

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

In the Matter of

**FINDINGS OF FACT, DECISION  
AND ORDER**

STUDENT<sup>1</sup>, by and through Parent  
Petitioner,

Hearing Officer: Audrey J. Beeson

v.

LOCAL EDUCATION AGENCY

Respondent

**I.**

**INTRODUCTION AND PROCEDURAL HISTORY**

The following synopsis of the prehearing proceedings that took place in this matter is in chronological order. On August 25, 2025, the Local Education Agency (hereinafter “LEA” or “Respondent”) received Petitioner’s *Due Process Complaint* (hereinafter “Complaint”).<sup>2</sup> This Impartial Hearing Officer (hereinafter “IHO”) was appointed on or about September 3, 2025.<sup>3</sup> Respondent’s *Response to Petitioner’s Due Process Complaint* (hereinafter “Response”) was submitted on September 12, 2025.<sup>4</sup> A *Notice of Status Conference, Status Conference Agenda, Preliminary Order, Hearing Process Guidelines, & Rights of Parties* was issued on September 16, 2025.<sup>5</sup> On September 16, 2025 during the Status Conference, the parties made a joint oral motion to continue the decision date based on the first availability that counsel and this IHO had to conduct a two-day hearing. The *Status Conference Report and Order & Notice of Prehearing Conference* was issued on September 16, 2025. The *Status Conference Report and Order* granted the parties’ joint oral motion to continue the decision date to December 3, 2025, after finding good cause.<sup>6</sup> A

<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

Prehearing Conference was held on October 6, 2025. A *Prehearing Conference Report and Order* was issued on October 6, 2025.<sup>7</sup> The burden of proof and the expectation that Petitioners needed to provide evidence at the time of the hearing related to the provision or funding of compensatory education was discussed during the prehearing conference and included in the *Prehearing Conference Report and Order*.<sup>8</sup> The parties exchanged their 5-business day disclosures and list of witnesses on October 28, 2025.<sup>9</sup>

A hearing was held virtually on November 6, 2025 and November 7, 2025. It was a closed hearing. A Court Reporter was present keeping a record of the evidentiary hearing. Petitioner was represented by their attorneys. Respondent was represented by their attorney.

After the opening statement by the Hearing Officer, both parties confirmed that this Hearing Officer was not missing any prehearing correspondence that should be admitted as a hearing officer exhibit. Each party made an opening statement.

The following witnesses testified for Respondent: Principal, General Education Teacher (hereinafter “Teacher”), Special Education Instructional Facilitator (hereinafter “SEIF”), and Special Education Expert (hereinafter “SPED Expert”).

The following witnesses testified for Petitioners: Parent.

The following exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits HO-1 through HO-8; Petitioner’s Exhibit 18; and Respondent’s Exhibits A through Y.

The record was closed on November 7, 2025. A decision is due on December 3, 2025.

## **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 (hereinafter “NRS”) 388, and the Nevada Administrative Code (hereinafter “NAC”) 388.

<sup>7</sup> HO-6

<sup>8</sup> HO-6

<sup>9</sup> HO-7; HO-8

**III.**  
**ISSUE**

The issue to be determined and each of the parties' basic positions concerning each are as follows:

**ISSUE:**

Whether the LEA violated its Child Find duty under the IDEA and NAC by failing to evaluate the Student for special education services from August 25, 2023 to May 11, 2025? If so, did the failure to evaluate the student deprive Student of educational benefits and result in a denial of a Free Appropriate Public Education (FAPE)?

**Respondent's Position/Argument:**

1. Respondent takes issue with the characterization of facts and the descriptions of communications between Parent and School as set forth in the Complaint.
2. Allegations dating back to August of 2023 should be barred for consideration at the time of hearing.
3. School did not deny or refuse to evaluate Student for an IEP in October of 2023.
4. Tutoring availability was consistently provided to Student throughout the 2023-2024 school year.
5. From the fall 2023 forward, Student made appropriate progress in Measures of Academic Progress (MAP) scores, i-Ready Data scores and written expression.
6. School conducted a timely special education evaluation within the 45 school day timeline.
7. The Local Education Agency (LEA) and School did not violate its child find duty.

**Relief Requested by Petitioner:**

1. The LEA shall provide and/or fund compensatory education to Student in all areas of need.
2. The LEA shall ensure that all LEA personnel that have been involved in Student's evaluation receive training on the provisions of the IDEA and NAC 388 and its requirements to ensure strict compliance with the rights and procedural safeguards afforded to parents and students.

**IV.**  
**FINDINGS OF FACT**

After considering all the evidence, as well as arguments of both parties, this Hearing Officer's Findings of Fact are as follows:

***Background***

1. Student was enrolled at a District school (a school in another LEA) for the first-grade school year. Parent became concerned towards the end of Student's first grade year because Student was struggling with reading and writing. Student became easily frustrated, ripped up papers in class, became angry, and walked away. Student did not want to start a writing task at all. District school provided Student with Response to Intervention (RTI) for the last two-to-three months of the first-grade school year. Because of concerns about Student's behaviors, Parent reached out to a private behavior therapist and Student began counseling in June 2023.<sup>10</sup>

***2023-2024 School Year***

***Second Grade***

2. Student enrolled at and attended the LEA School (hereinafter referred to as "School") for the 2023-2024 school year for second grade.<sup>11</sup> The first day of school for the 2023-2024 school year was August 10, 2023. School held an open house on August 9, 2023. Parent and Student's first interaction with Teacher was at the open house.<sup>12</sup> Teacher had 27 students in the second-grade class. The 2023-2024 school year contained 180 school days or 34 weeks.<sup>13</sup>
3. Parent and Teacher have different recollections of the first meeting that occurred on August 9, 2023. Teacher vaguely remembers the conversation, does not recall Parent telling Teacher that Student was previously receiving RTI services but does recall Parent making general inquiries such as asking what an IEP was. Parent recalls telling Teacher that Parent wanted Student evaluated for an IEP and that Teacher responded by stating that because they were at the beginning of the school year with diagnostic testing coming up, they

<sup>10</sup> Parent's testimony

<sup>11</sup> Teacher's testimony; Principal's testimony; R's Ex B; R's Ex Q

<sup>12</sup> Teacher's testimony; Parent's testimony

<sup>13</sup> R's Ex A, page 0038

wanted to get the data from the testing to determine whether an IEP was appropriate for Student.<sup>14</sup>

4. Communications between parents and Teacher are not normally as extensive as the communications that took place between Parent and Teacher. Teacher’s relationship with this family was closer than with other families.<sup>15</sup>
5. The i-Ready program in general education tests overall growth. The program has imbedded lessons that are based on how a student does, and monitors progress along the way as quizzes are administered. The data from i-Ready looks at other components in reading such as phonemic awareness, phonics, vocabulary and comprehension. The program presents the student with a passage and asks them to demonstrate their understanding.<sup>16</sup>
6. Student’s August 2023 i-Ready results in reading were as follows:<sup>17</sup>

Phonological Awareness	Surpassed Level
Phonics	Grade K
High-Frequency Words	Grade 2
Vocabulary	Grade K
Comprehension: Literature	Grade 1
Comprehension: Informational Text	Grade K
<i>Overall Ability</i>	<i>Grade 1 (426)</i>

7. English Language Arts (hereinafter “ELA”) is broken down into six subcategories, each of which earn a letter grade and are added together for quarter grades. The subcategories include language, foundational skills, informational text, literature, speaking and listening, and writing. During the first quarter, between August 10, 2023 and October 6, 2023, Student’s Progress Report shows grades in five of the six subcategories. Student earned a D in language, Cs in foundational skills and speaking and listening, and Bs in informational text and writing with an overall Quarter 1 grade of B.<sup>18</sup> Student’s Report Card shows grades in three of the six subcategories. Student earned a C in language, an A in foundational skills and a B in writing with an overall Quarter 1 grade of B.<sup>19</sup>

<sup>14</sup> Teacher’s testimony; Parent’s testimony

<sup>15</sup> Teacher’s testimony; Parent’s testimony

<sup>16</sup> SPED Expert’s testimony

<sup>17</sup> R’s Ex M, page 0087

<sup>18</sup> R’s Ex D; R’s Ex Q

<sup>19</sup> R’s Ex E

8. Based on Student's diagnostic testing results Student was not invited into School's tutoring program because Student's scores were higher than other students and close to proficiency. The purpose of the school tutoring program was to help students get passed the average where Student was already scoring.<sup>20</sup>
9. Parent was surprised that Student was not invited to tutoring based on the i-Ready test scores and wanted to follow up on her prior question about an IEP in August 2023 to Teacher.<sup>21</sup>
10. On October 11, 2023, Parent and Teacher had the following communication exchange:

*Parent:* It's my understanding that tutoring is being offered to certain students do you think that this will be beneficial for Student or do you think Student needs an IEP?

*Teacher:* I think tutoring is a great opportunity for Student. IEPs work differently and are based off of certain tests and data collected from a team that includes the people Student works with, lives with, your pediatrician, and school professionals (SPED department). Student can only qualify if Student has a certain disability. Looking through the front cover: so, just Student...Student has no apparent disability. Academically, Student is also doing well, engaged in class, responsive, and can communicate needs correctly.

*Parent:* Student needs help with reading; last year Student had an RTI. Over the summer to date Student has been in tutoring for reading with little to no progress. Student needs help. I just don't know how to help Student.

*Teacher:* Student isn't in RTI this year, Student is currently reading below level, but that's not a problem in class. I have noticed that Student is not motivated and gets distracted, but Student is doing well.<sup>22</sup>
11. Teacher believed the October 11, 2023 communication exchange was Parent asking the difference between tutoring and IEP and asking Teacher's opinion regarding the same. It was not Teacher's understanding that Parent was asking for an evaluation. Teacher responded with her opinion after having Student in Teacher's classroom for about three

<sup>20</sup> Teacher's testimony; R's Ex A 0041

<sup>21</sup> Parent's testimony

<sup>22</sup> Teacher's testimony; Parent's testimony; R's Ex A, pages 0041-0040

months. When responding, Teacher was considering Student academically and believed that Student would benefit from tutoring.<sup>23</sup>

12. “Read by Grade 3” was a law passed to make sure that all students are ready to move on beyond the third grade. All students have a Read by Grade 3 Literacy Plan that lets Parents know where their student is at and what strategies are being used to catch them up.<sup>24</sup>
13. For the 2023-2024 school year, School used MAP assessment<sup>25</sup> scores to determine which students should receive a Read by Grade 3 letter. Student was below the 14th percentile, and as a result, received the Read by Grade 3 letter. The letter was sent home with Student on October 27, 2023. Students being monitored under the Read by Grade 3 Literacy Plan are being monitored to ensure progress is being made.<sup>26</sup>
14. The Read by Grade 3 Literacy Plan form contains four sections: Student Background; Primary Target; Parent Communication; and Progress Monitoring Plan.<sup>27</sup>
15. The description of Student Background states: *Give any pertinent background information on the student, i.e. How many schools have they attended. Is attendance a concern? Has he/she participated in tutoring programs or summer school?* Student’s literacy plan notes that Student joined School for the 2<sup>nd</sup> grade; Student had been in a District school for kindergarten through first grade. Chronic absenteeism is not an issue for Student’s academics. The literacy plan fails to include the fact that Student had an RTI at the previous school and received tutoring over the summer with little to no progress - even though this information was documented in communications with Teacher on October 11, 2023.<sup>28</sup>
16. The description of Primary Target states: *What is the primary area in which you are focusing instruction for this student? How are you differentiating instruction for this student within the Tier 1 setting?* Student’s literacy plan notes the following: that results

<sup>23</sup> Teacher’s testimony

<sup>24</sup> Principal’s testimony

<sup>25</sup> MAP testing is one of the different types of assessments available to schools to help identify students that are struggling or potentially struggling to meet grade level standards by the end of the school year. MAP tests are administered on a computer and are student driven. As a student answers questions correctly, the questions become more difficult. If a student answers questions incorrectly, however, then the questions get easier. A student’s willingness to persevere and show what they are capable of is inherently built into the scores. MAP testing requires students to demonstrate proficiency in what they learned the year before requiring them to demonstrate the ability of previously learned skills before moving on and being asked additional questions. SEIF’s testimony; SPED Expert’s testimony; R’s Ex M, pages 0090-0091

<sup>26</sup> Teacher’s testimony

<sup>27</sup> R’s Ex I

<sup>28</sup> Teacher’s testimony; Parent’s testimony; R’s Ex I

indicate that Student has not acquired fundamental decoding skills and is below grade level in Phonics; the vocabulary score indicates gaps in grade-level word knowledge; instruction in phonics is a priority; this child will also benefit from rich, engaging oral-language activities that target vocabulary; and this information places Student in Instructional Grouping Profile 1.<sup>29</sup>

17. The description of Parent Communication states: *How was the family notified that their student was struggling? When did the notification occur? Has there been any additional communication? What type of support has been offered to the family?* Student's literacy plan states in part the following: Parent Communication for Student included that a Read by grade 3 letter was sent on October 27, 2023. A parent-teacher conference was held between October 16, 2023 and October 30, 2023 to discuss i-Ready Diagnostics, MAP Results, and behavior. There is a note that there will be a follow-up conference in January.<sup>30</sup>
18. The description of Progress Monitoring Plan states: *What intensive instruction has been designed for this student? How often does it occur? Who provides it? What progress monitoring data is collected? How often?* Student's literacy plan notes: Student is receiving Tier 1 on-grade-level instruction in English Language Arts (ELA) for 115 minutes daily. The classroom teacher provides this instruction. Student is also required to complete 50 minutes or more of i-Ready personalized instruction in reading each week. The classroom teacher also works with Student in small groups 3-5 times per week. Student utilizes Wonders resources to build foundational skills and practice vocabulary and MyON/Accelerated Reader to complete reading comprehension quizzes. The instructional aid supports Student with academics when in the classroom. Student will be monitored using MAP growth assessment, i-Ready Diagnostic, and i-Ready Growth Monitoring.<sup>31</sup>

#### *Progress Reports & Report Cards*

19. During the second quarter, between October 9, 2023 and December 15, 2023, Student's Progress Report shows grades in all six of the subcategories in ELA. Student earned Ds in language and foundational skills, Cs in informational text and literature, an A in speaking

<sup>29</sup> Parent's testimony; R's Ex I

<sup>30</sup> R's Ex I

<sup>31</sup> R's Ex I

and listening, and a B in writing with an overall Quarter 2 grade of C.<sup>32</sup> Student's report card showed the same final grades as the Progress Report.<sup>33</sup>

20. On December 1, 2023 Parent reached out to Teacher inquiring whether Student was acting out and notified Teacher that Parent had Student in private counseling due to an issue last year and just withdrew the Student from counseling. Teacher responded that since Thanksgiving break Student's behavior was a lot better and Student was participating more.<sup>34</sup>

21. Student's December 2023 i-Ready results in reading were as follows:<sup>35</sup>

Phonological Awareness	Surpassed Level
Phonics	Grade 1
High-Frequency Words	Max Score
Vocabulary	Grade K
Comprehension: Literature	Grade 1
Comprehension: Informational Text	Grade K
<i>Overall Ability</i>	<i>Grade 1 (437)</i>

22. During the third quarter, between January 2, 2024 and March 8, 2024, Student's Progress Report shows grades in all six of the subcategories in ELA. Student earned Cs in language and informational text, Bs in foundational skills, literature, and writing, and an A in speaking and listening with an overall Quarter 3 grade of B.<sup>36</sup> Student's report card showed the same final grades as the Progress Report except for literature which went down from a B to a C.<sup>37</sup>

23. On March 5, 2024, Parent reached out to Teacher to touch base about Student's progress and asked for any recommendations that Student needed extra help on. Parent mentioned that Student attends tutoring at school twice a week for reading. Teacher told Parent that they would have more information after diagnostics and would get back to Parent at the end of the week.<sup>38</sup>

<sup>32</sup> R's Ex Q; R's Ex D

<sup>33</sup> R's Ex E

<sup>34</sup> R's Ex A, page 0034

<sup>35</sup> R's Ex M, page 0087

<sup>36</sup> R's Ex Q; R's Ex D

<sup>37</sup> R's Ex E

<sup>38</sup> R's Ex A, page 0029

24. Student's March 2024 i-Ready results in reading were as follows:<sup>39</sup>

Phonological Awareness	Surpassed Level
Phonics	Early 2
High-Frequency Words	Grade 1
Vocabulary	Grade 1
Comprehension: Literature	Grade 1
Comprehension: Informational Text	Grade 1
<i>Overall Ability</i>	<i>Grade 1 (425)</i>

25. On March 13, 2024, Parent reached out to Teacher asking for updates on Student's progress. Based on Parent's review of the most recent report card, Parent was debating on taking Student out of a sport. Parent clarified that the category that was concerning was literature under ELA and that Parent did not know how else to help Student. Teacher told Parent not to worry, because literature had been hard on everyone and based on Student's work, Student was getting better. Teacher also mentioned that Student didn't pass one test that was worth a lot of points. Parent then inquired whether Student would pass 2<sup>nd</sup> grade because Parent was worried and wanted to get Student as much help as possible. Teacher assured Parent that Student would pass to 3<sup>rd</sup> grade. Teacher stated that Student was high achieving and it's only on a certain assignment [that Student has trouble with].<sup>40</sup>

26. During the fourth quarter, between March 18, 2024 and May 24, 2024, Student's Progress Report showed Student was receiving Cs in all but the speaking and listening subcategory of ELA and a Quarter 4 grade of C.<sup>41</sup> Student's report card showed the same final grades as the Progress Report.<sup>42</sup>

### ***2024-2025 School Year***

#### ***Third Grade***

27. Student remained enrolled at School for the 2024-2025 third-grade school year. While it is not typical for students at School to have the same teacher two years in a row, the random assignment of teachers through the registrar's office assigned Teacher to teach the third grade for the 2024-2025 school year, and as a result they had Student in their class again. The 2024-2025 school year had 176 school days or 33 weeks.<sup>43</sup>

<sup>39</sup> R's Ex M, page 0087

<sup>40</sup> Teacher's testimony; R's Ex A, pages 0029-0028

<sup>41</sup> R's Ex Q, R's Ex D

<sup>42</sup> R's Ex E

<sup>43</sup> Principal's testimony; Teacher's testimony; R's Ex P

28. Student's August 2024 i-Ready results in reading were as follows:<sup>44</sup>

Phonological Awareness	Not Assessed
Phonics	Grade 1
High-Frequency Words	Surpassed Level
Vocabulary	Grade 2
Comprehension: Literature	Grade 1
Comprehension: Informational Text	Grade 1
<i>Overall Ability</i> <i>(on grade level = 511-602)</i>	<i>Grade 1</i> <i>(460)</i>

29. On September 18, 2024 Parent received a call from School about enrolling Student in tutoring for math, and was confused about the same, so Parent reached out to Teacher to ask for clarification. Teacher replied that the math tutoring suggestion was due to Student's diagnostic scores, and while Student scored low in fractions and algebra, Student was doing good in math, however, Student needed help in reading comprehension the most. Parent agreed that Student needed more help in reading. Teacher taught tutoring for reading that school year. The purpose of the reading tutoring instruction was to prepare students for the Smarter Balanced Assessment Consortium (SBAC), an assessment given to all students. Tutoring was a regular class size; students were not given one-on-one time and rarely received small group instruction. Tutoring was given from October 2024 to March 2025.<sup>45</sup>

30. In September Student was missing assignments, most of which were in class during writing time. Student tended to try and avoid writing assignments. Teacher believed it was because the third-grade curriculum was more rigorous and demanding than the second-grade curriculum. Teacher often allowed Student to sit next to Teacher and Student typically got the work done.<sup>46</sup>

31. On November 20, 2024, Parent reached out to Teacher to check on Student's academics and behavior. Teacher responded in length to inform Parent that behaviors started to get out of control about a week prior and Teacher was having to talk to Student about the behaviors daily. The behaviors included talking in class while Teacher or other students were talking. Teacher discussed the possibility of having Student moved to a different classroom with the administrator because Teacher was concerned that if the behaviors were

<sup>44</sup> R's Ex M, page 0087

<sup>45</sup> Teacher's testimony; R's Ex A 0020

<sup>46</sup> Teacher's testimony

not the result of the more difficult curriculum, it might be because Student was too comfortable in Teacher's classroom and Teacher was close with Parent. Teacher thought Student might benefit from a different teaching style. The administrator would not move Student because it would result in the change of classroom for another student because the classrooms were full. At that point, Student's behaviors were affecting academics. Teacher was surprised as this was new behavior compared to the previous school year. Teacher wanted to assuage Parent's concerns and placed Student in RTI for reading even though Student didn't need RTI based on the assessment scores. Student was pulled out for reading support twice a week.<sup>47</sup>

32. Parent completed the *Behavioral Information* form for Student's RTI services. Parent marked "yes" for the following categories - frustrates or angers easily, sad, dislikes school, avoidance behaviors include acting out. Parent's written comments included: tends to act out when unable to finish a task; when we sit down to read and Student messes up on a word, no longer wants to read; easily discouraged; walks away; Student starting acting out in first grade; we also noticed issues with reading; Student saw a therapist for behavioral issues; attended tutoring outside of school with little improvement since 2023. The *Student Data* form completed by Teacher included the following additional comments related to classroom behavior, or other data points to determine student eligibility for RTI or notes about teacher/parent requests: (1) reading is a bit of a problem, lots of missing assignments, doesn't want to read or write when prompted to; (2) math whiz, loves multiplication and finishes assignments on time (mostly in math), reading is getting better, recommending for RTI; (3) no motivation for writing unless interested personally [in the topic]; and (4) very fidgety, cannot sit still more than 10 minutes, needs lots of breaks.<sup>48</sup> Student was demonstrating feelings of frustration and failure to Parent, even asking Parent why Student was dumb.<sup>49</sup>
33. The RTI instructional coach was responsible for pulling Student out of teacher's classroom to work with Student on reading fluency and monitor progress. Student's behaviors improved after Student was given RTI.<sup>50</sup>

<sup>47</sup> Teacher's testimony; R's Ex A 0015

<sup>48</sup> Parent's testimony; Teacher's testimony; R's Ex K 0066-0067

<sup>49</sup> Parent's testimony

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

34. In December, Parent reached out to Principal to inquire what it would take to move Student out of Teacher’s classroom. Parent had a discussion with the Vice Principal, explained that Student was not doing well academically and behavior-wise. The Vice Principal told Parent to wait for Student’s diagnostic scores. Parent then reached out a week later to Vice Principal but never received a response back.<sup>51</sup>

35. Student’s December 2024 i-Ready results in reading were as follows:<sup>52</sup>

Phonological Awareness	Not Assessed
Phonics	Grade K
High-Frequency Words	Surpassed Level
Vocabulary	Grade 2
Comprehension: Literature	Grade 2
Comprehension: Informational Text	Grade 2
<i>Overall Ability</i>	<i>Grade 2</i>
<i>(on grade level = 511-602)</i>	<i>(494)</i>

36. In February 2025 Parent reached out to Nevada PEP, a family support organization, because Parent knew very little about IEPs. Nevada PEP helped Parent write an email to the SEIF. On February 12, 2025, Parent sent an email to SEIF at 10:00 a.m. with the subject line: IEP Evaluation and included the following pertinent information: I suspect that my child has a disability in the areas of reading and writing. I am requesting a complete multi-disciplinary team initial evaluation. Towards the end of the 2022-2023 school year Student’s prior elementary school sent home an RTI letter. The following year, Student attended this school. When the teacher mentioned my child was struggling with reading, I requested tutoring and an IEP evaluation. The teacher responded that my child did not have an “apparent disability.” My child met with a tutor outside of the school since 2023 with little improvement.<sup>53</sup>

37. Prior to receiving Parent’s February 12, 2025 email, SEIF was not approached by any teacher or parent for Student requesting a formal special education evaluation. SEIF forwarded the email to School Psychologist the same day at 10:04 a.m. The *Determination of Scope of Evaluation & Need for Additional Data* form completed on February 12, 2025

<sup>51</sup> Parent’s testimony

<sup>52</sup> R’s Ex M, page 0087

<sup>53</sup> Parent’s testimony; R’s Ex X 02013

notes: “Teacher expressed concern related to attention deficit hyperactivity disorder-like symptoms.”<sup>54</sup>

38. Once a request for evaluation is made, they have ten days to contact the parent. On February 14, 2025 School Psychologist sent an introductory email to Parent to start the evaluation process by requesting a date and time for the scope of assessment interview. School Psychologist followed up on February 24, 2025 by resending the email and texting Parent. Upon receiving the text message, Parent checked email and found the same in the spam folder. The scope of assessment interview was scheduled and took place on February 26, 2025. On February 28, 2025 School Psychologist held a virtual meeting with Parent to review and obtain Parent’s signature on the Procedural Safeguards, Prior Written Notice, Meeting Notice, Consent for Evaluation and the Development/Medical History form, copies of which were given to Parent.<sup>55</sup>
39. Once School has the consent for evaluation form signed by a parent they have 45 instructional days to complete the evaluation. The Multidisciplinary Team (MDT) Report shows that (1) the health assessment was completed on April 20, 2025; (2) Student was administered the Woodcock Johnson Test of Achievement, Fourth Edition (WJ-IV) on May 5, 2025; (3) Student was administered the Weschler Intelligence Scale for Children, Fifth Edition, (WISC-V) on May 5, 2025; (4) Teacher completed the Behavior Assessment System for Children, Third Edition (BASC-3) on May 6, 2025; and (5) Parent completed the BASC-3 on May 7, 2025. No additional assessments on Student’s behavior were completed. The MDT meeting was held on May 13, 2025 via Zoom. The MDT members consisted of School Psychologist, Nurse, Teacher, Special Education Teacher, Parent and SEIF. The initial evaluation was conducted to determine whether Student demonstrated characteristics consistent with criteria established for Specific Learning Disability (SLD) or Other Health Impairment. Parent acknowledged reviewing and receiving a copy of the MDT Report on May 15, 2025.<sup>56</sup>
40. The information contained under *Parent Report* in the MDT Report included in pertinent part: Student enjoys math as it is a strength; when reading Student tends to guess at words

<sup>54</sup> SEIF’s testimony; R’s Ex L, page 0071

<sup>55</sup> SEIF’s testimony; Parent’s testimony; R’s Ex S, page 0200; R’s Ex L

<sup>56</sup> SEIF’s testimony; R’s Ex M; R’s Ex S, page 0200

and becomes frustrated when corrected; reading comprehension is a challenge; in the area of writing, Student struggles to put thoughts into words, and has difficulty in the areas of grammar, punctuation, and spelling; when completing the RTI paperwork, Parent noted that Student frustrates easily, becomes sad when people let Student know that the Student is not doing the work correctly, and will act out when unable to finish a task, becomes easily discouraged when reading and will walk away. When completing the social/emotional/behavior rating scale, Parent noted that Student can become angry and/or sad easily and seems to experience extreme nervousness when taking tests especially those in reading and writing.<sup>57</sup>

41. The information contained under *Teacher Report* in the MDT Report included in pertinent part: Student thrives in the area of math; experiences difficulty in reading comprehension though has been positively progressing; the team tracks reading fluency and provides RTI support two times per week; Student has shown progress in reading fluency as well as with not being so fidgety in the classroom; Student seems to struggle the most in the area of writing; when provided a task to start or complete an essay, Student avoids it completely unless it is a topic of interest; Student hates to write, but has been typing paragraphs which seems to have helped; finds success completing an outline with 1:1 help though struggles to put those into sentences and paragraphs; Student requires support in the areas of sentence structure, conventions and organization. During mid-year, Student struggled to meet classroom behavioral expectations, refusing to complete work and turn in assignments.<sup>58</sup>
42. The information contained under *Student Interview* in the MDT Report included in pertinent part: Student finds math easy and reading and writing to be hard; identified math as a favorite subject and writing as the least favorite; finds spelling to be “OK” though coming up with ideas to write about to be more difficult; believes that capitalization and punctuation are areas they do well in, but when it comes to reading, the words on the page can be a challenge.<sup>59</sup>
43. The MDT Report shows that Student’s March 2025 i-Ready results in reading were as follows:<sup>60</sup>

<sup>57</sup> R’s Ex M, page 0088

<sup>58</sup> R’s Ex M, page 0089

<sup>59</sup> R’s Ex M, page 0090

<sup>60</sup> R’s Ex M, page 0087

Phonological Awareness	Not Assessed
Phonics	Surpassed Level
High-Frequency Words	Surpassed Level
Vocabulary	Grade 2
Comprehension: Literature	Grade 2
Comprehension: Informational Text	Early 3
<i>Overall Ability</i>	<i>Early 3</i>
<i>(on grade level = 511-602)</i>	<i>(514)</i>

44. Student’s i-Ready diagnostic growth shows 164% progress toward annual typical growth. Typical growth is the average annual growth for a student at this grade and placement level on their baseline diagnostic. Student made 86% progress toward strength growth. For students below grade level on their baseline diagnostic, stretch growth is an ambitious, but attainable, level of annual growth that puts them on a path toward proficiency.<sup>61</sup>
45. RTI monitoring of Student’s progress reading grade level 2 content demonstrated a baseline of 51 words correct per minute at the beginning of RTI on 11/22/24 and a final score of 92 words correct per minute as of 4/29/25 at the conclusion of RTI.<sup>62</sup>
46. The MDT determined that Student was eligible for special education services under the category of Specific Learning Disability (SLD) in the area of Written Expression. Parent agreed with the determination.<sup>63</sup>
47. Right after the MDT qualification, the team went into the IEP meeting to create Student’s IEP. Student’s Present Levels came from the MDT Report. Under Consideration of Special Factors, the “yes” box is marked for the question: “Does the student’s behavior impede the student’s learning or the learning of others?” Student’s goals include writing (spelling) writing, behavior, and organizational skills: list-management. Student’s placement is regular class and special education class combination, spending 93% of the school day in the regular education environment.<sup>64</sup>
48. Student’s writing (spelling) goal is to correctly spell words that include consonant blends at the end of the syllables (lt, mp, nk, nd) with an accuracy of 80%. Student’s writing goal is to use prewriting strategies to plan written work and revise drafts for proper capitalization, word choice and grammar, achieving a criteria of 80% or better, Student’s

<sup>61</sup> R’s Ex K, page 0063

<sup>62</sup> R’s Ex J, page 0056-0057

<sup>63</sup> SEIF’s testimony; R’s Ex M; R’s Ex L, page 0082

<sup>64</sup> SEIF’s testimony; R’s Ex N

behavior (self-regulation) goal is to be able to use self-regulation techniques (i.e. counting to 10, taking a deep breath, asking for a break) in order to lessen the occurrences of impulsive behaviors in 8 out of 10 occurrences. Student's organizational skills: list management goal is to list-manage class assignments by creating checklists for smaller step tasks, implementing suggestions from staff, and checking them off when completed achieving a success rate of 80%.<sup>65</sup>

49. Under Special Education Services/Specially Designed Instruction, Student's IEP lists the following: writing – direct 150 minutes per week; and behavior - direct 150 minutes per week. Writing is provided in a special education setting while behavioral support minutes are provided in the regular education setting.<sup>66</sup>
50. The IEP contains the following modifications, accommodations or supports: (1) frequent checks for understanding for the duration of assignments and assessments; (2) use of graphic organizers for note taking and writing assignments; (3) provide modified work at student's instructional level; (4) student will be allowed to complete assignments and assessments in the resource room; (5) provide extended time on assignments and assessments (one extra day) when effect is shown; (6) grades will be a collaboration between special education and regular education teacher; (7) allowed one opportunity to retake assessment and quizzes if scores are below 70%; and (8) i-Ready diagnostic: small group setting, extended time.<sup>67</sup>
51. During the IEP meeting Parent agreed with the IEP and requested a copy at the meeting to provide to the District school where Parent would be enrolling Student for the 2025-2026 school year. Parent believes Student is currently getting the support needed with the IEP at the District school and Student is “definitely taking the right step in the right direction.”<sup>68</sup>
52. Parent believes that if Student had been assessed in 2023 and received services since that time, Student would not be as behind academically. Parent has investigated services that would help Student catch up academically. Parent found a tutoring service that provides lessons with a trained instructor at varying rates depending on the number of sessions. 78-105 sessions total taking place 3-4 times per week are charged at \$65 an hour. 52 sessions

<sup>65</sup> R's Ex N, pages 0125-0127

<sup>66</sup> Parent's testimony; R's Ex N, page 0128

<sup>67</sup> R's Ex N, page 0129

<sup>68</sup> SEIF's testimony; Parent's testimony; R's Ex N, page 0132

total taking place twice a week are charged at \$70 an hour. 26 sessions total taking place once a week are charged at \$75 an hour. Parent believes the tutoring services would be necessary for Student to catch up academically based on Student's IEP and the testing completed such as i-Ready, however no testimony was provided by Student's current teachers at the District school.<sup>69</sup> No evidence was presented related to the type, frequency or intensity of services that the tutoring service needs to provide to get Student at grade level. No one from the tutoring service testified to provide their licensing information or explain the content, quality and integrity of the tutoring services that they provide.

53. Parent re-enrolled Student in counseling for behavioral issues with a behavior therapist that charges \$250 an hour.<sup>70</sup> The behavior therapist was not called as a witness to provide evidence that continued therapy is necessary, why it is necessary, the frequency of sessions needed, the therapy goals that Student is working on, or where Student is currently at related to progressing on those goals.

54. No evidence was provided related to Petitioner's request for the amount or cost of training they are asking this Hearing Officer to order that the LEA provide to the personnel that have been involved in Student's evaluation.

#### *SEIF's Testimony*

55. At the beginning of each school year School's teachers come back to school about a week to two weeks before the students start for professional development and training. SEIF specifically has a session training all teachers on child find, the differences between a 504 plan and special education services, state requirements and regulations, the compliance and monitoring portions of what is required if they have students in their classes that are receiving special education services. Throughout the year they also have professional development days and SEIF does sub-training with all the teachers as well as with the special education teachers.<sup>71</sup>

56. SEIF trains teachers helping students with special education support – when they notice that students are not responding to Tier 1 instruction by not showing growth or progress in the classroom or in their diagnostic scores, that would be an indicator that there might be

<sup>69</sup> Parent's testimony; P's Ex 18

<sup>70</sup> Parent's testimony

<sup>71</sup> SEIF's testimony

some sort of suspected learning disability. If so, the teachers would refer those to SEIF. Other instances include behavioral incidences, with no medical diagnosis, where a student is not demonstrating typical behaviors in that grade level, so they may refer the student to the SEIF. Teachers are trained to look for characteristics in their students that are indicators of potential disabilities. SEIF has open communication with the teachers and they have full access to SEIF whenever they need help.<sup>72</sup>

57. SEIF trains the teachers to respond to a general inquiry from a parent by answering the question, informing them about the evaluation process, how the special education process is completed and what the services would look like so the parents have that information and can make a request for an evaluation. Teachers are trained to determine whether they are receiving a general inquiry versus a request for evaluation. General inquires about the process include questions like what does the IEP process look like, what kind of services does School provide, do you have a special education department, what kind of special education services do you have, which are very different from the services that District schools provide? A request for an evaluation would be I want my student to have an evaluation, I want my student to have an IEP, how do I go about getting my student an IEP, and who do I get in touch with to get my student evaluated an IEP?<sup>73</sup>

58. SEIF has worked with Teacher since May 2023 and knows that Teacher has several students with IEPs. In SEIF's experience, there have not been any issues with Teacher not following requirements. Upon review of Parent's October 11, 2023 communication (It's my understanding that tutoring is being offered to certain students do you think that this will be beneficial for Student or do you think Student needs an IEP?) to Teacher SEIF considered it to be an inquiry about what services look like and what the teacher knows about an IEP, but not something that would warrant an evaluation based on that (because Parent was asking teacher for an opinion of whether tutoring or an IEP were better.) SEIF expects that the teachers are trained to know the difference between Tier 1 interventions, such as tutoring, and Tier 3 interventions, such as an IEP.<sup>74</sup>

<sup>72</sup> SEIF's testimony

<sup>73</sup> SEIF's testimony

<sup>74</sup> SEIF's testimony

59. Upon review of Teacher's response to Parent on October 11, 2023, SEIF stated that this response was 100% proof that the staff is trained by SEIF and is the same verbiage and language that SEIF would have used and shows that Teacher answered the question to the best of their ability and on a professional level. In retrospect, there is nothing more SEIF wishes Teacher had included in the response.<sup>75</sup>
60. A student should meet grade level standards for that grade by the end of the school year, so a student beginning grade 3 should obtain grade 3 level standards by the end of third grade. If a student is behind two grade levels based on i-Ready scores and the individualized student, Tier 2 instruction (RTI services), would be the recommended course of action for that student. If a student's MAP scores are in the very low percentile, this could be one factor that would trigger a request for a special education evaluation, however some students don't perform well on standardized tests so their academic abilities should also be considered (grades, testing, how the student is doing in the classroom; the reason for the student's grades). If a student is not doing well with their grades, they want to ensure the student is completing and turning in their assignments. If a student is not completing or turning in their assignments, the first step is a parent-teacher conference to figure out why the student is not turning in or completing their work. If improvement is not seen, then the teacher might bring in additional support such as the counselor but continued missing or incomplete assignments by itself would not trigger a referral to the SEIF.<sup>76</sup>
61. While a student's behaviors in and of themselves such as fidgeting, talking in class and needing breaks, would not result in a referral to the dean, if those behaviors rose to the level that they were disrupting the classroom learning environment, then that information would be passed on to the dean.<sup>77</sup>
62. SEIF does not believe that the staff missed anything that would have resulted in an evaluation prior to receiving the Parent's request for an evaluation in February 2025. When asked whether there was anything School should have done prior to the Parent's request to determine whether Student was a student with a disability, SEIF looked at Student's ability

<sup>75</sup> SEIF's testimony

<sup>76</sup> SEIF's testimony

<sup>77</sup> SEIF's testimony

to show progress through i-Ready growth, was 40 points away from being proficient in ELA, all indicated that the Tier 1 and Tier 2 instruction was working for Student.<sup>78</sup>

63. School's instructional coaches responsible for RTI would report to the SEIF when a student is not showing growth or progress when reviewing data, as required by NAC 388.325(4). Because Student was showing growth and progress, a determination was made that Student was responding to Tier 1 and Tier 2 interventions, and they did not suspect that student had a disability.<sup>79</sup>
64. When conducting an MDT evaluation, a student's educational record (including MAP Scores, i-Ready diagnostic scores and grades), while included in the MDT report, is not the determining factor for whether a student qualifies for special education. The testing conducted by the school psychologist and whether a student demonstrates deficiencies in certain categories in that testing determines eligibility.<sup>80</sup>

***SPED Expert's Testimony***

65. The LEA's SPED Expert has served as an expert witness in a due process hearing previously in at least one case, has a Bachelor's Degree, Master's Degree and Ph.D. in Special Education, has 17 years of classroom experience in special education, has moved on to being a special education administrator and served in various roles such as working on national level grants to help ensure school districts across the country improve. SPED Expert has an active license to teach special education in Nevada with an endorsement in autism. SPED Expert is currently an Executive Director of Special Education Support Staff (SESS). Some of SPED Expert's responsibilities include oversight of training, support, and compliance oversight to campuses in special education, 504 and related service programs, overseeing support of Special Education Facilitators, and overseeing conflict resolution of high-profile cases with legal teams' administration, special education teams and families.<sup>81</sup>
66. SPED Expert became familiar with Student as part of this due process complaint, familiarizing themselves with Student's background and academic progress. Upon review of the October 11, 2023 communications between Parent and Teacher (It's my understanding that tutoring is being offered to certain students do you think that this will

<sup>78</sup> SEIF's testimony

<sup>79</sup> SEIF's testimony

<sup>80</sup> SEIF's testimony

<sup>81</sup> SPED Expert's testimony; R's Ex R

be beneficial for Student or do you think Student needs an IEP?), SPED Expert did not believe that this communication qualified as a request for special education because the inquiry asks the teacher for a personal opinion. The expectation would be that a teacher could provide a parent with a level of information and knowledge to then continue the conversation if the parent wants their child evaluated. Here, Teacher did not just respond to the inquiry about tutoring, but when on to provide additional information about an IEP and opened the door for Parent to follow up with additional questions, or a request to proceed with the tests needed for the IEP. Upon review of all communications between Parent and Teacher, SPED Expert did not see any communications that should have prompted the Teacher to escalate the communication to the SEIF.<sup>82</sup>

67. In SPED Expert's opinion, School did not violate their child find duty, and in fact did an amazing job demonstrating growth with Student and getting Student in a place academically that Student was nowhere near when starting at School. Not only did Student grow over the period of a school year but surpassed a school years' worth of growth.<sup>83</sup>

68. SPED Expert explained that the RTI team decided to put Student in front of second grade level text, which did not mean that Student could not read third grade level text, but when working on a student's fluency, you want to ensure they have the basic mechanics before increasing in grade level material. A student should not be practicing the other four parts of reading when working on fluency. The results of Student's RTI instruction confirmed that the RTI team made the right decision on focusing in the area of reading fluency for Student.<sup>84</sup>

69. SPED Expert does not believe that Student is owed any compensatory hours. Compensatory education is generally awarded when something is missing such as services when developing an IEP and is meant to bring the child back to whole because something was missing. Here, the output of data shows that Student grew beyond expectations. SPED Expert does not believe that there were any educational services that Student should have received but didn't.<sup>85</sup>

<sup>82</sup> SPED Expert's testimony

<sup>83</sup> SPED Expert's testimony

<sup>84</sup> SPED Expert's testimony

<sup>85</sup> SPED Expert's testimony

## V.

### CONCLUSIONS OF LAW AND DISCUSSION

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

***Whether the LEA violated its Child Find duty under the IDEA and NAC by failing to evaluate the Student for special education services from August 25, 2023 to May 11, 2025?***

#### LEGAL AUTHORITY

##### **i. Child Find**

"[A] state must comply both procedurally and substantively with the IDEA."<sup>86</sup> Parents may thus challenge the school district's procedural and substantive compliance with the IDEA.<sup>87</sup> Procedural compliance requires the district to assess any suspected disability, known as the "child-find" requirement. "In order to provide a free appropriate public education to all children with disabilities States must, of course, first identify those children and evaluate their disabling conditions."<sup>88</sup> A child with a disability means a child evaluated in accordance with 34 CFR §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.<sup>89</sup> "Once identified, those children must be evaluated and assessed for all suspected disabilities so that the school district can begin the process of determining what special education and related services will address the child's individual needs."<sup>90</sup> "That this evaluation is done early, thoroughly, and reliably is of extreme importance to the education of children . . . [because o]therwise, many disabilities will go undiagnosed, neglected, or improperly treated in the classroom."<sup>91</sup>

<sup>86</sup> *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634, 644 (9th Cir. 2005) (citing *Rowley*, 458 U.S. 206-07).

<sup>87</sup> *See N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1207 (9th Cir. 2008).

<sup>88</sup> *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1110 (9th Cir. 2016).

<sup>89</sup> 20 U.S.C. § 1401(3)(a); 34 CFR § 300.8

<sup>90</sup> *Timothy O.* (citing 20 U.S.C. §§ 1412(a)(7), 1414(a)-(c)).

<sup>91</sup> *Id.* (citing 20 U.S.C. § 1400(c)).

"The IDEA requires that, if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act."<sup>92</sup> "[A] disability is 'suspected,' and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability."<sup>93</sup> The duty to assess can be triggered by the "informed suspicions of parents, who may have consulted outside experts" even if the school disagrees.<sup>94</sup> If the school refuses to evaluate based on a parent request it must send the parent Written Notice of Refused Actions along with a copy of the procedural safeguards. "[N]otice may come in the form of expressed parental concerns about a child's symptoms, as in *Pasatiempo*, of expressed opinions by informed professionals, as in *Hellgate*, or even by other less formal indicators, such as the child's behavior in or out of the classroom."<sup>95</sup> "A school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel this suspicion through informal observation."<sup>96</sup> Such "notice automatically triggers mandatory statutory procedures: the school district must conduct an assessment for all areas of the suspected disability using the comprehensive and reliable methods that the IDEA requires."<sup>97</sup> Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not "exclusively in hindsight."<sup>98</sup>

Child find also must include ... Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade. "Whether a school district 'suspects' a disability is an objective test."<sup>99</sup> In the Ninth Circuit, a disability is "suspected ... when the district has notice that the child has displayed symptoms of that disability."<sup>100</sup> Even if a child has such a disability, he or she does not qualify for special education services if support provided through the regular school program is sufficient.<sup>101</sup>

<sup>92</sup> *Id.* at 1118-19.

<sup>93</sup> *Id.* at 1119.

<sup>94</sup> See *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir. 1996); *N.B.*, 541 F.3d at 1209-10 (noting that the duty may also be triggered by the informed suspicions of outside experts).

<sup>95</sup> *Timothy O.*, 822 F.3d at 1121.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 1121-22.

<sup>98</sup> *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)

<sup>99</sup> *J.R.*, 668 F.Supp.3d at 1076 (citing *Timothy O.*, 822 F.3d at 1119-20).

<sup>100</sup> *Timothy O.*, 822 F.3d at 1119.

<sup>101</sup> *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996 (9th Cir. 2016), 1007

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>102</sup> Child find must also include children who are suspected of being a child with a disability under 34 CFR § 300.8(b) and in need of special education, even though they are advancing from grade to grade.<sup>103</sup> Claims based on a local education agency's failure to meet the child find requirement are cognizable under the IDEA.<sup>104</sup>

A violation of the child find procedural obligation may result in the denial of a FAPE only if the child was eligible for special education at the time of the violation.<sup>105</sup> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies impeded the child's right to a free appropriate public education; significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or caused a deprivation of educational benefits.<sup>106</sup> Procedural inadequacies that result in the loss of educational opportunity or seriously infringe the parents' opportunity to participate in the IEP formulation process, or that caused a deprivation of educational benefits, clearly result in the denial of a FAPE.<sup>107</sup> A FAPE must be tailored to the unique needs of the child. Although the instruction provided need not be the absolutely best or potential maximizing, "Congress did not intend that a school system could discharge its duty under the IDEA by providing a program that produces some minimal academic advancement, no matter how trivial."<sup>108</sup>

Compensatory education is not a contractual remedy, but an equitable remedy. There is no obligation to provide day-for-day compensation for time missed. Appropriate relief is designed to ensure that the student is educated within the meaning of the IDEA.<sup>109</sup>

<sup>102</sup> 20 USC § 1412(a)(3)(A); 34 CFR § 300.111(a)(1); NAC 388.215

<sup>103</sup> 34 CFR § 300.111(c)(1)

<sup>104</sup> *Compton Unified Sch. Dist. v. Addison*, 598 F.3d 1181, 1185 (9th Cir. 2010)

<sup>105</sup> *R.B., ex rel. F.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 942 (9th Cir. 2007); *Burnett v. San Mateo Foster City Sch. Dist.*, 739 Fed.Appx. 870, 872 (9th Cir. 2018); 20 U.S.C. 1415(f)(3)(E)

<sup>106</sup> *SPB v. Washoe Cnty. Sch. Dist.*, 3:22-cv-00340-ART-CLB (D. Nev. Sep 30, 2024)

<sup>107</sup> *Amanda J. ex rel. Annette J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citation and quotation omitted).

<sup>108</sup> *Id.* at 890

<sup>109</sup> *Parents of Student W. v. Puyallup School Dist., No. 3*, 31 F.3d 1489 (9th Cir. 1994)

Although courts are not bound by agency interpretations of statutes and regulations, they generally give them deferential consideration. The use of RTI does not diminish a district's obligation under the IDEA to obtain parental consent and evaluate a student in a timely manner, OSEP informed state education directors. When there is reason to suspect the student may have a disability and need special education and related services as a result, the IDEA's initial evaluation provisions kick in, regardless of whether the district plans to or already utilizes RTI strategies with the student.<sup>110</sup>

## ANALYSIS

### i. **Child Find Obligation**

#### a. *August 2023*

This Hearing Officer finds both the testimony of Teacher and Parent to be credible as it relates to their memory regarding the August 2023 open house.<sup>111</sup> The conversation which took place over two years ago was likely just that – an unstructured flow of conversation wherein Parent mentioned an IEP but did not necessarily tell Teacher that Student needed an IEP or that Parent wanted Student evaluated for an IEP. Recollections tend to be imperfect because our memory does not store complete depictions of what we perceived, but only fragments of our interpretations of the relevant facts or events. Our ability to recall requires reconstructing our interpretation, where we often use logical judgments to fill in missing details. Witnesses must recreate events from their long-term memory when asked to answer a specific question. The recreation may be constructed on information attained during the original event as well as information attained after the event.<sup>112</sup>

While Parent may have meant to request an IEP for Student through the verbiage used during that meeting, it is more likely that Parent is remembering the conversation based on what she intended to say during the conversation rather than the exact dialogue used at the time. This finding is supported by the entirety of the record including the close relationship and ease of communication that flowed between Teacher and Parent while Student was enrolled in and attended School. It is also supported by the fact that during the October 11, 2023 Parent did not

<sup>110</sup> *Memorandum to State Directors of Special Educ.*, 56 IDELR 50 (OSEP 2011).

<sup>111</sup> FOF 3

<sup>112</sup> PAUL BREST AND LINDA HAMILTON KRIEGER, *PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT*, 242-243 (1<sup>st</sup> ed. 2010)

mention any prior inquiry about an IEP for Student, even though Parent testified that the communication was intended to be a follow-up to the August 2023 conversation.<sup>113</sup>

***Therefore, the Child Find obligation was not triggered in August 2023.***

*b. October 2023*

This Hearing Officer finds the initial communication on October 11, 2023 from Parent to Teacher asking for Teacher's opinion about whether tutoring or an IEP would help Student was not a request for an evaluation. This finding is supported by the evidence provided not only by SEIF, but also the SPED Expert.<sup>114</sup>

However, this Hearing Officer finds that the subsequent communication on October 11, 2023 by Parent ("*Student needs help with reading; last year Student had an RTI. Over the summer to date Student has been in tutoring for reading with little to no progress. Student needs help. I just don't know how to help Student.*")<sup>115</sup> after receiving teacher's opinion placed School on notice of Parent's suspicions and triggered the mandatory statutory procedures pursuant to child find. Learning Student had RTI the previous school year along with tutoring during the summer but was not progressing with those supports superseded the subjective views and informal observations of Teacher.<sup>116</sup>

While a great deal of School's case focused on the progress Student made after receiving RTI, and the record supports that assertion,<sup>117</sup> whether School had reason to suspect Student might have a disability must be evaluated considering the information they knew, or had reason to know, at the relevant time, namely October 2023. Student did not begin receiving RTI until November 2024,<sup>118</sup> over a year after child find was triggered.

Due to the progress Student made with RTI and tutorial services in the third grade,<sup>119</sup> the evidence demonstrates that if Student was timely evaluated and provided with supports in second grade Student would have struggled less during the second and third grade. The reason that this Hearing Officer gave less weight to SEIF's and SPED Expert's testimony related to the

<sup>113</sup> FOF 3; FOF 4; FOF 9; FOF 10

<sup>114</sup> FOF 10; FOF 57; FOF 65

<sup>115</sup> FOF 10

<sup>116</sup> FOF 10; FOF 11

<sup>117</sup> FOF 33; FOF 44; FOF 45; FOF 63; FOF 83; FOF 68

<sup>118</sup> FOF 31; FOF 45

<sup>119</sup> FOF 44; FOF 45

communications that took place after Teacher gave an opinion is because both SEIF and SPED Expert were viewing the information through the lens of hindsight with the knowledge that Student made progress through RTI supports. SEIF did not become aware of Student until February 2025 upon receipt of Parent’s request for an evaluation.<sup>120</sup> SPED Expert acknowledged becoming familiar with Student for the sole purpose of this due process hearing, becoming familiar with Student’s background and academic progress<sup>121</sup> – progress that did not exist in October 2023. School did not provide any additional supports to Student during the 2023-2024 school year and only provided the RTI supports to “assuage Parent’s concerns.”<sup>122</sup>

***Therefore, the Child Find obligation was triggered on October 11, 2023.***

***Did the failure to evaluate the student deprive Student of educational benefits and result in a denial of a Free Appropriate Public Education (FAPE)?***

ii. **Denial of a FAPE**

The violation of the child find procedural obligation resulted in a denial of a FAPE for Student. Despite receiving two years of school tutoring and five months of RTI instruction after which Student demonstrated significant growth, Student still qualified under the eligibility category of SLD in Written Expression.<sup>123</sup> Therefore, Student should have received a special education evaluation and would have qualified in October 2023 prior to receiving two years of tutoring and approximately five months of RTI. Because Student was not provided with special education and related services between October 11, 2023 and May 13, 2025, approximately 300 school days (or 60 weeks)<sup>124</sup> Student was deprived educational benefits and opportunities Student would have received from an IEP tailored to meet Student’s unique needs.

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, **it is hereby ordered:** Student shall receive compensatory education in reading and writing. Petitioners did not have any witnesses besides Parent to provide this Hearing Officer with evidence related to the type,

<sup>120</sup> FOF 37

<sup>121</sup> FOF 66

<sup>122</sup> FOF 31

<sup>123</sup> FOF 23; FOF 29; FOF 31; FOF 33; FOF 44; FOF 45; FOF 46

<sup>124</sup> FOF 2; FOF 27

frequency or intensity of services needed for Student to reach grade level proficiency. As previously discussed under the denial of a FAPE, Student lost 60 weeks of special education and related services, therefore Student is awarded compensatory education hours in the amount of one hour per week for a total of 60 hours total in reading and writing. Student shall receive individual tutorials in reading and writing from a dually credentialed provider. School is to provide the hours directly to Student or contract with Student's current school to provide the hours to Student. The compensatory hours are to begin no later than the first week that school resumes after winter break and be completed no later than the beginning of the 2026-2027 school year. The provision of compensatory education shall be coordinated with the District's school and Parent.

Although Petitioners were placed on notice during the prehearing conference and in the *Prehearing Conference Report and Order* that evidence needed to be presented regarding the relief they were requesting, because they did not have the behavior therapist provide evidence related to why ongoing behavioral therapy is necessary, the frequency of sessions needed, the therapy goals that Student is working on, or where Student is currently related to progressing on those goals, the request for funding of additional behavior therapy is denied. Likewise, because no evidence was provided related to Petitioner's request for the amount or cost of training that they are asking this Hearing Officer to order the LEA provide to the personnel that were involved in Student's evaluation, the request is denied.

### **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: December 2, 2025

/s/ Audrey J. Beeson  
Hearing Officer

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