five years prior to August 1, 2024, is required to be placed in kindergarten, rather than Pre-K, and if there is a conflict between the IDEA and Nevada Revised Statutes as to this issue, which law must be followed?
- B. Whether the Student's May 17, 2024 IEP was reasonably calculated to enable Student to make progress appropriate to the Student's circumstances with respect to the Student's expressive speech deficits, and if not, was the Student denied FAPE?
- C. Whether for May 17, 2024 IEP, the School District failed to appropriately assess the Student for expressive speech deficits, and if so, was Student denied FAPE?
- D. Whether the May 17, 2024 IEP provides Student the reasonable accommodations and services that Student needs to be reasonably calculated to enable the Student to make progress appropriate to the Student's circumstances, in light of Student's expressive speech deficits, and if not, was Student denied FAPE?
- E. Whether the May 17, 2024 IEP failed to provide Student an IEP that appropriately addressed the Student's expressive speech deficits, failed to consider input from Student's parents in formulating Student's IEP, and failed

20 U.S.C. § 1415(f)(3)(E)(ii). The use of "step 1" herein refers to the determination of whether there was a procedural violation, or inadequacy. If the answer to step 1 is yes, the "step 2" determination is whether the violation resulted in the specified loss to the parent or the student.

⁴ The record in this matter includes the three volumes of exhibits at the IHO level (respectively labelled at that level as "HO 1-17" for those of the IHO, "P 1-27" for those of the Petitioner-Parents, and "R 1-25" for those of the Respondent-District) plus the exhibits at the current 30-day stage (labelled as "SRO"), such as the IHO decision and the emails to and from the parties during this stage. The record also includes a transcript consisting of two volumes corresponding to the hearing sessions. Because the pagination is not consecutive across the two volumes of the transcript, the citations are respectively to "Tr. I" and "Tr. II" followed by the page number(s). Cross references in this decision are, per legal citation style, via "*supra*" (above) or "*infra*" (below) to identified footnotes or parts of the text.

⁵ 20 U.S.C. §§ 1401 *et seq.*; 34 C.F.R. §§ 300.1 *et seq.*

⁶ NEV. REV. STAT. §§ 388.419 *et seq.*; NEV. ADMIN. CODE §§ 388.001 *et seq.* This decision refers to this corollary state statute and administrative code only to the limited extent that they add in relevant respect to the IDEA legislation and regulations.

to collect sufficient data to determine if Student's IEPs were providing FAPE or needed amendment, and if so, whether these procedural violations denied the Student FAPE?

On October 4, 2024, the IHO issued a final decision that ruled in favor of the District.

(SRO-1). More specifically, the IHO reached the final conclusions for each of the here-
enumerated issues:

- A: Neither the IDEA nor Nevada law requires a student, who reaches the age of five years prior to August 1, 2024, to be placed in kindergarten rather than a pre-K program.
- B: The May 17, 2024 IEP was reasonably calculated to enable the Student to make progress appropriate to the Student's circumstances with respect to the Student's expressive speech deficits and phonological goals.
- C: There was no failure by the School District to appropriately assess the Student for expressive speech deficits.
- D: The May 17, 2024 IEP provides the Student with the reasonable accommodations and services that Student needs to be reasonably calculated to enable the Student to make progress appropriate to the Student's circumstances which includes Student's expressive speech deficits.
- E: The May 17, 2024 IEP appropriately addressed the Student's expressive speech deficits and collected sufficient data to determine whether Student's IEPs were providing FAPE or needed amendment. The District failed to consider input from Student's parents in formulating Student's IEP by predetermining that the Student would not attend pre-K and that this predetermination of the Student's placement significantly impeded the parents' opportunity to participate in the decision-making process regarding FAPE; "[h]owever, this procedural violation did not result in the denial of FAPE to the child." (*Id.* at 22).⁷

On October 31, 2024, the state superintendent received the Parents' appeal of the IHO's decision (SRO-2) and appointed me as the SRO, specifying the due date as November 30, 2024.

⁷ With one exception, each of these five conclusions is a paraphrased summary of the wording in the IHO's decision. *Id.* at 16–21. The exception is for the quotation in item E. Moreover, for this item, the IHO incidentally found, at step 1, predetermination in the District's refusal to consider placing the Student in the speech class that deals with expressive speech. *Id.* at 19. At step 2, he followed the quoted statement with this explanatory conclusion: "Placement is based on services needed by the student, not vice versa. Placement must be based on the Student's needs, which come from assessments and parental input." *Id.* at 22.

(SRO-3).

On November 1, 2024, I sent the parties an email requesting information for a status conference, with a deadline of November 5 for their respective responses. (SRO-4, at 1–2).⁸

On November 12, 2024, based on their responses for availability, I held a status conference with the parties. As documented in a summary email to the parties later that day (SRO-4, at 12) neither side took issue with the procedures of the hearing or sought to proffer additional evidence, and the two issues for this appeal are as stated *infra* in Section IV.

On the deadline date of November 21, 2024, the Parents (SRO-5) and the District (SRO-6) timely submitted their respective written arguments.

III. STANDARD OF REVIEW

The standard of review for a SRO under the IDEA is for an “independent decision” after examining the entire record.⁹ The SRO finds persuasive the interpretation of the Third Circuit in *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3d Cir. 1995), requiring “plenary review” with one narrow exception: “[the SRO] should defer to the hearing officer's findings based on credibility judgments unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion.” (*Id.* at 529).¹⁰

⁸ In alignment with the requirements for SROs (34 C.F.R. § 300.514(b)(2)), the announced agenda for the status conference included whether they (1) took issue with the procedures of the impartial hearing; (2) sought additional evidence; and (3) preferred oral or written arguments.

⁹ 34 C.F.R. §§ 300.514(b)(2)(i) & 300.514(b)(2)(v).

¹⁰ In this decision, the Third Circuit explained that “beyond this rather narrow class of record-supported, credibility-based factual findings, we think that, to give the statute's language about ‘independent’ decisions effect, the [SRO] must have much more leeway in reviewing other non-credibility based findings of the hearing officer.” *Carlisle Area Sch. Dist.*, 62 F.3d at 528–29 (citing Perry A. Zirkel, *The Standard of Review Applicable to Pennsylvania's Special Education Appeal Panel*, 3 WIDENER J. PUB. L. 871, 892 (1994)). The Ninth Circuit indirectly appeared to approve of this approach. *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 888–89 (9th Cir. 2001). More recently and more directly, the federal district court of Nevada directly upheld this standard of review. *HPB v. Washoe Cnty. Sch. Dist.*, 2024 WL 4368227 (D. Nev. Sept. 30, 2024).

IV. ISSUES

The issues for this appeal are as follows:

- A. Whether the District's predetermination as to discussing alternatives to the kindergarten placement of the Student resulted in a denial of FAPE based on the requisite loss to the Parents and/or the Student, as specified in 20 U.S.C. § 1415(f)(3)(E)(ii)?¹¹
- B. Whether the May 17, 2024 IEP was reasonably calculated to enable the Student to make appropriate progress specific to phonological deficits under the Student's circumstances?

V. FINDINGS OF FACT¹²

On July 14, 2024, the District's multi-disciplinary team issued an evaluation report that determined that the child to be eligible for special education. The classification was Development Delays based on the prescribed ranges for expressive language as well as self-help skills. (R-5).¹³

Directly thereafter on July 14, 2022, the IEP team met and issued the initial IEP, which specified placement in in general education for 95% of the time and with SLT for 120 minutes per month, thus avereraging 30 minutes per week, in the speech room. The language goal aimed at 80% accuracy for vocabulary, answers to "WH" questions, and 2–3 word utterances. The SDI

¹¹ *Supra* note 3. For a leading case law predecessor to this two-step inquiry, including the alternative parent and student prongs for step 2, see *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 1992).

¹² Based on the applicable review standard, these factual findings are independent of those of the IHO with the limited exception of those warranting deference due to being credibility-based. Nevertheless, although the IHO provided more detail for factual findings, especially for those not within the specific scope of the issues on appeal, none of the IHO findings is contrary to mine in any outcome-determinative way.

¹³ This classification is limited to students under age 6 that the eligibility team determines to need special education (including related services) as the result of "a delay of at least two standard deviations in one, or at least one standard deviation in two or more," of five specified areas, which include "receptive or expressive language" and "self-help." NEV. ADMIN. CODE § 388.430(1).

in the general education classroom consisted of 100 minutes per week for each of the following two areas: functional communication and self-help. (R-6).

During the 2022–23 school year, the District implemented the IEP in the pre-K Early Childhood Inclusion program at one of its elementary schools for four morning, half-days per week. (Tr. II, at 109–10; R-4, at 22). Separately, the Parents arranged for private SLT sessions for 60 minutes approximately once per month during that school year (Tr. II, at 142–43, 150, & 187).

The May 12, 2023 IEP for the following year continued the same 95% general education placement but changed the SDI to 60 minutes per week in receptive-expressive language, 100 minutes per week in social/emotional/behavioral skills, and 60 minutes per week in fine motor skills. The language goal focused on answers to WH questions at the unchanged 80% level of accuracy. The SLT in the speech room continued at the same level of 120 minutes per month, which the SLP provided at 30 minutes per week. (R-7; Tr. I, at 31). At that IEP meeting, the Parents identified the need for focusing on phonological deficits for intelligibility, and the SLP agreed to initiate a speech/language evaluation for possible corroboration (Tr. II, at 57)

The 2023–24 school year started on August 7, 2023 (R-1, at 3), with the Student remaining in the same pre-K program. (e.g., Tr. I, at 95–96).

On September 29, 2023, the IEP team received and reviewed the speech/language evaluation report (R-12). Based on a severity rating of 97 and a consonant ability score of 70 (< 1%ile) on the Hodson Assessment of Phonological Patterns, Third Edition (HAPP-3), the evaluation revealed that the Student was in the high moderate category, specifically a few points away from the severe category, for speech sound production. (R-12 & R-14; Tr. I, at 32). As a result, the SLP agreed to focus on speech sound production. (Tr. I, at 25–26). The IEP team

issued a revised IEP, which added a goal for phonology (specifically, speech intelligibility in SLT sessions at 90% accuracy) and, separately, to add 80 minutes of OT per month. (R-8).

On February 14, 2024, the Parents started a series of communications with District representatives, seeking continuation of the Student's placement in the pre-K program for another year, even though Student would reach age five, which is the entering date for kindergarten, on July 9, 2024. (R-4, at 22).¹⁴

On April 19, 2024, a private SLP issued an IEE report per arrangements with the Parents. Based on a different standardized instrument than the HAPP-3,¹⁵ the Parents' information, and the private SLP's observations, the report concluded that the Student's sound production errors were 1-2 years below chronological age and the Student's overall intelligibility ranged from 60% to 80%. The recommendation was for at least 60 minutes of SLT per week. (R-11).

For the 2023–24 school year, the Student had 29 absences (R-3). The private SLT sessions continued on a less frequent basis than the previous year. (Tr. II, at 187 & 194). The District's progress reports to the Parents indicated satisfactory progress although not meeting, the goal for phonology (e.g., R-8, at 53 & 56).¹⁶ However, the Parents perceived lack of progress specific to phonology/intelligibility based on their interactions at home and the IEE, and they shared this concern with the general education teacher and the SLP (Tr. II, at 69–77).

On May 1, 2024, the Parents met with the principal, the assistant principal, and the SLP, the special education facilitator, and the teacher to request a third year of pre-K to address the Student's continuing phonological deficits. The assistant principal suggested the District's

¹⁴ For documentation of the ensuring communications specific to this issue, see R-4, at 8–11 & 17–32.

¹⁵ However, the report found a similar pattern of speech sound production errors as those identified the September 23, 2023 evaluation. Tr. II, at 146–47.

¹⁶ In her testimony at the hearing on direct examination, the SLP acknowledged that part of the problem was limited carryover from the speech room to other settings. Tr. I, at 28.

speech center/phonological program as a possible alternative, but other staff members countered that the program was contingent on meeting specific qualifications. (R-4, at 10).¹⁷ The Parents' primary concern was to provide a foundation for reading and writing, which research reveals to be directly linked to phonological skills, although they were also concerned with its impact on attendance and social interaction. (e.g., Tr. II, at 80–85 & 164).

On May 10 and 17, 2024, the IEP team met and agreed, per the Parents' request and after considering the IEE,¹⁸ to increase the SLT to 360 minutes per month, which averages 90 minutes per week. (R-4, at 14–16). The other IEP changes included expanding the objectives for the same phonology goal, adding 10 minutes per week of SLP consultation to the general education teacher, revising the SDI to consist of 120 minutes per week for social/emotional/behavioral skills, eliminating the OT services, and—without notable discussion due to the District's interpretation of kindergarten being required at age 5—placing the student in the kindergarten general education classroom. (R-9).¹⁹

On May 20, 2024, the District received and forwarded to the Nevada Department of Education the Parents' request for a due process hearing. (HO-1, at 16). The Parents' proposed resolution was to have another IEP team “to freely discuss and decide” the Student's services and placement for FAPE, including potential placement in a third year of pre-K, direct SLT services for generalization of correct sound production, and potential placement in an intensive phonological program. (*Id.*).

¹⁷ The District's speech center program is limited, based on specified standardized testing, to students with a severe or profound phonological disorder. The typical age range is 3–4, although qualified students who reach the age of 5 during the school year are allowed to complete that year. The classes are for a half day (either mornings or afternoons) for two or four days per week depending on the needs of the student. The services are intense and provided in small classes by an SLP with an aide. Tr. I, at 104–05 & 130–31.

¹⁸ The District SLP on the IEP team also consulted with the private SLP who had provided the first IEE. E.g., Tr. II, at 188.

¹⁹ The exiting from OT services was based, at least in notable part, on the District OT's evaluation report for the Student in April 2024. P-10.

The Student is currently attending the District’s kindergarten program per the May 17, 2024 IEP. (Tr. I, at 189).

On July 3, 2024, per advice from the SLP from the first IEE (Tr. II, at 155), the Parents obtained a second IEE, which was by another private SLP and which was specific to phonology. The report identified an improvement in the scores on the HAPP-3 after five consecutive days of 30-minute sessions of SLT from an overall severity rating of 101 (low severe) to 69 (moderate), with consonant ability scores changing from 72 (1%ile) to 52 (1%ile). The recommendation was for SLT focusing on speech sound production and speech intelligibility. (P-17)

VI. CONCLUSIONS OF LAW

Issue A (Predetermination)

As a matter of procedural FAPE within the two-step test that the IDEA requires for adjudication (*supra* note 3), predetermination is a step 1 violation that includes refusing to consider the parents’ proposals for a potential part of or alternative for the child’s placement.²⁰ In this case, the proof is preponderant that the district, based on its mistaken interpretation of the state law for entry to kindergarten,²¹ precluded the IEP team’s consideration of the Parents’ proposal for an alternative to the May 2024 proposed placement.²² The District’s arguments about “supplemental” and “retention” (e.g., Tr. I, at 196 & 207) are red herrings or semantic distractors in this case. As the guidance from the federal agency that administers the IDEA made

²⁰ See, e.g., *R.L. v. Miami Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1189 (11th Cir. 2014); *D.B. v. Gloucester Twp. Sch. Dist.*, 489 F. App’x 564, 566 (3d Cir. 2012); *Berry v. Las Virgenes Unified Sch. Dist.*, 370 F. App’x 843 (9th Cir. 2010); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004).

²¹ More specifically, the state law provides that a child who is five years old on August 1 of or before the school year “may,” not must, be enrolled in kindergarten. NEV. REV. STAT. § 392.040(2). Instead, the applicable mandatory age for kindergarten, unless the parent waives kindergarten or the child already completed it, is age 6. *Id.* § 392.040(3)-(4).

²² For specific examples of the applicable evidence, see Tr. I, at 178 (age is only reason) & 207 (no say); R-4, at 11 (“no choice”) and 21 (“no option”), and 13 (hands are tied).

clear, the issue is “placement,” which is for the IEP team to discuss and determine (e.g., R-4, at 17–18).²³ Similarly, the District’s written arguments miss the point by focusing on the incidental alternative of placement in the speech center rather than the Parents’ central suggestion, which was for the IEP team to consider postponing the movement to kindergarten for appropriate programming during another year of pre-K.

The finding of predetermination at the first step generally fulfills the second-step requisite of significantly impeding the parents’ opportunity for participation in the IEP’s FAPE process, and this case is not an exception.²⁴ The IHO’s ruling in favor of the Parents at steps 1 and 2 of the applicable analysis for procedural FAPE on the predetermination issue was clearly supported by the record. However, his consequent conclusion that this prejudicial procedural violation of the Parents’ participation rights “did not result in the denial of FAPE to the child” (*supra* text accompanying note 7) is reversible legal error for two reasons. First, based on its accompanying reasoning (*supra* note 7) and the ultimate resolution of issue 2, it is directly in error. But second and ultimately more significant, the IHO’s analysis fails to recognize that, independent of any loss to the child, the predetermination was denial of FAPE based on the

²³ In its written arguments, the District responds that pre-K is not a placement, solely relying on early OSEP guidance specific to the second part of stay-put analysis, which is change in placement. Letter to Fisher, 21 IDELR 992 (OSEP 1994). This source is too thin a reed to support the District’s position for two reasons. First, Nevada’s elaboration of the IDEA specifically provides that for pupils aged 3–5, pre-K may serve as a placement. *Infra* note 31. Second, the predetermination issue in this case focuses on the movement from pre-K to kindergarten. To whatever extent “stay-put” may overlap with this issue, a subsequent line of judicial case law provides more weighty and specific authority on point. *See, e.g., Joseph R. v. Mars Area Sch. Dist.*, 318 F. App’x 113, 119 (3d Cir. 2009) (“the ‘touchstone’ is whether the modification ‘is likely to affect in some significant way the child’s learning experience.’”); *cf. N.D. v. Haw. Dep’t of Educ.*, 600 F.3d 1104, 1116 (9th Cir. 2010) (not a change in placement within stay-put analysis if “same school, ... same teachers, and ... same classrooms).

²⁴ My review of judicial rulings on predetermination did not reveal any previous case in which a finding of predetermination at step 1 did not also fulfill step 2 of the applicable analysis for procedural FAPE. Moreover, the District did not argue, and I did not otherwise find any reason in the record of this case to conclude, that the District’s predetermination did not significantly impede the Parents’ right for participation in the IEP team’s decision-making process.

alternative prong in step 2 of the applicable analysis.²⁵

Issue B (Substantive Appropriateness of May 2024 IEP)

The general substantive standard for FAPE under the IDEA is whether the IEP is “reasonably calculated to enable [the] child to make appropriate progress under the child’s circumstances.”²⁶ Per the agreed-upon statement of this issue, the specific focus for applying this standard here is in relation to the Student’s phonological deficits.

Here, the provisions and progress under the previous two IEPs offer a useful background. The IEP for 2022–23 provided for 30 minutes per week for SLT in the speech room for receptive-expressive language plus 100 minutes per week of SDI in functional communication in the general education classroom. The IEP for 2023–24 provided the same scope and amount of separate SLT but changed the SDI to 60 minutes in receptive expressive language. However, after approximately two months, the Parents were able to have the IEP team revise the IEP to focus more specifically on the Student’s phonological deficits. For the second year, the service providers perceived some progress toward, although not fully meeting, the added phonological goal. The comparison between the 8/14/23 (R-12) and 6/24/24 (P-17) standardized testing with the HAPP-3 clearly leaves in question any actual progress. However, based on the applicable snapshot standard,²⁷ the May 17 IEP team did not know or have reason to know of the subsequent HAPP-3 testing results, and the mid-April standardized testing with a different instrument that the Parents shared with the team (*supra* note 15 and accompanying text) was not as clearly counter to the contemporaneous progress reports.

²⁵ The alternative parental prong in step 2 of the adjudicative analysis of procedural claims of denial of FAPE likely stems in part from the Supreme Court’s recognition that parents have “independent, enforceable rights” under the IDEA.” *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 533 (2007).

²⁶ *Endrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 580 U.S. 386, 403 (2017).

²⁷ *See, e.g., Adams v. State of Or.*, 195 F.3d 1141, 1149 (9th Cir. 1999). The Supreme Court reinforced this longstanding approach. *Endrew F.*, 580 U.S. at 399 (“The ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials.”).

The other background information that is particularly relevant to answering this May IEP issue for the individual circumstances of the Student based on the snapshot standard consists of the aforementioned foundational significance of phonological skills; the limited window for addressing them²⁸; and the need for more systematic generalization to and intense reinforcement in the general education context.²⁹

Finally, the applicable “reasonably calculated” standard is neither a guarantee of actual progress nor an ideal level of calculation, but it must be “informed not only by the expertise of school officials, but also by the input of the child's parents or guardians.”³⁰

Against this cumulative backdrop, the May 2024 IEP’s pertinent provisions do not meet the applicable substantive standard. The revision from 60 to 90 minutes per week of SLT focused on an elaborated phonological goal tied to the speech room marginally, if at all, would appear to be reasonable when examined alone. However, the accompanying revisions specific to reinforcement in the general education classroom move the overall balance of phonologically-aimed services markedly below the requisite reasonable calculation under the Student’s particular circumstances. The addition of 10 minutes per week of consultation from the SLP without any direct SDI addressing the Student’s phonological deficits—indeed instead with the elimination of the 100 minutes of SDI in the more general area of receptive-expressive language and with retention of the phonology goal limited to the speech room context—is clearly inadequate to meet the standard.

Finally, the above answer to issue no. 1 overlap with issue no. 2 at least to the extent to show that the IEP was not informed as to the Parents’ input with regard to the possible

²⁸ This window is limited not only by the age for mandatory kindergarten (*supra* note 21) but also the ceiling age for developmental disability classification (*supra* note 13).

²⁹ *See, e.g.*, Tr. II, at 114, 166–68, & 179.

³⁰ *Andrew F.*, 380 U.S. at 398–99.

alternatives for achieving this mix of services.³¹ The remedy below is equitably tailored to address the scope and interaction of Parent and Student FAPE denials.

DECISION AND ORDERS

The IHO's decision is reversed as to denial of FAPE. The remedial orders are as follows (unless the parties mutually and promptly agree to an alternative remedial resolution in this case):³²

1. The District shall convene an IEP meeting for the Student within 14 school days of receipt of this decision, and the District shall arrange for an IEP facilitator to participate in the meeting to help achieve fulfilling remedial orders 2 and 3.
2. The other members of the IEP team shall fully and fairly consider the Parents' input as to any proposed alternatives to revising the IEP to meet the substantive inadequacies of the present IEP that are identified in this decision.
3. The IEP team shall determine the necessary revisions in the IEP without constraint as to placement at the pre-K and/or kindergarten level, instead focusing on reasonably addressing the Student's needs specific to phonological skills.³³

³¹ In doing so, the IEP team should recognize not only that Nevada law does not require the Student to be placed in kindergarten for this year (*supra* note 21) but also Nevada law does provides that the continuum of alternative placements for pupils who are at least 3 but less than 6 years of age "may include, as appropriate" a public (or private) preschool program. NEV. ADMIN. CODE § 388.245(3).

³² Although both parties had reasonable notice that these remedial orders were among the forthcoming possibilities based on the Parents' originally proposed resolution, the formulation of the hearing issues, and the Parent's response to the requested clarification of the notice of appeal, the SRO's broad equitable authority is only limited to the issues and the resulting rulings of this appeal. *See, e.g., Albuquerque Pub. Schs. v. Sledge*, 74 IDELR ¶ 290, at *18 (D.N.M. 2019) ("the IDEA does not necessarily limit the relief a due process hearing officer can award to the relief a party proposes at a given stage of the administrative process); *see also* Letter to Zirkel, 81 IDELR ¶ 22 (OSEP 2022).

³³ The revised IEP must include (a) more intensive and expansive phonology-oriented services, with systematic coordination between the separate SLT component and the reinforcing phonology-focused SDI in general education, (b) re-wording of the phonology goal to extend the context to the more phonology focused SDI in the general education class, and (c) continued attention to not only FAPE but its overlap with LRE. The general education component needs to continue to be for the majority of the school day, although not necessarily at the 95% level. The length and frequency of the school days is left to the IEP team's discretion, except if the team chooses the kindergarten rather than pre-K option, and the District only offers kindergarten for five full days a week.

4. The District shall promptly implement the revised IEP.³⁴



Dated: November 30, 2024

Perry A. Zirkel, State Review Officer

NOTICE OF APPEAL RIGHTS

The decision of this SRO is final unless a party appeals the decision. A party may appeal from the decision of this SRO by initiating a civil action in a court of competent jurisdiction within ninety (90) days receipt of this decision (NAC § 388.315).

Similarly, although the options for the revised provisions could include, for example, push in SLT, an SLP aide, or access to the speech center, the particular formulation of the revisions to meet the three foregoing requisite specifications (i.e., “a,” “b,” and “c”) of the reasonably calculated placement for the Student is left to the fully collaborative process of the IEP team.

³⁴ The Parents’ expressly declined the remedy of compensatory education for the asserted denial of FAPE, and the record lacks sufficient basis for calculation this remedy. Tr. II, at 15. However, any failure to promptly implement the revised IEP will, especially in light of the particular chronological context of this decision, provide the basis for compensatory education for the delay.