

**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 AND
DECISION**

STUDENT¹, by and through Parents

Hearing Officer: Audrey Beeson

Petitioners,

v.

SCHOOL DISTRICT

Respondent

I.

INTRODUCTION AND PROCEDURAL HISTORY

On June 6, 2025, School District (hereinafter “District” or “Respondent”) received *Petitioners’ Due Process Complaint* (hereinafter “Complaint”).² This Hearing Officer was appointed on or about June 11, 2025.³ On June 12, 2025, District filed a *Notice and Response to the Due Process Request*.⁴ On June 18, 2025, a *Notice of Status Conference and Preliminary Order* was issued. The same included notice that “With regard to remedies, the petitioner is expected to provide evidence to support the proposed resolution(s) in the Due Process Complaint.”⁵ On July 16, 2025, a *Status Conference Report and Order and Notice of Prehearing Conference* was issued.⁶

During the prehearing conference on July 21, 2025, this Hearing Officer addressed the fact that Petitioners’ Complaint contained allegations and legal argument that the statute of limitations in this matter runs from October 20, 2020 and determined that a decision needed to be made on the statute of limitations prior to the due process hearing. A *Prehearing Report and Order* was

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

² HO-1

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issued on July 28, 2025. The *Prehearing Report and Order* states that the parties agreed to the presumptions regarding the various procedural items identified in the *Notice of Prehearing Conference* including that with regard to remedies, Petitioner is expected to provide evidence to support the proposed resolution(s) in the Complaint.⁷

On July 25, 2025, an *Order Directing Briefing by the Parties and Setting Hearing on Statute of Limitations Issue* was issued.⁸ On July 28, 2025, a *Prehearing Report and Order* was issued.⁹ On August 4, 2025, Respondent, through their counsel, filed their brief entitled *Motion Regarding Statute of Limitations*. On August 14, 2025, Petitioners, through their attorneys, filed their brief entitled *Response to District's Motion re Statute of Limitations*.¹⁰ On August 21, 2025, an *Order Granting Continuance of Statute of Limitations Hearing and Notice of Vacating Due Process Hearing Dates Pending Rescheduling* was issued.¹¹

A pre-hearing evidentiary hearing on the sole issue of whether the evidence supports an exception to the 2-year statute of limitations pursuant to IDEA, 20 U.S.C. § 1415 (f)(3)(D), 34 C.F.R. 300.511(f), and NAC 388.306(15) was held virtually on August 27, 2025, August 28, 2025, and September 11, 2025. The following witnesses testified during the pre-hearing evidentiary hearing: Case Worker 1, Case Worker 2, Educational Decision Maker (hereinafter “EDM”), Petitioners’ Expert Witness (hereinafter “Expert Witness”) trained in the Orton-Gillingham method and structured literacy, District Foster Care Coordinator, Foster Parent 1, Special Education Teacher (hereinafter “SPED Teacher”), Principal, School 1 Psychologist, and Speech Language Pathologist. The following exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits 1-22 and Respondent’s Exhibits R1 through R-17. The following exhibits were admitted into evidence with no objection: Respondent’s Exhibits R-27 and R-36; and Petitioner’s Exhibits P-2, P-17, P-33, P-34, P-38, P-43, P-45, P-46, P-53, P-64, and P-65. During closing arguments, Respondent raised the issue of standing. While Respondent should have filed a motion to allow Petitioners the opportunity to respond, Petitioners orally responded during the hearing. To ensure a clear and complete record, this Hearing Officer addressed the issue in the Decision (rendered on October 30, 2025¹²).

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¹¹ HO-19

¹² HO-24

This matter was originally set for a due process hearing on August 28, August 29 and September 12, 2025, with a Decision Date of October 10, 2025. Due to an unforeseen emergency, the Statute of Limitations hearing originally scheduled for August 22, 2025, was continued and held over a period of three days, concluding September 11, 2025. Therefore, counsel for the parties made a joint motion to continue the decision date from October 10, 2025 to December 19, 2025, to allow issuance of the decision from the Statute of Limitations Hearing and based on the first availability of both counsel and this Hearing Officer to hold a four-day due process hearing. Therefore, this Hearing Officer found good cause to grant the joint motion and issued an *Order Granting Motion for Continuance of Due Process Hearing* on September 15, 2025.¹³

This Hearing Officer issued a *Decision on Statute of Limitations and Standing* on October 30, 2025.¹⁴ Regarding the issue of whether EDM had standing to bring this due process complaint because EDM's name was not identified in the Court Order Appointing a Voluntary Education Advocate as the Educational Decision Maker, this Hearing Officer determined that EDM has standing to bring this due process complaint pursuant to NRS 432B.462, 34 CFR § 300.51, 20 USC § 1401 (23), 34 CFR § 300.30, NAC 388.071 and NAC 388.191.

Regarding the issue of whether the evidence supported an exception to the 2-year statute of limitations, including whether a parent was prevented from requesting the hearing due to either (1) specific misrepresentations by the local agency that it had resolved the problem forming the basis of the complaint, or (2) the local educational agency's withholding of information from the parent that was required to be provided to the parent, pursuant to IDEA, 20 U.S.C. § 1415 (f)(3)(D), 34 C.F.R. 300.511(f), and NAC 388.306(15) the Hearing Officer determined that specific misrepresentations were made by District that Student was not a Student with "SLD and Dyslexia" since October 23, 2020. Therefore, Petitioners' motion was granted with respect to the exception of the statute of limitations and Petitioners were allowed to address whether Student had dyslexia and any remedies that they are seeking as of October 23, 2020 as part of this due process hearing.¹⁵

The Hearing Officer also determined that specific misrepresentations were made by District as of October 23, 2020, when despite Student having 19 of 20 clinically significant or at risk factors under the BASC-3 which can indicate autism, and 10 of the 13 factors that are

¹³ HO-23

¹⁴ HO-24

¹⁵ HO-24

considered for a finding of eligibility for autism under NAC 388.387, District failed to open the scope of the evaluation to include all required assessments for that eligibility category. Therefore, Petitioners' motion was granted with respect to the exception of the statute of limitations and Petitioners were allowed to address whether Student had autism and any remedies that they are seeking as of October 23, 2020 as part of this due process hearing.¹⁶

The due process hearing was held virtually on November 17, November 19, and November 21, 2025. Counsel for the parties were notified that the findings of fact, testimony and exhibits deemed admitted from the Statute of Limitations Hearing would be deemed admitted for the due process hearing, and that duplicate exhibits and testimony would not be allowed.¹⁷ The following witnesses testified: Special Education Instructional Facilitator (hereinafter "SEIF"), School 4's Covering Psychologist, SPED Teacher School 4, SEIF School 3, Expert Witness trained in the Orton-Gillingham method and structured literacy, Petitioners' Expert Witness 2 (hereinafter "Expert Witness 2") also trained in structured literacy and the Orton-Gillingham approach, and EDM.

The following additional exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits HO-23 through HO-27; Respondent's Exhibits R-18 through R-33, and R-35; and Petitioner's Exhibits P-48, P-62, P-66 (a) and (b). The following exhibits were admitted over objection: Petitioner's Exhibits P-67 (a) and (b).

The record was closed on November 21, 2025. A decision is due December 19, 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 388, and the Nevada Administrative Code 388.

III. ISSUES

¹⁶ HO-24

¹⁷ DP Hearing Transcript, pages 12-13

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

Issue One

Whether District failed to evaluate Student for a reading disability under SLD, known as dyslexia, since October 20, 2020, under the Individuals with Disabilities Education Act (IDEA) and Nevada state law and if so, whether the failure resulted in a denial of a Free Appropriate Public Education (FAPE)?

- a. If yes (to Issue One): Whether District failed to indicate in Student's 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 Individualized Education Program (IEPs) that Student was a student with SLD and Dyslexia, and if so, whether the failure of the IEP Team to consider the instructional approaches under NRS 388.443 was a procedural violation. If so, was there a denial of a FAPE?

Issue Two:

Whether District failed to evaluate Student for Autism Spectrum Disorder (ASD) since October 20, 2020, and if so, whether the failure resulted in a denial of a FAPE?

Issue Three

Whether Student's IEPs dated 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 were reasonably calculated to meet Student's unique needs relating to reading, writing, math, and behaviors since May 21, 2021, and if not, whether the failure resulted in a denial of a FAPE?

Issue Four:

Whether Student's 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 IEPs repeated Student's reading and behavior goals and failed to include services to assist with Student's behaviors, and if so, whether the failure resulted in a denial of a FAPE?

Issue Five:

Whether Student's 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 IEPs failed to provide Student with measurable goals, which adequately describe current levels of performance and the extent to which the past goals were accomplished in reading, writing, math, and social/emotional/behavior, since October 20, 2020, and if so, whether the failure resulted in a denial of a FAPE?

Issue Six:

Whether District failed to appoint Student an Educational Surrogate pursuant to 20 U.S.C. § 1415(b)(2) and NAC 388.283 when the court did not timely appoint an Educational Decision

Maker (EDM) thereby denying meaningful parent participation from December 2022 to November 2023, and if so, whether the failure resulted in a denial of a FAPE?

Issue Seven:

Whether District failed to invite/include Student's court appointed EDM in Student's 4/9/2024 and 10/30/2024 IEP meetings, and failed to provide the EDM with progress updates, since November 2023 and to provide the requested Student's educational records since August 24, 2024, thereby denying meaningful parental participation, and if so, whether the failure resulted in a denial of a FAPE?

REQUESTED RELIEF:

1. District will immediately conduct a full and individualized reevaluation of Student in the areas of reading, writing, math, behavior, Autism Spectrum Disorder, and Intellectual Disability, consistent with 34 C.F.R. § 300.304-306, incorporating the September 2023 Private Neuropsychological Evaluation, input from Student's current Educational Decision Maker (EDM), and any other providers with relevant information.
2. Upon completion of the reevaluation, District will conduct a Multidisciplinary Team (MDT) meeting and make a new eligibility determination with mandatory consideration of Specific Learning Disability with Dyslexia, Autism Spectrum Disorder, and Intellectual Disability.
3. Within ten (10) school days of the MDT, District will conduct an IEP meeting and developed a new IEP for Student that:
 - a. Checks box #7 indicating that Student is a student with SLD and Dyslexia;
 - b. Reflects Student's actual performance in school with comprehensive present levels for reading, writing, math and behavioral levels;
 - c. Include bi-weekly meetings with the EDM and relevant IEP team members to discuss progress on reading, writing, math, and social skills with work samples in each academic subject provided to the EDM ahead of each meeting;
 - d. Include appropriate decoding and encoding goals in reading and writing along with other goals appropriate for children with deficits in reading, writing, math, and behavior in line with Nevada academic standards; and
 - e. Include appropriate related services, including:

- i. Specialized reading instruction using a research-based, multi-sensory program (e.g. Orton-Gillingham or Linda-Mood Bell);
 - ii. Behavioral Supports and Counseling services;
 - iii. ABA services; and
 - iv. Occupational therapy.
4. District shall fund intensive compensatory education services to remedy the denial of a FAPE dating back to the 2020-2021 school year (subject to the decision on the statute of limitations by this Hearing Officer), including:
 - a. A minimum of 2,000 hours of compensatory 1:1 reading instruction, including through the completion of a research-based, multi-sensory program with fidelity chosen by Petitioner and paid for directly by District, with the remainder of the hours to be provided in the form of 1:1 tutoring with a teacher trained in working with children with dyslexia to address other areas of deficit in reading.
 - b. 800 hours of private compensatory math instruction;
 - c. 800 hours of private compensatory writing instruction;
 - d. 1000 hours of private compensatory education related to Student's social/emotional needs, including but not limited to ABA therapy;
 - e. Or in the alternative, create a Special Needs Trust for Student in the amount of \$500,000 to allow Student to arrange and pay for compensatory education without District involvement.
5. Any and all additional remedies the hearing officer deems just and appropriate in light of the evidence presented.

DISTRICT'S POSITION:

1. The Individualized Education Program (IEP) provided the Student with a Free Appropriate Public Education (FAPE).
2. The District has fulfilled its obligation under the Individuals with Disabilities Education Act (IDEA).
3. The IEP team reviewed the Student's educational records, including but not limited to the Multidisciplinary Team Reports, IEPs and other reports and documentation.

IV.
FINDINGS OF FACT FROM
PRE-HEARING EVIDENTIARY HEARING & DUE PROCESS HEARING
Educational Decision Makers

1. Pursuant to Nevada law, children in foster care must be appointed educational decision makers by the Court.¹⁸ An educational decision maker, if not the parent, is the person who has the legal authority to make educational decisions for a student and has the rights of a surrogate parent. An educational decision maker has the same access to education records as any parent outside of the foster care system. An educational decision maker must be invited to attend and participate in an IEP meeting. District receives a court order from Office of General Counsel and a set of instructions on how to input the information into the District's system. The District's foster care department along with student's individual school share responsibility to input the educational decision maker's information into the system. The foster care department's role is to provide educational support and stability, and guidance for schools and district personnel.¹⁹
2. An *Order Appointing an Educational Decision Maker* includes the rights and responsibilities of the educational decision maker within the body of the court order. These include: (1) have an initial meeting with the children, and meet with them as often as necessary to carry out the duties rescripted in accordance with the best interest of the children; (2) address any disciplinary issues relating to the education of the children and the school in which the children are enrolled; (3) ensure that the children receive a FAPE in accordance with federal and state law including without limitation: (a) any special programs of instruction or special services for pupils with disabilities to which the children are entitled; and (b) if the children are at least 14 years of age, educational services to assist the children in transitioning to independent living; (4) consult with the agency which provides children welfare services concerning a determination about whether the children should change schools pursuant to NRS 388E.105 if applicable; (5) participate in any meeting relating to the education of the children including, without limitation, a meeting regarding any individualized education program established for the pupil pursuant to 20 USC § 141(d) or special program instruction or special service

¹⁸ NRS 432B.462

¹⁹ NRS 432B.462; R-17; District Foster Care Coordinator's testimony

provided to pupil; (6) to the extent practicable, communicate any concerns regarding the educational placement of the children and the educational services provided to the children and any recommendations to address those concerns to: (a) the agency which provides children welfare services; (b) the attorney representing the children; (c) if the educational decision maker for the children is not the parent or guardian of the children, the parent or guardian of the children; and (7) appear at any proceeding held pursuant to this section and NRS 432B.410 to 432B.590 inclusive, and make specific recommendations to the court appropriate concerning the educational placement of the children, the educational services provided to the children, and if the children are at least 14 years of age, the services needed to assist the children in transitioning to independent living.²⁰

3. Under Nevada law, the educational decision maker for a foster care youth could be the parent if they still have educational rights, or a relative of the child, or a foster parent, or a fictive kin, or a CASA, and finally, if none of the foregoing are available, then a volunteer can be appointed. The names of all the possible educational decision makers would be known to the court except for a volunteer.²¹
4. Family Court designates an agency with authority to appoint a volunteer as the educational decision maker, usually on a temporary basis until a more permanent person is appointed. These designations are known as Volunteer Education Advocates (VEA). Typically, the court order names the Agency responsible for appointing the VEA. The court order states that the VEA is trained by the Agency or the District. A VEA needs to have knowledge of the student's educational history and the ability to navigate trauma-informed learning and educational support systems. The name of the individual person chosen by the Agency to act as the VEA is listed in correspondence to District from either the Office of General Counsel or the Agency. This is the standard mechanism in the State of Nevada for identification and appointment of VEAs for children in foster care. District Foster Care Coordinator has no objection to the format of the court order or the standard mechanism in the State of Nevada appointing a VEA.²² A VEA appointed by the Agency must pass a background check, receive training and be provided with reference materials.²³

²⁰ R-17; District Foster Care Coordinator's testimony

²¹ District Foster Care Coordinator's testimony

²² District Foster Care Coordinator's testimony

²³ EDM's testimony

5. Typically, the DFS case worker provides the Agency or the VEA with the student's educational records. Due to the significant level of need for a student, discussions would take place about behavioral concerns or the academic history of the student relevant to providing educational support. Discussions would relate to records such as a behavior chronology report, a functional behavior assessment, an academic or education support plan, or an IEP.²⁴

Background

6. District's records indicate that the Department of Family Services (DFS) had to intervene in Student's home on several occasions.²⁵ Student was removed from the custody of parents in 2018 and parental rights were terminated with no subsequent contact. The exact date of the termination was not offered or admitted into evidence. Student was adopted both at the age of 8, by Guardian 1, and age 10, by Guardian 2, separate family members who both passed away. The exact dates of adoption were not offered or admitted into evidence.²⁶

Kindergarten 2018-2019

7. Student was enrolled in the District at School 1 for kindergarten for the 2018-2019 school year by Guardian 1. Student missed 33 days of instruction during kindergarten. Student's attendance improved after being placed with Guardian 1 in 2018. Thereafter, Student began living with Guardian 1 and Guardian 2.²⁷ After adoption Guardian 1 was the legal parent of the student. Student did not attend a school, such as preschool, before kindergarten. Student appeared to have post-traumatic stress-like symptoms, had a lot of difficulty in the classroom, eloped, used profanity, refused to engage in work and demonstrated communication delays. School 1 communicated with Guardian 1 about vocabulary development to learn if there was background information School 1 needed to know to help Student. Guardian 1 informed School 1 that Student had minimal interactions that allowed Student to learn things that children normally learn during the developmental years prior to kindergarten, while living with the parents. Student appeared unaccustomed to being in a school setting and being around larger groups of children and showed frustration or confusion because Student didn't understand how to properly play with others. Student showed a desire to learn basic social skills, but struggled

²⁴ District Foster Care Coordinator's testimony

²⁵ Principal's testimony; R-3; R-10

²⁶ R-27, page 3

²⁷ Principal's testimony; R-3; R-10

to acquire some of the skills, even with the support provided. School 1 implemented social emotional supports and academic interventions for Student.²⁸

8. School 1 immersed Student in situations that allowed development of vocabulary, allowed participation in intentional play, allowed Student to learn how to interact with other children, take turns, play games, and use imagination. School 1 worked on vocabulary development and practicing how to say words and use them. In September 2018 Student was referred for speech/language services by the general education teacher because it appeared that Student might have phonological difficulties, as intelligibility was not clear and it was difficult to understand what Student was saying some of the time. Student presented with a frontal lisp, so the Speech Language Pathologist provided a Response to Intervention (hereinafter “RTI”) to help Student keep the student’s teeth locked in a little bit to keep the tongue from protruding.²⁹ District implements a scientifically based intervention system consisting of three tiers. Tier 1 interventions are classroom interventions that all students receive. Tier 2 interventions are small group interventions (typically between 3-5 students, but no more than 7) after the teachers have completed diagnostic assessments to determine what a student’s deficits are and where supports are needed. Tier 3 interventions are more individualized interventions with a teacher or a licensed interventionist on campus.³⁰
9. That intervention lasted 8 weeks before an assessment for special education was conducted. After the 8 weeks of RTI Student did not make the progress hoped for, and a decision was made that more support was needed. Student continued to be unintelligible 75% of the time. Guardian 1 was notified that a formal evaluation for speech sounds was necessary to get Student more formal support.³¹ A signed Parental Consent for the initial evaluation was not offered or admitted into evidence.
10. At the conclusion of the 1/18/2019 Multidisciplinary Team Meeting (MDT), Student was found eligible for special education services under speech/language impairment due to a moderate disorder in phonology. Guardian 1 participated in the meeting and reported that while Student’s speech was improving, it was difficult to understand most of the time at home and among family and friends. At the time of the evaluation Guardian’s only other concern was

²⁸ Principal’s testimony; School Psychologist’s testimony

²⁹ Principal’s testimony; Speech Language Pathologist’s testimony; R-10; R-15, page 2; P-2

³⁰ School Psychologist’s testimony

³¹ Principal’s testimony; Speech Language Pathologist’s testimony; R-10; R-15, page 2; P-2

Student's behavior. Guardian 1 signed a *Parental Consent for Initial Provision of Special Education and Related Services* on January 18, 2019. Guardian 1 also participated in the IEP meeting that followed the evaluation.³² The 2019 IEP was not offered or admitted into evidence.

11. Guardian 1 trusted School 1 to maintain constant communication about Student. Guardian 1 actively participated with School 1, expressed academic and/or behavioral concerns about Student and consistently engaged with School 1 relative to those concerns.³³
12. On May 2, 2019, Student was given a Behavior Intervention Plan (BIP) because Student was not displaying 'on task' behaviors for any duration in the kindergarten classroom. When a task was too difficult, expectations were not clear or when the student was given a non-preferred direction, Student would swear, tell the teacher no, walk around the classroom, touch materials belonging to others, hit, kick, spit, or elope from the classroom to gain attention.³⁴

First Grade 2019-2020

13. Student remained at School 1 for first grade during the 2019-2020 school year and really started to struggle as they witnessed other students performing academic skills that they did not understand, found difficult, or that were taking them longer to grasp.³⁵ The enrollment history shows that Student was withdrawn from School 1 on or about November 18, 2019 to enroll in another school, then re-enrolled at School 1 on December 5, 2019.³⁶ No evidence was provided to explain the same.
14. On December 17, 2019, Guardian 1 signed a *Consent for Special Education Supports* for targeted assessments and or instructional guidance in the areas of academic performance/achievement, progress monitoring, observations, functional behavioral assessment, transition, and social/emotional/behavior.³⁷
15. By Winter, first-grade students are expected to produce 40-54 letter sounds correctly in one minute and by year's end are expected to read 67 words correctly in one minute. By

³² Principal's testimony; Speech Language Pathologist's testimony; R-10; R-15, page 2; P-2

³³ Principal's testimony

³⁴ R-4

³⁵ Principal's testimony; R-3; R-10

³⁶ Principal's testimony; R-3

³⁷ R-15, page 3

comparison, in January 2020 Student could only identify 3 letter names and 2 letter sounds and could not read any words. Student scored 0/73 on a CORE Phonics Survey³⁸

16. Student received Tier I support for daily instruction and practice in reading. Student received Tier II small-group instruction with the teacher and an interventionist, focusing on decoding skills and using word sorts and tactile resources. Student also received Tier III one-on-one daily instruction, on letter sound recognition with the classroom teacher and an interventionist.³⁹
17. By Winter, first grade students are expected to correctly identify 50-70 numbers in one minute and by year's end to identify at least 66 numbers in one minute. By comparison, in January 2020 Student could correctly identify only 2 numbers in one minute. Student's math goal was to identify 10 numbers correctly by the end of the 2019-2020 school year.⁴⁰
18. Student received Tier I support in math for instruction and practice. Student received Tier III one-on-one support from the teacher, focusing on counting with manipulatives, sorting, number matching, number recognition, and number correspondence.⁴¹
19. Student's short attention span and low frustration tolerance were noted as factors that affected performance. By the end of first grade Student was still struggling with reading and math.⁴²

Second Grade 2020-2021

20. The enrollment history shows that Student was enrolled at District School 2 from August 10, 2020 until August 21, 2020 and then re-enrolled back at School 1 on September 4, 2020.⁴³
21. Guardian 1 signed a *Consent for Evaluation Form* for an MDT on September 25, 2020. The *Consent* noted Student was being referred for an MDT evaluation based on concerns in the areas of health and sensory/motor functioning, academic performance/achievement, general intelligence, speech/language/communication, and social and emotional condition/adaptive skills/behavior.⁴⁴ Student was referred for an early 3-year reevaluation by the first-grade classroom teacher in 2020 because Student received Tier II and III interventions since 2018 but was not responding to those extra supports and showed minimal skill retention and

³⁸ R-10

³⁹ School Psychologist's testimony; R-10

⁴⁰ R-10

⁴¹ School Psychologist's testimony; R-10

⁴² Principal's testimony; R-10

⁴³ R-3

⁴⁴ R-15, page 2

academic growth. Student and school staff reported that Guardian 1's deteriorating health impacted Student's behavior and social-emotional functioning.⁴⁵

October 2020 MDT

22. On October 23, 2020, via telephone, Guardian 1 was provided with a *Parental Prior Notice of District Proposal* to develop an initial IEP and educational placement. The reason for the proposed action was academic concerns because Student had not demonstrated sufficient progress in the core subject areas with the interventions provided. An MDT meeting was held on 10/23/2020. Participants included School Psychologist, General Education Teacher, a special education teacher, Speech Language Pathologist and Guardian 1. Guardian 1 participated by phone.⁴⁶
23. At the time of the reevaluation, Student could write Student's first name, knew less than ten letter names and sounds from the alphabet, and recognized a few numbers, though inconsistently. Concerns/deficits included cognition, reading, writing, math socialization, and behavior.⁴⁷
24. The Health and Developmental History in the 10/23/2020 MDT states in part: Student did not answer all questions appropriately, for example, when asked about a favorite sport, the response was "green"; speech deficits were noted; Student has difficulty completing a 3-step direction.⁴⁸
25. The 10/23/2020 MDT states: Student has been participating in curriculum addressing state content standards as specified within the core curriculum and RTI Intervention Plan. Under the "Appropriate Instruction in Math" subheading, it states: Student is currently participating in math instruction, appropriate to address math goals as indicated in the core curriculum and RTI Intervention Plan, delivered by the general education teacher, who is licensed in the state of Nevada; in consideration of current and prior instruction, the lack of appropriate academic instruction does not appear to be a controlling factor within Student's eligibility profile. Under the "Appropriate Instruction in Reading" subheading, it states: Student is currently participating in reading instruction appropriate to address reading goals as in a general education setting as indicated in the core curriculum and RTI Intervention Plan, delivered by

⁴⁵ R-10

⁴⁶ School Psychologist's testimony; R-5; R-10

⁴⁷ School Psychologist's testimony; R-10, page 1

⁴⁸ R-10, page 1

the general education teacher, who is licensed in the state of Nevada; the general education teacher confirms that Student is participating in instruction on essential components of reading in the following areas: phonemic awareness, phonics, vocabulary, reading fluency, and reading comprehension; in consideration of current instruction and prior data, the lack of appropriate academic instruction in reading does not appear to be a controlling factor within Student's eligibility profile.⁴⁹

26. Student's Nonverbal Intelligence Index score was 72 and fell in the Moderately Below Average Range. However, the 10/23/2020 MDT noted the following: "Considering that Student has a history of difficulty with speech and /or language, and that subtests that measure verbal ability may not accurately estimate true cognitive functioning, only those subtests that place minimal verbal demands were administered. Tests used to provide a composite score reflecting conceptual and reasoning abilities indicated that Student's general ability to perform complex mental processing involving conceptualization and transformation of information was delayed for Student's age." Caution was advised by School Psychologist in interpreting the results because Student had some difficulty sustaining attention to the tasks and could be impulsive/careless with responses.⁵⁰

27. Student's general ability to perform complex mental processing involving conceptualization and transformation of information was delayed for Student's age falling in the very low range at or better than 0.4% of children the same age. Student's nonverbal reasoning, dependent upon immediate problem-solving which requires complex mental processing, fell in the low range at or better than 5% of same-age peers. Student's ability to perceive and apply relationships among abstract figures fell in the below average range. Student's ability to solve nonverbal problems using inductive reasoning fell in the low range or the 3rd percentile. Student's spatial cluster scores which measure complex visual-spatial processing, responses which require moderate amount of eye-hand coordination for drawing or constructing block patterns fell in the very low range and equal to 0.1st percentile when compared to same-age peers. Student demonstrated very low range scores for short-term recall of visual and spatial relationships when asked to reproduce abstract figures with paper and pencil and within the low range on tasks that measured ability to construct patterns with blocks. Caution was suggested in

⁴⁹ R-10, page 2

⁵⁰ School Psychologist's testimony; R-10

interpreting these results because Student had some difficulty sustaining attention to the tasks, could be impulsive/careless when responding, and during one of the subtests selected the third response option to most test items regardless of the pictorial prompts and verbal instructions. Student's overall cognitive abilities scored over two standard deviations below the mean.⁵¹

28. Despite receiving "appropriate instruction" in math and reading, Student's Reading and Math MAP scores were within the unsatisfactory range for beginning of year grade level reading and math skills relative to common core standards, in the Low Achievement range, with low growth over the prior year, below the national average and in the 1st percentile.⁵²
29. The first-grade teacher reported that they took notes from the first day of school until the school closure due to COVID-19 and the notes were included in the MDT. They indicated that Student's behavior was inconsistent from day to day with afternoons being more difficult. Student demonstrated frustration with schoolwork which prompted bouts of crying, noncompliance, defiance, classroom disruptions, destruction of classroom materials, inattention, hyperactivity, profanity, and verbal aggression towards adults and peers. Observations of Student and teacher reports indicated that Student functioned below expectations of typical peers in the classroom.⁵³
30. The Behavior Assessment System for Children, Third Edition (BASC-3) Teacher Rating Scales Results rated Student as clinically significant in the following areas: hyperactivity, aggression, conduct problems, externalizing problems, depression, internalizing problems, attention problems, learning problems, school problems, atypicality, withdrawal, behavioral symptoms index, adaptability, leadership, study skills functional communication, and adaptive skills. Student was rated at risk in the areas of anxiety and social skills and rated within normal range for somatization.⁵⁴ The BASC-3 is typically used as an evaluation to assess autism.⁵⁵
31. Guardian 1 completed the Adaptive Behavior Assessment System, Third Edition (ABAS-3), which is completed in every autism evaluation.⁵⁶ The ABAS-3 measured Student's adaptive skills, practical and everyday skills necessary to meet daily demands and expectations at home, school, and community. The results were then categorized into three skill areas or adaptive

⁵¹ R-10, page 4

⁵² School Psychologist's testimony; R-10

⁵³ R-10, page 6

⁵⁴ R-10, page 7

⁵⁵ School Psychologist's testimony

⁵⁶ R-10, page 12

domains: conceptual (communication and academic skills), social (interpersonal and social competence skills), and practical (independent living and daily living skills). These scores generated a General Adaptive Composite (GAC) that summarized Student's ability to function within the home and community environment. Student's GAC was below average however the evaluation noted that caution was warranted when interpreting the GAC score as significant variability in adaptive domain and skill area scaled skills were noted.⁵⁷

32. Breaking down the ABAS-3 further, the composite score for the conceptual domain standard summarizing performance across communication, functional academics and self-direction skill areas fell in the extremely low range and equal to or better than 2% of same-age peers. Communication abilities including speech, vocabulary, listening, conversation, and nonverbal communication skills were below average and basic academic skills such as reading, writing, math, and functional skills were extremely low. Social skills were below average and equal to 9% of same-age peers. Leisure skills needed for engaging in play and planning recreational activities were below average. Ability to interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed was also below average. Practical domain scores were in the average range for practical skills, functioning at home, ability to protect self, and ability to perform self-care activities were all average. Ability to function and get around in the community was below average. Student's General Adaptive Composite (GAC) score was considered equal to 10% of same age peers, and in the below average range and Student was noted as demonstrating limitations in the areas of social skills, use of community, self-direction, functional academics, and leisure.⁵⁸

33. Despite Student being evaluated as clinically significant or at risk in 19 of the 20 categories, and the GAC score in the below average range, the scope of the October 2020 evaluation was not opened to consider autism because School Psychologist did not see behaviors consistent with autism or expected deficits in communication, socialization and stereotypical behaviors in the adaptability and adaptive scores. Although Guardian 1 reported a slight deficit in communication skills, School Psychologist believed the student had "relatively good adaptive skills." For a student with autism, School Psychologist would generally see all the scores in social, leisure, home living, and health and safety to be in the below average range or lower.

⁵⁷ R-10, pages 12-13

⁵⁸ School Psychologist's testimony

School Psychologist also noted that in the communication assessment part of the report, the speech pathologist described the student as friendly, who interacted well, spoke in complete sentences, asked questions, and maintained direct eye contact.⁵⁹

34. Student was administered the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) which assesses student strengths and weaknesses relevant to achievement in reading, math, and written language. Results were in the very low range and below that of 0.1% same-grade peers in all areas assessed.⁶⁰ Student could not identify or name alphabet letters based on their sound; could not read Consonant-Vowel (CV) words, Consonant-Vowel-Consonant (CVC) words, or basic sight words; and was greatly challenged when asked to match concrete nouns with pictures. Under the Supplemental Composite Score Table, Student fell in the very low range for phonological processing and letter & word recognition and in the below average range for the nonsense word decoding. Student was in the very low range of phonological processing skills, struggling to hear blend sounds, hear and create rhymes, match sounds, delete sounds, and segment words.⁶¹
35. Upon review of the data, previous evaluation components and parent/guardian reports Speech Language Pathologist determined that progress in speech and language was made since 2019 because Student understood tactile cues, correct articulator movement towards mastering speech goals with reminders to use the correct movements 75% of the time, and remembered what was taught from week to week. Student's speech was generally intelligible, but errors were noticeable to the everyday listener. Student demonstrated a need for speech-language intervention in articulation. Conversational speech suggested that language skills were appropriate for age and/or grade level. Concerns that Student might have autism were not expressed nor did Speech Language Pathologist suspect Student had autism based on the assessments completed. The MDT Report indicated a disorder in the area of articulation, and based on the assessment results, Student demonstrated a need for speech-language intervention in the area of articulation, with the final determination to be made by the MDT Team at the meeting.⁶²

⁵⁹ School Psychologist's testimony

⁶⁰ School Psychologist's testimony; R-10

⁶¹ R-10, page 11

⁶² Speech Language Pathologist's testimony; R-10

36. Behaviors continued to be used as an avoidance tactic if Student did not understand.⁶³ Student responded well to positive reinforcement and was friendly.⁶⁴
37. The October 2020 MDT Team determined Student eligible for special education under the category of Specific Learning Disability (SLD) and ruled out Intellectual Disability. Autism was not considered by the MDT Team. The October 2020 MDT does not include a specific area under the SLD eligibility category. However, the areas of inadequate achievement included oral expression, mathematical calculation, basic reading skills and reading fluency skills. Student had been provided with appropriate instruction including individualized RTI, but the response was inadequate as indicated by the data in the evaluation evidencing dual deficits in level of performance and rate of learning. Therefore, Student needed specially designed instruction that could not be provided or sustained in a general education setting. Guardian 1 agreed with the eligibility category of SLD.⁶⁵
38. Looking back at the October 2020 MDT today, School Psychologist could not accurately gauge whether Student had indicators of dyslexia because of the other factors impacting performance such as previous limited access to education, variables in terms of home life, trauma and frequent involvement in DFS. The MDT team's conclusion was that the foregoing history, along with prior attendance problems, indicated a lack of opportunity. At the time of the evaluation a referral question for dyslexia was not brought up by a parent or teacher. School Psychologist cannot diagnose dyslexia as it does not fall within the scope of that profession. School psychologists assess for educational disabilities; they are not in a clinical setting and do not diagnose students. School psychologists can find students educationally qualify for a specific learning disability but cannot diagnose the disability.⁶⁶
39. Indicators of dyslexia can include challenges with rhyming, not being able to participate in nursery rhymes, inability to play with iterations of words, not having an interest in words, a general lack of awareness of certain letters that are common for their age, a lack of awareness of sounds, inability to break up sounds, difficulty with letter and sound symbol recognition, and inability to keep up with learning two to three letters per week.⁶⁷

⁶³ It is typical for students with unremediated dyslexia to have behavioral issues at school. Expert Witness's testimony

⁶⁴ Speech Language Pathologist's testimony

⁶⁵ School Psychologist's testimony; R-10; R-16

⁶⁶ School Psychologist's testimony; R-10, page 17

⁶⁷ Expert Witness's testimony

40. Upon review of the October 2020 MDT, Expert Witness, trained in structured literacy and the Orton-Gillingham approach, found the following indicators for dyslexia: Student knows less than ten letter names and sounds and has concerns and deficits including cognition, reading, writing and math; Student could not read any words in January 2020, when in the first grade. Writing and math go along with dyslexia or language processing, because common core math is mostly reading. Even remembering numbers is something that can be difficult due to working memory challenges with dyslexia. Remembering numbers, like multiplication tables are an issue because they require matching a symbol to a specific amount, like matching a letter sound to a letter symbol. The brain must work extra hard to connect “that’s a number; and that number represents an amount.” Expert Witness does not see a distinction between SLD with reading and dyslexia. Likewise, a parent would not see a distinction between the two. Low exposure to language does not cause dyslexia. Children who have experienced abuse and neglect learn to read all the time. 33 days of absence in kindergarten would not cause Student to know less than ten letters of the alphabet in the second grade. By second grade, District had enough information from this 2020 MDT to determine that Student either had dyslexia or that more assessments were necessary because it’s very clear that Student needed a very specialized, explicit, direct, repetitive, systematic instruction. A parent could not be expected to know what teaching methodology Student needed based on the information in this October 2020 MDT.⁶⁸

41. A written copy of the *Parental Prior Notice of District Proposal* to develop an initial IEP and educational placement was sent to Guardian 1 on October 29, 2020 along with a *Parental Prior Notice – Proposed Meeting Arrangements* with a tentative meeting date of November 10, 2020 for the IEP meeting.⁶⁹ A second written notice of the *Parental Prior Notice of District Proposal* and *parental Prior Notice – Proposed Meeting Arrangements* was sent to Guardian 1 on November 6, 2020.⁷⁰

November 2020 IEP

42. An IEP meeting was held on November 10, 2020. On page 1 of the 11/10/2020 IEP, SLD is marked as the Eligibility Category. Under the Consideration of Special Factors section of the

⁶⁸ Expert Witness’s testimony

⁶⁹ R-6, pages 19-20

⁷⁰ R-6, pages 19-22

November 2020 IEP under the question, “Does the student have a Specific Learning Disability and Dyslexia?” the box is marked “no.” The 11/10/2020 IEP contains goals in reading, reading phonics, writing, math, speech, communication, and behavior. Related services include speech/language. Student’s placement is in a self-contained SLD classroom. The SLD classroom is a separate classroom from the regular general education classroom. School 1 did not have an SLD classroom, so Student had to be transferred to another school for the change in placement. The IEP was agreed to by Guardian 1 via phone/Google Meets.⁷¹

43. Student’s 11/10/2020 contained goals in Reading, Reading Phonics, Writing, Math, Speech, Communication, and Behavior.⁷²
44. Student’s Reading Goal was to increase reading foundational skills by sounding out/reading the beginning consonants, medial vowels, and ending consonant sounds in CVC words, achieving a criteria of 4 out of 5 trials. Benchmark 1 was to sound out beginning consonant sound in a CVC word. Benchmark 2 was to sound out ending consonant sound in a CVC word. Benchmark 3 was to sound out the medial vowel sound in a CVC word.⁷³
45. Student’s Reading Phonics Goal was to increase letter identification of uppercase and lowercase letters and production of all letter sounds, achieving a criteria of 80% accuracy. Benchmark 1 was to identify and produce the sounds for the letters Aa- Ff. Benchmark 2 was to identify and produce the sounds for the letters Gg-Mm. Benchmark 3 was to identify and produce the sounds for the letters Nn-Ss. Benchmark 4 was to identify and produce the sounds for the letters Tt-Zz.⁷⁴
46. Upon review of this 11/10/2020 IEP, Expert Witness does not believe that these two reading goals were appropriate for Student. The first reading goal does not address the need to master the sound to symbol step that needs to be accomplished first. The second goal does not explain what teaching methodology was used in the classroom and does not show why no progress was made from the previous two years.⁷⁵
47. Student’s Writing Goal was to increase writing skills by being able to write their last name and the lowercase and uppercase letters of the alphabet with correct letter size and formation

⁷¹ Principal’s testimony; R-5; R-6

⁷² R-6

⁷³ R-6, page 8

⁷⁴ R-6, page 9

⁷⁵ Expert Witness’s testimony

independently achieving a criteria or 4 out of 5 trials. Benchmark 1 was to write the student's last name using correct letter size and formation. Benchmark 2 was to write the uppercase letters of the alphabet using correct letter size and formation. Benchmark 3 was to write the lowercase letters of the alphabet using correct letter size and formation.⁷⁶

48. Student's Math Goal was to increase foundational math skills by counting to 20 with one-to-one correspondence achieving a criteria of 80%. Benchmark 1 was to count to 1-10 with one-to-one correspondence. Benchmark 2 was to count to 1-15 with one-to-one correspondence. Benchmark 3 was to count to 1-20 with one-to-one correspondence.⁷⁷
49. Student's Behavior Goal was to decrease inappropriate behavior when feeling upset about a stressful situation, by choosing and implementing a previously taught calming strategy ("Stop, think, do," "Feel your heart," etc.) and then return to the task at hand within 10 minutes or less achieving a criteria of 4 out of 5 trials." Benchmark 1 was to use the cue "Stop, think, do" to remind Student to make good/safe choices so Student returns to task within 15 minutes. Benchmark 2 was to use the cue "Stop, think, do" to remind Student to make good/safe choices to Student returns to task within 12 minutes. Benchmark 3 was to use the cue "Feel your heart" when Student is getting excited as a reminder to calm down and to return to task within 15 minutes. Benchmark 4 was to use the cue "Feel your heart" when Student is getting excited as a reminder to calm down and to return to task within 12 minutes.⁷⁸
50. Student's placement in the 11/20/2020 IEP was a self-contained program with 15% of the school day in the regular education environment.⁷⁹
51. Student was withdrawn by Guardian 1 from School 1 on December 10, 2020 due to the change in placement to a SLD classroom, but the enrollment history shows that Student was not enrolled in School 2 until March 1, 2021.⁸⁰ Student's confidential folder was received at School 2 on April 6, 2021. Student's Status Records note that distance education forms were emailed home on April 15, 2021, but no testimony was offered to explain this notation.⁸¹ No evidence was provided to explain the gap in Student's education and the exact start date at School 2 is not documented.

⁷⁶ R-6, page 9

⁷⁷ R-6, pages 9-10

⁷⁸ R-6, page 11 of 22; R-7, page 12 of 28

⁷⁹ R-6, page 15

⁸⁰ R-4; R-3

⁸¹ R-5, page 3

52. A *Parental Prior Notice of District Proposal* was sent on April 27, 2021 proposing to change the instructional model; moving from the hybrid instruction model to full in person instruction. Full-time distance education and hybrid education was rejected due to administration approved of parent/guardian’s request for the full in person instruction.⁸² On April 28, 2021, a *Parental Prior Notice – Proposed Meeting Arrangements* was sent to Guardian 2 scheduling the IEP meeting via Google Meet for May 13, 2021. Guardian 2 was provided the *Parental Prior Notice of District Proposal* on May 13, 2021 rescheduling the IEP meeting for May 14, 2021.⁸³
53. A Revision IEP Team meeting was held on May 14, 2021 by School 2, to revise Student’s 11/10/2020 IEP to include the change from full-on distance learning, to hybrid, and then in-person learning due to the ongoing conditions because of Covid. Student’s confidential status record notes that the IEP was explained after [the meeting] to Guardian 2.⁸⁴ Due to the passing of Guardian 1, Guardian 2 attended the meeting.⁸⁵ Guardian 2 was provided the *Notice of intent to Implement IEP* dated 5/14/2021 which notes that Guardian 2 was in agreement with all the components of the IEP.⁸⁶ Student’s placement in the 5/14/2021 IEP was a self-contained program with 22% of the school day in the regular education environment.⁸⁷
54. Dyslexia was never discussed during this meeting and SPED Teacher did not suspect that Student had dyslexia while teaching Student during the 2020-2021 school year. The “Consideration of Special Factors” portion of the IEP is a checklist to ensure that all the bases are covered to ensure students are receiving the appropriate supports. Under “Consideration of Special Factors” in this IEP, SPED Teacher was coached, by a colleague providing guidance to SPED Teacher, to mark the box labeled “Does the student have SLD and Dyslexia” as “no” unless the student had a diagnosis of dyslexia from a doctor. SPED Teacher found the question of whether Student had an “SLD and Dyslexia” confusing and had to seek guidance from a colleague on how to answer the question. SPED Teacher’s understanding of dyslexia is that it is “when a student has trouble reading and they look at a page of words and the words appear in different variations.”⁸⁸

⁸² R-7, page 24

⁸³ R-7, pages 25-27

⁸⁴ SPED Teacher’s testimony; R-5, page 3

⁸⁵ SPED Teacher’s testimony; R-7, page 3

⁸⁶ R-7, page 28

⁸⁷ R-7, page 16

⁸⁸ SPED Teacher’s testimony; R-7, page 3

55. If the box for the question “Does the student have a Specific Learning Disability and Dyslexia?” is marked “yes”, then the IEP team has to consider the following instructional approaches: (1) explicit, direct instruction that is systematic, sequential, and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the student; (2) individualized instruction to meet the specific needs of the student in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize student engagement; (3) meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition; and (4) multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and student practice.⁸⁹ (Checking these four subcategory boxes off would involve the foundation of structured literacy.)⁹⁰
56. Student’s 5/24/2021 Progress Report Progress Report for Reading Benchmark 1, sound out beginning consonant sound in a CVC word, is marked “Unsatisfactory” and notes more time is needed on this goal; Student cannot sound out beginning consonant sounds in short CVC words at this time. Reading Phonics is marked “Satisfactory” for Benchmark 1, identify and produce the sounds for the letters AA-Ff, and notes Student can make the letter sounds of A, B, O, P, S, and Z.⁹¹ The Progress Report does not contain the student’s Writing Goal.⁹² The Math Goal is marked “Satisfactory” for Benchmark 1, count to 1-10 with one-to-one correspondence. The Behavior Goal is marked “Satisfactory” for Benchmark 1, use the cue “stop, think, do” to remind Student to make good/safe choices and return to task within 15 minutes, and notes depending on the situation, Student is able to return to most tasks within 15 minutes after an upsetting event; Student calms down best when someone is talking to the student about what the student is feeling and what the student is going to do to resolve what has made the student upset.⁹³

Third Grade 2021-2022 School Year

57. Student remained at District School 2 for third grade in the 2021-2022 school year.⁹⁴ Student’s 10/22/2021 Progress Report for the 5/14/2021 Revision IEP goals is marked “Satisfactory” for

⁸⁹ R-6, page 8

⁹⁰ Expert Witness’s testimony

⁹¹ R-6

⁹² R-6, pages 17-18

⁹³ R-6, page 18

⁹⁴ R-3; R-8

the Reading Goal for Benchmark 1, to sound out beginning consonant sound in a CVC word, and notes Student needs more time on this goal as the student has not mastered all the letters of the alphabet for upper and lower case letters and that Student should be accessing the online program which is specifically designed at the student's skill level at least 30 minutes a day. The Progress Report does not state how or when the online program was made available to the student. The Reading Phonics Goal is marked "Satisfactory" for Benchmark 1, identify and produce the sounds for the letters Aa-Ff with a notation to see the previous comment under the reading Goal. The Writing Goal is marked "Satisfactory" for Benchmark 1, using a model, Student will write the student's last name using correct letter size and formation, and notes Student is still working on this goal and has not mastered all the letters of the alphabet which impacts the ability to write the student's last name without using a model. The Math Goal is marked "satisfactory" for Benchmark 2, Student will count to 1-15 with one-to-one correspondence, and states Student is able to count up to 20 but cannot consistently identify all of the numbers beyond 12; the student needs to access the online math programs the class has implemented that are specifically aligned with skill level. The Behavior Goal is marked "Unsatisfactory" for Benchmark 1, use the cue "stop, think, do" to remind Student to make good/safe choices, Student will return to task within 15 minutes, stating that Student requires a lot of redirection throughout the day, although the student has a Behavior Intervention Plan with incentives to work for, the student rarely gets to pick a prize.⁹⁵

58. Upon review of the 10/22/2021 Progress Report for the Reading Goals, Expert Witness noted that the explicit instruction needed could not be accomplished by any type of program or review because the student had not mastered all the letters of the alphabet.⁹⁶

59. Student's Progress Report dated 1/20/2022 was marked "Unsatisfactory" for the Reading Goal for all three Benchmarks⁹⁷ and notes that Student has made little to no progress toward this goal. Student requires constant redirection during whole group instruction and makes little to no effort to complete assigned tasks during independent instruction. Student needs to be accessing the online programs at least 30 minutes per day and still has not mastered all the letters in the alphabet which impacts the student's ability to even read 3 letter words. The

⁹⁵ R-7, page 18

⁹⁶ Expert Witness's testimony

⁹⁷ Sound out beginning consonant sound in a CVC word, sound out ending consonant sound in a CVC word, sound out the medial vowel sound in a CVC word

Reading Phonics Goal is marked “Unsatisfactory” for all four Benchmarks⁹⁸ and notes Student has made little to no progress toward this goal, with the same additional comments listed under the Reading Goal. The Writing Goal is marked “Satisfactory” for Benchmark 2, write the uppercase letters of the alphabet using correct letter size and formation, noting that Student will attempt to write the letters in the alphabet on a separate sheet of paper but is still not identifying all the letters on the student’s own; the student has not mastered writing the last name correctly, and still requires a model and guided practice for that task. The Math Goal is marked “Satisfactory” for Benchmark 3, count to 1-20 with one-to-one correspondence, noting that Student is capable of counting to 20 but still does not recognize all of the numbers after 12 on a consistent basis when seeing it written down; the student needs to access the online math programs at least 30 minutes per day to increase math skills. The Behavior Goal is marked “Unsatisfactory” for Benchmark 1, use the cue “Stop, think, do” to remind Student to make good/safe choices and return to task within 15 minutes, noting Student still struggles with this and needs to be redirected to attend to tasks several times during a class period, it not motivated by earning rewards and often yells out, “I don’t care” or “I don’t want anything anyways.”

60. Student’s Progress Report dated 4/4/2022 was marked “Satisfactory” for the Reading Goal, with no specific Benchmarks or comments listed. The Reading Phonics Goal was marked “Satisfactory” for Benchmarks 1 and 2, identifying and producing the sounds for the letters Aa-Ff and Gg-Mm, stating Student has made progress toward this goal, however, Student is unable to read a two-letter word; Student should be participating in the online programs at least 30 minutes every day to increase ability to identify letters and eventually read sight words from a pre-K list. The Writing Goal was marked “Unsatisfactory” for meeting Benchmark 1, to write the student’s last name using correct letter size and formation, and notes Student has not made progress with this goal although attempts to work one-on-one have been made; Student is still unsure of all of the letters in the student’s name; Student needs to practice with flash cards for letters of the alphabet as well as continue working on the online programs that are based on skill level. The Math Goal is marked “Satisfactory” for meeting Benchmark 2, to count to 1-15 with one-to-one correspondence, and notes Student has made significant progress towards this objective, however the student still requires more time because the student has not mastered the numbers past 15 with consistency; Student would benefit from participating in

⁹⁸ Identify and produce the sounds for the letters AA-FF, Gg-MM, Nn-Ss, and Tt-Zz

the online math programs that are specifically designed at this skill level. The Behavior Goal is marked “Unsatisfactory” for Benchmark 1, use the cue “Stop, think, do” to remind Student to make good/safe choices and return to task within 15 minutes, noting Student requires a lot of redirection throughout the day, is easily distracted, and when the student does not feel confident in a task, reacts impulsively, which causes a disruption to the learning environment.⁹⁹

61. A *Parental Prior Notice of District Proposal* to develop the annual IEP was provided to Guardian 2 by phone on May 3, 2022 and a written notice was sent out on May 9, 2022, The reason for the proposal was based on academic concerns, IEP development review, speech/language concerns, parent/guardian concerns, behavior concerns, and teacher concerns.¹⁰⁰ On May 10, 2022 a *Parental Prior Notice – Proposed Meeting Arrangements* setting a tentative IEP meeting date of May 13, 2022 was sent to Guardian 2. Guardian 2 signed the same on May 11, 2022¹⁰¹ A second *Parental Prior Notice of District Proposal* was sent on May 11, 2022. A second *Parental Prior Notice – Proposed Meeting Arrangements* was sent out on May 12, 2022.¹⁰²

62. An annual IEP meeting was held on May 13, 2022. Guardian 2 is listed as the Parent/Guardian/Surrogate under the participants.¹⁰³ There is no signature on the Parent Signature line under IEP Implementation, but the box is marked that the parent agrees with the components of the IEP.¹⁰⁴ Under Statement of Parent Educational Concerns, it states that Guardian 2 is concerned about getting the student’s attitude under control and getting up to speed with peers. Guardian 2 did not want the student to feel frustrated or isolated from peers and wanted to give the student the best opportunities possible.¹⁰⁵

63. Student’s Eligibility Category on page 1 of 5/13/2022 IEP remained SLD. Under the Consideration of Special Factors section of the 5/13/2022 IEP under the question, “Does the student have a Specific Learning Disability and Dyslexia?” the box is marked “no.” Teacher observations noted that Student wants to learn but has a difficult time remaining focused for any extended period of time beyond 5 minutes. Student has not mastered all of the lower and

⁹⁹ R-7, pages 22-23

¹⁰⁰ R-8, page 20

¹⁰¹ R-8, pages 21-22

¹⁰² R-8, page 24

¹⁰³ R-8, page 2

¹⁰⁴ R-8, page 17

¹⁰⁵ R-8, page 7

uppercase letters of the alphabet. All text is read aloud because Student is unable to read even 2 letter sight words. Student is unable to generalize words they are learning in the programs to text that is different than what is displayed within the program and does not have the cognitive ability to understand that the same word in the same sentence will be the same if it is used again. Student showed progress toward understanding words and sounds when provided with pictorial support. Although Student could copy information from the board, they did not know what they were copying because they were unable to read. Student could only write their first name correctly about 75% of the time and could not write their last name. Student was unable to independently read or write sight words from a pre-kindergarten list. Student could recognize and identify numbers 1-15 with 75% accuracy when presented in isolation. Under Statement of Student Strengths, it notes that when the student is focused, the student's strength is in oral comprehension; the student can recall specific details from a passage or a story when it is read aloud for the student.¹⁰⁶

64. Upon review of the information contained in the 5/13/2022 IEP related to Student's present levels, Expert Witness determined that whatever the methodology was that was being used in the classroom, it was not successful in teaching Student how to read. Children cannot learn to decode using only sight words because long-term memory does not have the capacity to store every word visually that you see.¹⁰⁷
65. Student's Reading Goal was to increase reading skills by identifying and understanding the meaning of 30 sight words by orally expressing the words in a sentence achieving a criterion of 4 out of 5 trials. Benchmark 1 was to read 1-8 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence. Benchmark 2 was to read 9-15 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence. Benchmark 3 was to read 16-22 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence. Benchmark 4 was to read 23-30 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence.¹⁰⁸ Expert Witness did not find this to be an appropriate goal for Student because until Student knows every letter of the alphabet,

¹⁰⁶ R-8

¹⁰⁷ Expert Witness's testimony

¹⁰⁸ R-8, page 9

the sounds that correspond, and has mastered them, this is not a realistic goal. This goal, however, would tell a parent that Student is making progress.¹⁰⁹

66. Student's Written Expression Goal was to increase writing skills by developing 2–3-word sentences with beginning capitalization and end punctuation achieving a criterion of 75%. Benchmark 1 was write all 26 uppercase letters of the alphabet achieving a criterion of 75%. Benchmark 2 was to write all 26 lowercase letters of the alphabet achieving a criterion of 75%. Benchmark 3 was to copy and write 1-8 sight words from the Dolch or Fry's pre-kindergarten list achieving a criterion of 75%. Benchmark 4 was to copy and write 9-16 sight words form the Dolch or Fry's pre-kindergarten list achieving a criterion of 75%. Benchmark 5 was to write 2 word sentences using sight words from Dolch or Fry's list achieving a criterion of 75%. Benchmark 6 was to write 3 word sentences using sight words from Dolch or Fry's list achieving a criterion of 75%.¹¹⁰
67. Student's Math Goal was to increase math skills by solving problems involving measurement and estimation of intervals of time. Benchmark 1 was to identify the part of an analog clock achieving a criterion of 75%. Benchmark 2 was to tell time to the hour on an analog clock achieving a criterion of 75%. Benchmark 3 was to tell time to the half hour on an analog clock achieving a criterion of 75%. Benchmark 4 was to tall time to the nearest minutes and measure time intervals in minutes achieving a criterion of 75%.¹¹¹
68. Student's Social and Behavior Goal was to display productive school behavior by following adult directives across school campus and classrooms on a daily basis by achieving a criterion of 4 out of 5 trials. Benchmark 1 was to refrain from using profane language toward adults and peers and use kind words to express emotions achieving a criterion of 4 out of 5 trials. Benchmark 2 was to resolve conflicts without physical contact or inappropriate language (i.e. walk away, ignore, or state desired outcomes in a positive manner) achieving a criterion of 4 out of 5 trials. Benchmark 3 was to participate in competitive games play (academic or playground) until the end of the time period, regardless of the outcome (good sportsmanship) achieving a criterion of 4 out of 5 trials. Benchmark 4 was to identify and follow school and

¹⁰⁹ Expert Witness's testimony

¹¹⁰ R-8, page 10

¹¹¹ R-8, page 10

classroom rules and comply with adult directives within the 2nd request achieving a criterion of 4 out of 5 trials.¹¹²

69. Supports for Student included the following for behavior: Student will have a Behavior Intervention Plan implemented and will also be using a token economy system (incentive reward menu to be developed with case manager and student); Student will have a token board to work towards earning incentive awards for displaying appropriate and productive behavior; provide Student with preferential seating near the source of instruction or near the teacher to alleviate classroom distractions and disruptions; and provide Student with highly structured routines with consistent rules and consequences in order to access positive reinforcements when displaying appropriate behaviors.¹¹³
70. Student's placement in the 5/13/2022 IEP was a self-contained program with 22% of the school day in the regular education environment.¹¹⁴
71. A *Notice of Intent to Implement IEP* dated 5/13/2021 was provided to Guardian 2 via Student on May 23, 2022.¹¹⁵ While no testimony was provided to explain the incorrect year of the IEP Date, Date of Notice and Proposed Implementation Date, the *Notice* lists Grade 3 at the top, so the incorrect year is likely a typographical error.

Fourth Grade 2022 -2023 School Year

72. Student remained at School 2 for fourth grade in the 2022-2023 school year.¹¹⁶ Guardian 2 signed a *Consent for Special Education Supports* on November 10, 2022 related to behavior plan development and supports in the classroom for the student. Assessments to be completed included observations, a functional behavioral assessment and social/emotional/behavior.¹¹⁷ Student was placed into DFS protective custody on or about November 28, 2022 due to an open investigation regarding the illness and inability of Guardian 2 to continue to care for Student. On November 28, 2022, School 2 was provided with a *Placement Custody Letter* from DFS. On November 29, 2022, District received the *Letter of Authorization* for the DFS representative to act on behalf of the student, including accessing the educational records, dropping off and picking up the student from school and being invited to all educational

¹¹² R-8, page 11

¹¹³ R-8, page 13

¹¹⁴ R-8, page 16

¹¹⁵ R-8, page 25

¹¹⁶ R-3

¹¹⁷ R-15, page 4

meetings for the student. At the protective custody hearing Guardian 2 was appointed as Student's educational decision maker despite illness and inability to care for Student. Case Worker 1 was assigned Student's case in November of 2022. Student was initially placed at a group shelter until December 15, 2022 when placed with a DFS foster parent. District was provided with this *Placement Custody Notification*.¹¹⁸

73. Student's 12/16/2022 Progress Report is marked "Satisfactory" in the Reading Goal stating Student is learning new sight words, but due to behavior is not practicing daily. The Written Expression Goal is marked "Satisfactory" and notes that Student is able to copy all the letters of the alphabet, sight words, and a simple sentence. The Math Goal is marked "Satisfactory" and notes Student is learning the analog clock but due to behavior is not practicing daily. The Social and Behavioral Goal is marked "Unsatisfactory" and notes that Student is often breaking school rules, and elopes from the classroom.¹¹⁹ Student's December 15, 2022 DFS foster placement disrupted and Student was once again placed at a group shelter on January 25, 2023.¹²⁰ District received a *Placement Custody Letter* notifying them of the change.¹²¹ Student's enrollment history shows that Student was not enrolled between January 28, 2023 and March 27, 2023.¹²² However, Student's attendance record does not show any missed instruction.¹²³ No evidence was given to explain this discrepancy. A *Parental Prior Notice of District Proposal* and *Parental Prior Notice – Proposed Meeting Arrangements* tentatively scheduling an IEP meeting for May 11, 2023 were sent out on April 5, 2023 to develop the annual IEP, but the listed "Guardian" was Case Worker 1.¹²⁴ Although marked as "Written notice 1," a second *Parental Prior Notice of District Proposal* was sent out on April 23, 2023, a "Written notice 2" was sent on May 1, 2023 along with another *Parental Prior Notice – Proposed Meeting Arrangements* once again listing "Guardian" as Case Worker 1.¹²⁵ Guardian 2 remained the educational decision maker until Guardian 2 passed away on or about May 10, 2023.¹²⁶

¹¹⁸ Case Worker 1's testimony; R-4

¹¹⁹ R-8, page 19 of 26

¹²⁰ Case Worker 1's testimony; R-3; R-4

¹²¹ R-4, page 11, page 13

¹²² R-3

¹²³ R-2, page 3

¹²⁴ R-9, page 15

¹²⁵ R-9, pages 17-19

¹²⁶ Case Worker 1's testimony;

74. An IEP Team meeting was held on May 11, 2023. Student's Eligibility Category remained SLD. Under the Consideration of Special Factors section of the 5/11/2023 IEP under the question, "Does the student have a Specific Learning Disability and Dyslexia?" the box is marked "no." Case Worker 1 attended the IEP meeting virtually and informed School 2 that listing a case worker as the legal guardian was incorrect. The 5/11/2023 IEP notes the following under "Parent Educational Concerns" voiced by Case Worker 1: whether Student's behavior was impeding Student's learning or if there were cognitive delays that needed to be evaluated.¹²⁷
75. Teacher observations noted that Student was able to say all the consonant sounds except q and w, struggled with reading 3 letter CVC words and could not state the beginning, medial and ending sounds. Student could write their first name with 80% accuracy, but not able to write their last name. Student could recognize their last name if spelled out for them in isolation. Student could recognize 26/26 letters of the uppercase and lowercase letters of the alphabet. Student was able to count by 1's to 20 and was able to do single digit addition with 80% accuracy and single digit subtraction to 5 with 80% accuracy.¹²⁸
76. Student's Reading Goal was to increase the ability to answer a variety of questions about a text such as multiple choice and written response with the use of non-fiction and fictional texts and assignments with at least 80% accuracy. Benchmark 1 was to increase the ability to answer questions about a fictional text. Benchmark 2 was to increase the ability to answer questions about non-fictional text. Benchmark 3 was to increase the ability to ask questions about text the student reads.¹²⁹
77. Student's Written Expression Goal was to increase written expression skills by independently writing simple sentences, using correct uppercase/lowercase letters and punctuation when provided a model or sentence starter achieving a criteria of 80% accuracy. Benchmark 1 was to increase the ability to write sentences using correct punctuation. Benchmark 2 was to increase the ability to write sentences using correct letter formation. Benchmark 3 was to increase the ability to write sentences using correct noun/verb agreement.¹³⁰

¹²⁷ Case Worker 1's testimony; R-5, page 7; R-9

¹²⁸ R-9, page 5

¹²⁹ R-9, page 9

¹³⁰ R-9, page 9

78. Student's Math Goal was to increase ability to add and subtract single and multi-digit numbers achieving a criteria of 80% accuracy. No benchmarks or short-term objectives were recorded.¹³¹
79. Student's first Social and Behavioral Goal was to increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis, by achieving a criterion of 80% accuracy. Benchmark 1 was to identify and follow school and classroom rules and comply with adult directives within the 2nd request achieving a criterion of 4 out of 5 trials, Benchmark 2 was to refrain from using profane language toward adults and peers and use kind words to express emotions achieving a criterion of 4 out of 5 trials. Benchmark 3 was to resolve conflicts without physical contact or inappropriate language (i.e. walk away, ignore, or state desired outcomes in a positive manner) achieving a criterion of 80% accuracy.¹³²
80. Student's second Social and Behavioral Goal was to increase the ability to display productive school behavior by using strategies to control emotions and increase positive behavior across school campus and classrooms on a daily basis by achieving a criterion of 80%. Benchmark 1 was to use strategies to control emotions by the use of breathing strategies, and a calm down corner. Benchmark 2 was to identify emotions in a variety of school settings. Benchmark 3 was to recognize emotions in a variety of school settings and state how the student is feeling.¹³³
81. A *Notice of Intent to Implement IEP* dated 5/11/2023 was given to Case Worker 1.¹³⁴
82. Case Worker 1 was new to Student's case, saw behavior concerns, and was unaware of all the diagnoses Student received in terms of physical health, mental health and educational needs. As a result, in June 2023, Case Worker 1 requested a neuropsychological assessment of Student through DFS to assess Student's level of cognitive and academic functioning and to make recommendations for future services as warranted. Case Worker 1 took Student to the appointment on September 22, 2023 and completed the developmental and psychosocial history/DSM checklist for the assessment.¹³⁵

¹³¹ R-9, page 10

¹³² R-9, page 8

¹³³ R-9, page 9

¹³⁴ R-9, page 21

¹³⁵ Case Worker 1's testimony; R-27

83. Student's 7/18/2023 Progress Report is marked "Satisfactory" for the Reading Goal and states Student is maintaining progress on this goal. No other goals are contained in the Progress Report.¹³⁶

Fifth Grade 2023-2024 School Year

84. Student was placed with Foster Parent 1 and Foster Parent 2, a married couple, in late September or early October of 2023. Student was enrolled at School 3 at the time. On August 17, 2023 and September 14, 2023 a *Parental Prior Notice – Proposed Meeting Arrangements* with a tentative IEP meeting date of October 20, 2023 was sent, but it is unknown who it was sent to or who received the same.¹³⁷ On August 18, 2023 and September 14, 2023 a *Parental Prior Notice of District Proposal* to re-evaluate the student's special education needs and continued eligibility for special education services was sent, but it is unknown who it was sent to or who received the same.¹³⁸ A *Parental Consent for Evaluation Form* to evaluate Student in health and sensory motor functioning, academic performance/achievement, and social/emotional/behavior was signed by Case Worker 1 on August 28, 2023.¹³⁹ A *Parental Prior Notice – Proposed Meeting Arrangements* dated September 14, 2023 was signed by Foster Parent 1 on September 16, 2023.¹⁴⁰ Both Notices were sent out again on October 3, 2023 with Foster Parent 2's email noted as "Parent" on one set of the notices and Case Worker 1 notes as "Parent" on the other set of notices.¹⁴¹ On October 16, 2023, both notices were sent again with Foster Parent 2 noted as "Parent."¹⁴²

85. Foster Parents 1 and 2 were not appointed as the educational decision maker(s) and Foster Parent 1 prefers not to be appointed as such. Foster Parent 1's experience is that schools tend to respect educational decision makers at meetings more than foster parents due to the knowledge that educational decision makers have. Even when a child placed with Foster Parent 1 has an educational decision maker, Foster Parent 1 or Foster Parent 2 attends meetings to be there as support. An MDT Meeting was held on October 26, 2023. Although the MDT does not list Foster Parent 1 as one of the participants, Foster Parent 1 attended the MDT meeting

¹³⁶ R-9, page 14

¹³⁷ R-22, page 24

¹³⁸ R-22, pages 25-28

¹³⁹ R-22, page 27

¹⁴⁰ R-22, page 29

¹⁴¹ R-22, pages 35-38

¹⁴² R-22, pages 40-43

virtually, but not as the educational decision maker.¹⁴³ Case Worker 1 attended Student's 3-year reevaluation MDT meeting. Case Worker 1 signed the 2023 MDT as "caseworker" and initialed next to "parent initials."¹⁴⁴ The 2023 MDT noted that the school psychologist submitted the referral for a reevaluation with concerns/deficits in reading, writing, math and behavior. A review of records confirmed that Student had been participating in instruction on essential components of reading in the areas of phonemic awareness, phonics, vocabulary, reading fluency and reading comprehension. The teacher rating scales of the BASC-3 were measured in a clinically significant range based on a Behavioral Symptoms Index of 88 and a percentile rank of 99. Student was in the at risk range for adaptive skills and at a level equal to or better than 6% of same aged peers. Student's IEP meeting occurred the same day as the MDT meeting. Case Worker 1 signed the IEP. Foster Parent 1 was also in attendance virtually but was not listed as a participant.¹⁴⁵

86. SEIF School 3 interacted with Student in the morning and afternoon when Student got on and off the bus at school as well as sometimes during lunch or socials. SEIF School 3 attended Student's IEP Meeting on October 26, 2023. Student was low academically with reading and writing skills that were extremely low. Student still did not know letter sounds and was learning to read instead of reading to learn. When asked the difference between SLD and SLD with dyslexia, SEIF School 3 stated that dyslexia must be medically diagnosed by a pediatrician or specialty doctor and is a disability in reading specifically, while SLD could be in reading, writing or math. Most students that have dyslexia also have SLD. SEIF School 3 is unaware of any actual testing for dyslexia done by District but knows that a phonics screener is used. SEIF School 3 would "need some kind of assessment, not necessarily medical," that shows a student has dyslexia. SEIF School 3 agrees that Student has a reading disability but is unable to pinpoint whether Student has dyslexia.¹⁴⁶

87. A Curriculum Based Measurement, called "easy CBM," is used to monitor a student's progress in learning, and a student is monitored every two weeks to determine whether there is any growth. According to Student's easy CBM report, Student was at the kindergarten and first grade levels, just identifying the letters and letter sounds. As of 9/20/2023 Student could read

¹⁴³ Foster Parent's testimony

¹⁴⁴ Case Worker 1's testimony; P-33, page P000279

¹⁴⁵ P-33; Case Worker 1's testimony; Foster Parent's testimony

¹⁴⁶ SEIF School 3's testimony

21 letter sounds per minute. Student had issues with spelling, reading fluency and decoding. Student should have been retained in third grade for being a non-reader based on the “Read by 3” law.¹⁴⁷

88. District had just adopted the Core 95 Phonics and Reading Program (hereinafter “Program”) that had a component with just phonics. The Program teaches the basics of core phonics, teaches letter sounds, teaches letter formation, starts off with letters and letter formations then it goes into short vowel sounds, then long vowel sounds, and progresses from there. Students engage in the program depending on their needs and what their results indicate. Some students have RTI with the Program three nights a week while others may go five nights a week. SEIF School 3 has seen this Program with students. Student should have received the Program for the entirety of the fifth-grade school year. It is SEIF School 3’s position that if the Program was correctly implemented it would have worked for Student. SEIF School 3 was not the teacher, was not in the classroom all day every day and did not implement instruction for Student.¹⁴⁸

89. Student’s Eligibility Category remained SLD on the 10/26/2023 IEP.¹⁴⁹ Under the Consideration of Special Factors section of the 10/26/2023 IEP under the question, “Does the student have a Specific Learning Disability and Dyslexia?” the box is marked “no” by the IEP Team because it was not part of the MDT Report and there was no indication that Student had both. No conversation about Student having dyslexia took place and it was not mentioned to SEIF School 3. Going into middle school the IEP Team was asked to strike a balance between what Student should be exposed to and also craft a goal that identified Student’s needs to know initial and middle sounds in consonants, basic knowledge of vowel teams and CVC words. Student could not retain information for a long period of time, sometimes forgetting what was learned from one day to the next. Student needed a lot of scaffolding and reinforcement. A core phonics screener should have been provided to Student and included in the present levels of the IEP. When directed to Student’s 10/26/2023, SEIF School 3 did not see any mention of core phonics in the present levels. Core phonics start with asking students to identify letters, then sounds of the letters, vowel sounds, CVC words, CVC e-words, words with consonant

¹⁴⁷ SEIF School 3’s testimony; R-33

¹⁴⁸ SEIF School 3’s testimony

¹⁴⁹ P-34, page P000280

blends, r-controlled words multisyllabic words. If a parent was looking at the 10/26/2023 IEP, they would not know that Student did not know the letter sounds.¹⁵⁰

90. Student's 10/26/2023 IEP notes the following under "Parent Educational Concerns:" not yet able to read, write and lacks social skills in getting along with others. These concerns were provided to the IEP team by Foster Parent.¹⁵¹ Case Worker 1 attended Student's 3-year IEP meeting on October 26, 2023. Case Worker 1 reminded School 3 that the case worker should not be listed as the parent, but signed the 10/26/2023 IEP next to "parent signature" agreeing to the IEP. Foster Parent 1 attended the meeting virtually, but not as the educational decision maker.¹⁵² DFS policy prohibits case workers from acting as foster children's educational decision makers. District receives a Letter of Authorization Packet that states "DFS Representatives may participate in special education activities (such as IEP meetings) but are prohibited from acting as the parent at those activities and meetings."¹⁵³
91. Student's Reading Goal was to increase the ability to answer a variety of questions about a text such as multiple choice and written response, with the use of non-fiction and fictional texts and assignments with at least 80% accuracy. Benchmark 1 is to increase the ability to answer questions about a fictional text. Benchmark 2 is to increase the ability to answer questions about a non-fictional text. Benchmark 3 is to increase the ability to ask questions about text that the student reads.¹⁵⁴
92. Student's second Reading Goal was to increase ability to recognize, blend, and identify sounds to demonstrate an understanding of spoken words, syllables, and sounds (phenomes) achieving a criteria of 80% accuracy. Benchmark 1 is to isolate and pronounce the initial, medial vowel and final sounds (phonemes) in three-phonemes (CVC). Benchmark 2 is to add or substitute individual sounds (phonemes) in simple one-syllable words to make new words.¹⁵⁵
93. Student's Written Expression Goal was to increase skills by independently writing simple sentences, using correct uppercase/lowercase letters, and punctuation when provided a model or a sentence starter, achieving a criteria of 80% accuracy. Benchmark 1 was to increase the ability to write sentences using correct punctuation. Benchmark 2 was to increase the ability

¹⁵⁰ SEIF School 3's testimony; R-22; P-34, page P000285

¹⁵¹ Foster Parent 1's testimony; P-34, page P000284

¹⁵² Foster Parent 1's testimony; Case Worker 1's testimony; P-34, page P000297

¹⁵³ Case Worker 1's testimony; R-4, page 5

¹⁵⁴ P-34, pages P000285-286

¹⁵⁵ P-34, page P000286

to write sentences using correct letter formation. Benchmark 3 was to increase the ability to write sentences using correct noun/verb agreement.¹⁵⁶

94. Student's second Written Expression Goal was to increase writing skills by writing opinion pieces on topics or text, supporting a point of view with at least 80% accuracy. Benchmark 1 was to introduce the topic clearly, state an opinion, and create an organizational structure that develops the stated point of view. Benchmark 2 was to provide reasons supported by facts and details. Benchmark 3 was to effectively link the student's opinion and reason using words or phrases. Benchmark 4 was to provide a concluding statement or section related to the opinion stated.¹⁵⁷
95. Student's Math Goal was to increase the ability to add and subtract single and multi-digit numbers, with and without regrouping achieving a criteria of 80% accuracy. Benchmark 1 was to increase fluency with basic addition and subtraction facts. Benchmark 2 was to increase ability to add and subtract with regrouping using models and place value strategies. Benchmark 3 was to increase ability to add and subtract multi-digit numbers without regrouping using place value strategies.¹⁵⁸
96. Student's Social and Behavioral Goal was to increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis by achieving a criterion of 80% accuracy. Benchmark 1 was to identify and follow school and classroom rules and comply with adult directives within the 2nd request achieving a criterion of 4 out of 5 trials. Benchmark 2 was to refrain from using profane language towards adults and peers and use kind words to express emotions achieving a criterion of 80% accuracy. Benchmark 3 was to resolve conflicts without physical contact or inappropriate language achieving a criterion of 80%.¹⁵⁹
97. Student's 10/26/2023 IEP placed Student in a self-contained program with 28% of the school day in the regular education environment.¹⁶⁰ A *Notice of Intent to Implement* the 10/20/2023 IEP was sent to Foster Parent. While no evidence was offered or admitted to explain the discrepancy between the date of 10/20/2023 listed and the actual date of the IEP which is

¹⁵⁶ P-34, page P000286

¹⁵⁷ P-34, page P000287

¹⁵⁸ P-34, page P000287

¹⁵⁹ P-34, page P000288

¹⁶⁰ P-34, page P000295

10/26/2023, because the *Notice* lists fifth grade, the earlier date must be a typographical error.¹⁶¹

98. After Guardian 2's passing on May 10, 2023, a new educational decision maker was not appointed for Student until after October 30, 2023 when the case was transferred from Case Worker 1 to Case Worker 2 due to Case Worker 1's promotion. No evidence was offered or admitted proving who the new educational decision maker was nor did the educational decision maker testify.¹⁶²
99. Student's 12/06/2023 Progress Report is marked "Unsatisfactory" for both Reading Goals and all Benchmarks, and the only comment noted under the second Reading Goal was that Student was doing better but still working on the weaknesses. Student was also marked as "Unsatisfactory" for both Written Expression Goals, the Math Goal and the Social and Behavioral Goal. The comment under the Math Goal notes Student is doing a better job with addition and subtraction when having objects to add and subtract from. The comment under the Social and Behavioral Goal notes that they still get outbursts from Student when the student is instructed to do things the student does not want to do.¹⁶³
100. Student's 3/8/2024 Progress Report is marked "Satisfactory" for all goals. Under the Reading Goals it simply notes Student is continuing to make good progress and that the student would benefit from reading nightly. The second Written Expression Goal is not listed.¹⁶⁴
101. An amendment to Student's IEP was completed on 4/9/2024 which added "P2 placement" to the Specially Designed Instruction because the student was moving to middle school the following school year. The first page of the 4/9/2024 IEP mistakenly lists Case Worker 1 as the Parent/Guardian/Surrogate. Case Worker 1 was no longer assigned to Student and was not present at the IEP meeting. Foster Parent 1 is listed under the IEP Participants as "Parent/Guardian/Surrogate." The 4/9/2024 Amended IEP does not have a signature on the "Parent Signature" page. By the time SEIF School 3 left School 3 in April of 2024, Student had not made the progress necessary to function as a sixth grader despite the willingness and desire to learn.¹⁶⁵

¹⁶¹ R-22, page 44

¹⁶² Case Worker 1's testimony; HO-1

¹⁶³ R-22, page 19

¹⁶⁴ R-22, pages 22-23

¹⁶⁵ SEIF School 3's testimony; R-23

102. In May of 2024, Student's case was transferred from Case Worker 2 to Case Worker 3. Case Worker 2 no longer works for DFS.¹⁶⁶

Neuropsychological Evaluation Report

103. A Pre-Adolescent Neuropsychological Evaluation Report was prepared from the September 2023 appointment at DFS's request with a Private Psychologist paid by DFS. The Private Psychologist did not testify. The report is broken down into the following categories: history and background, behavioral observations, parent rating scales, verbal and language ability, attentional system and executive functioning, visual perception and organization, overall intellectual ability, clinical interview, academic skills, diagnostic impression, and summary and recommendations.¹⁶⁷

104. Under behavioral observations, the report notes in part the following: that Student had difficulty understanding and retaining instructions; Student took instructions in an overly rigid manner and instructions would have to be repeated; Student spoke and acted immature; Student made a variety of repetitive motions and was shaking their body by the end of the evaluation; Student demonstrated a dysregulated and inconsistent vocal tone and volume; Student did not have typical eye contact and actually demonstrated overly intense eye contact; Student was unable to demonstrate typical gross and fine motor skills; as the evaluation progressed Student became more behaviorally dysregulated and demonstrated an increased rate of nonsensical vocalization, repetitive motor movements, and demonstrated rigidity; and Student demonstrated a lack of understanding of humor and social stories.¹⁶⁸

105. Under the parent rating scale, which was completed by Case Worker 1, the following significant symptoms were noted: does certain things repetitively and ritualistically, seems indifferent to another person's attention; doesn't try to make friends with others; has difficulty identifying when someone is teasing; has difficulty understanding when being disliked or ridiculed; fails to predict probable consequences in social events; needs excessive reassurance if things are changed or go wrong; temper tantrums if does not get own way or when asked to stop doing something enjoyable; uses exceptionally precise speech; attaches very concrete meanings to words; and communicates with a flat effect.¹⁶⁹

¹⁶⁶ Case Worker 3's testimony

¹⁶⁷ R-27

¹⁶⁸ R-27, page 3

¹⁶⁹ Case Worker 1's testimony; R-27, page 4

106. Student's verbal and language ability fell within the borderline impaired range and only at the 2nd percentile. Student's performance on a measure of expressive vocabulary skills were in the borderline impaired range and at the 5th percentile. Student's performance in generating logical responses was below average. Student's verbal memory and comprehension were in the low average and lack of social understanding impacted memory performance.¹⁷⁰
107. Under attentional system and executive functioning, Student's ability to hold information in memory and manipulate information to provide responses on cue fell in the very low range of functioning and at the 1st percentile. Student could not retain the meaning of instructions impacting performance and resulted in an extremely impaired range and at the 0.4 percentile on an auditory attentional task and in the borderline impaired range for visual attention. Visual attention span was borderline to low average and at the 9th percentile. However, in bold, underlined font, the report notes attention span is generally consistent with all other cognitive composites and is not an area of relative weakness; in fact, visual attention is one of Students strengths; auditory attention was impaired by sociodevelopmental issues and was not impacted by a true attentional problem; does not meet criteria for a diagnoses of Attention Deficit Hyperactivity Disorder (ADHD) though symptoms are apparent, in concert with Intellectual Disability and Autism Spectrum Disorder.¹⁷¹
108. Student's full-scale IQ fell in the moderately impaired range of functioning in the 1st percentile which indicates a clear and valid Intellectual Disability.¹⁷²
109. Under clinical interview, the following observations are of particular note: Student shared that the student does not like loud noises, when asked how someone becomes a singer or enters the music field, responded with phrases which did not make sense in conversational speech, then began talking about a particular music artist as if the artist were an area of stereotypical interest, and brought up certain statements several times during the evaluation process which indicated a stereotypical interest indicative of ASD. When asked about school, Student responded with a phrase which did not make sense in that context, which the student took far too literally saying, "My teacher says I can't talk about my business." Student had taken this instruction so literally that the student felt like they could not share what the student's likes

¹⁷⁰ R-27, page 4

¹⁷¹ R-27, page 5

¹⁷² R-27, page 6

and dislikes were. Student told the Private Psychologist that the student did not have a lot of friends, partly because the student does not understand the humor or what is said by peers. Student talked about hobbies and interests in a very immature and shallow manner. When asked about other emotions, Student's responses were sparse and were very limited in depth.¹⁷³

110. Under academic skills, significant delays were present in all academic areas: combined reading score fell in the very impaired range, below the .1 percentile at a 1st month kindergarten level. When asked to complete very simple sentences of oral reading, Student made up responses and could not understand any other stimulus provided even that at a kindergarten level. Combined mathematics performance fell at a 6th month kindergarten level.¹⁷⁴

111. Private Psychologist's Diagnostic impressions included ASD, Intellectual Disability, fine motor delay, specific learning disorders: mathematics and reading. Student meets criteria for a diagnosis of ASD and Moderate Intellectual Disability. Private Psychologist was not asked to determine whether Student had dyslexia.¹⁷⁵

112. Private Psychologist's Recommendations included: Applied Behavioral Analysis (ABA); services through Regional Center (RC); participation in play therapy, grief therapy, and animal assisted therapies; all academic content to be altered through an IEP with services and a classroom specific for students with ASD; and community activities geared toward children with intellectual disabilities.¹⁷⁶

113. It is unknown when the report was received by DFS or who initially reviewed the report, as it was not provided to the District until February 2025.¹⁷⁷

Sixth Grade 2024-2025 School Year

114. Student was enrolled in School 4 for the 2024-2025 school year.¹⁷⁸ School 3, however, was notified by fax on August 27, 2024 that EDM was appointed as Student's advocate.¹⁷⁹ On August 27, 2024, EDM signed a *Request for Student Health Office Records* and a *Release of Educational Records Authorization* authorizing District to discuss and release Student's educational/medical records, or reports of any nature to Attorneys for Petitioners.¹⁸⁰

¹⁷³ R-27, pages 6-7

¹⁷⁴ R-27, page 7

¹⁷⁵ R-27, page 7

¹⁷⁶ R-27, page 8

¹⁷⁷ Case Worker 1's testimony; EDM's testimony

¹⁷⁸ R-3

¹⁷⁹ R-36, page 1-2

¹⁸⁰ P-43, pages P000368-369

Correspondence with a copy of the Request Forms were emailed to SEIF on September 12, 2024. The correspondence requested inclusion of the following documents: (1) Cumulative folder to include all discipline records, data collected and/or used for the basis of said student's Progress Reports, any and all of the raw data collected and used for any and all evaluations/assessments performed on said student by District; (2) complete copy of the confidential folder; (3) any and all District forms, including but not limited to notices and decision making District forms; (4) any and all communications concerning said student, including, but not limited to emails, letters, correspondence sent or received by District, including any and all correspondence stored in the Google Vault, that identify said student not only by first or last name, or by initials, or by initials then first and last name, or last name then first initial, or by student number, and/or any combination thereof; and (5) school health records.¹⁸¹ EDM received some records from School 4 based on the request forms. The 9/12/2024 email from Petitioners' Counsel to the SEIF has handwritten notes that part 1 of the records were picked up around 9/18/2024 and part 2 was waiting to be picked up on 9/26/2024.¹⁸²

115. Once EDM was provided with Student's school records, EDM reached out to an advocate at the Agency to help go through the records and issue-spot potential problems with Student's education. After review, a concern about dyslexia was raised by the advocate aiding EDM. EDM was not invited to, or attend, any IEP meetings for Student in 2024.¹⁸³

116. When Student started School 4, Student was placed in the STAR program, which is a social and emotional reinforcement class. The decision to place Student in the STAR program was made by the Student's IEP Team prior to beginning at School 4. SEIF saw a variety of behaviors that supported placement in that program such as swearing, eloping and yelling at staff. SEIF reviewed Student's Behavioral Intervention Plan (BIP) and believes that School 4 has complied with it. SEIF does not know when the BIP was created or the last time that it was revised. Student's teacher purchased certain items to use for reinforcement for good behavior and from SEIF's observations, Student's behavior improved. While at School 4, Student was moved from the STAR program to the SLD classroom, which is focused more on academics

¹⁸¹ P-43

¹⁸² SOL Transcript, Day 2, page 200

¹⁸³ EDM's testimony

than behavior, to work on Student's reading deficits. SEIF is unaware of what progress, if any, Student has made in the SLD classroom.¹⁸⁴

117. Student is below grade level decoding, has a second grade reading level, has poor spelling, has difficulties with fluency and word recognition, and has issues with reading comprehension, although Student has good listening comprehension skills. Student has problems with all three of the criteria under the definition of dyslexia as set forth in NRS 388.417(2) – accurate and fluid word recognition, spelling and decoding. The SLD classroom receives the same reading program that a general education student in middle school receives, which does not address Student's specific deficits. School 4 does have a methodology that they can use for reading instruction, but SEIF is not aware of any request for specific programming that has been asked for to teach Student.¹⁸⁵
118. SEIF is familiar with ASD from classes, ongoing training and working with students. SEIF did not suspect that Student has ASD, as it is not the first thing that comes to mind when SEIF thinks of Student because Student is able to communicate and engage appropriately. However, SEIF acknowledged that for children with ASD that can communicate, it is common for those children to have pragmatic language issues, use words inappropriately, use cuss words inappropriately in the wrong environment, yell and/or yell at other students, and elope from classrooms. SEIF acknowledged that elopement and lashing out are also common traits of children with ADHD.¹⁸⁶
119. Student was in STAR Teacher's classroom for the sixth grade. At the very beginning of the school year, Student was "a little angel" and STAR Teacher did not understand why Student was in the STAR program. STAR Teacher taught all of Student's core classes and was the only teacher in that classroom, but the teacher next door was also reviewing Student's schoolwork and served as support for Student when Student left the assigned classroom but was willing to go into the neighboring classroom to do work. Student could not read or write at the beginning of the school year. Student could not read even simple sentences but might be able to read a few words. Student could not write a basic sentence with a correct pronoun and a verb. However, Student could carry on a conversation. At a certain point in time, something flipped

¹⁸⁴ SEIF's testimony

¹⁸⁵ SEIF's testimony

¹⁸⁶ SEIF's testimony

and Student started engaging in behaviors. Student would say outlandish things that didn't make sense for no reason, possibly to push other kids' buttons; curse; threaten; elope; destroy property sometimes; spit; and used a lot of racial slurs. Student could not read social cues if a peer did not want to talk about Student's interests; had difficulty relating to peers and talked about Student's interests obsessively.¹⁸⁷ Student's 10/11/2024 Progress Report is marked "Satisfactory" for the social & behavioral goal, but the remaining goals are missing from the progress report.¹⁸⁸

120. STAR Teacher worked a lot with Student one-on-one. Student's willingness to work on something difficult depended on the day. Student did not shy away from work and wanted to learn. STAR Teacher was surprised by Student's level of performance compared to the IEP that Student started the school year with. STAR Teacher was unsure if Student's writing was gibberish on purpose.¹⁸⁹ There was no specific curriculum used for Student. STAR Teacher stayed away from lessons on the chrome book as much as possible and supplemented lessons with videos and flashcards. Student was one of the lowest readers in STAR Teacher's 4–5-year career. STAR Teacher started from scratch with Student, from the a, b, c's and working on that for a few weeks before moving on to the sound of letters. STAR Teacher created a program based on what intrigued Student and tailored the program based on Student's needs. Student liked attention, so the more one-on-one that could be done, the better.¹⁹⁰

121. Up until Student started with behavioral issues, STAR Teacher gave Student credit for the work that Student tried and completed. The grades entered in the system for Student were modified based on what was being worked on. STAR Teacher would sit down with Student and ask questions, and Student could answer the questions, but could not read or write. Because Student was willing to work, STAR Teacher was not going to deter Student by giving a bad

¹⁸⁷ STAR Teacher's testimony

¹⁸⁸ R-23, page 20

¹⁸⁹ An example of Student's writing is contained in P-45, the 10/30/2024 IEP on page P000374. When asked to type favorite things about Christmas, Student wrote:

Whgsyfgkgkhgfuchrlgvhfugruhcfmjdhrbhiuehyjucgcjhehegchjkjgcehrchebtjldhjf
fcuryrhlujjkhfjherjghnjllcajwvgjmfjfdgjfngtbgnjfMhjyhrtgrecrjhjeghlrjhger
nhldhjjkjhrjhcwmm:iwcqbcwrbfefbrcbjhbefgbchgbckngjhghghj!u"fjhrjkgjgjbh jnuuekkj
ljjkfldkjfruhrfryuicfcwhhdjffjnjfnlclflhhffjfnklfthfberbfjffthfwnbfw
ejfwknwfkjjfnelcijnjwkwkfjnekjnkncnjfjkerigiejcjkjncgefmlcdfmbfjkljjkghnjiru tcerjgjoeeopjdkfky

¹⁹⁰ STAR Teacher's testimony

grade. Student “read” books by being provided audio books. For the most part, Student was able to comprehend the stories from the audio books.¹⁹¹

122. On October 30, 2024 a *Notice of Intent to Implement IEP* was sent/given to Foster Parent 1 by STAR Teacher.¹⁹² EDM was not provided with any prior written notices for any IEP meetings in 2024. Foster Parent 1 attended the 10/30/2024 IEP meeting and is listed as the Parent/Guardian/Surrogate under the list of participants’ section, while Foster Parent 2 is listed on the first page as the Parent/Guardian/Surrogate. Foster Parent was not aware at that time that EDM had been appointed to Student.¹⁹³

123. STAR Teacher attended one IEP for Student on October 30, 2024. Within the IEP, STAR Teacher noted Student’s typed response to a question asked in class. When asked what Student meant by the typed response that was gibberish, Student explained answers that were about 5 paragraphs in length. Student was at the pre-phonetic stage for reading and writing. At the beginning of the school year, Student could not do basic addition but could after STAR Teacher worked with Student. While Student made progress during the first quarter due once the behavior issues started, Student was unable to maintain progression. At times Student would refuse to work and would sometimes just go to sleep.¹⁹⁴

124. Student’s Annual IEP dated 10/30/2024 lists Student’s Eligibility Category as SLD.¹⁹⁵ Under the Consideration of Special Factors section of the 10/30/2024 IEP under the question, “Does the student have a Specific Learning Disability and Dyslexia?” the box is marked “no.”¹⁹⁶ The IEP notes that Student only has a base knowledge of alphabet phonic sounds, cannot read complete sentences, and their writing is at the pre-phonetic stage.¹⁹⁷ Student can only solve a few double-digit addition and subtraction problems and cannot multiply or divide.¹⁹⁸ The “Parent Educational Concerns’ section notes that Student only learned how to spell their last name over the past summer, and refuses to do anything intellectual because they are intimidated by it. Foster Parent 1 provided these concerns. Also noted is that Student tends to go into a “delusional world” when upset or avoiding something. As an example of what

¹⁹¹ STAR Teacher’s testimony; P-48

¹⁹² R-24, page 18 of 18

¹⁹³ SOL Transcript, Day 2, page 166; SOL Transcript, Day 1, page 131-132; SOCL Transcript Day 1, page 139

¹⁹⁴ STAR Teacher’s testimony

¹⁹⁵ P-45, page P000371

¹⁹⁶ P-45, page P000377

¹⁹⁷ P-45, page P000374

¹⁹⁸ P-45, page P000374

Foster Parent 1 means by delusional, Foster Parent 1 explained that Student would start talking about things that are not true, like the student wants to be green and wants to look like a Disney character, but the student knows what the student is doing because they have had several discussions about it and it is the student's way of entertaining strangers. Foster Parent 1 does not let Student stay in that delusional world. Foster Parent 1 even thought that Student might have schizophrenia, but is not a professional, and knew something was wrong with the student, but not exactly what was wrong. Foster Parent 1 reported this concern to the student's doctors, but it was never followed up on. The 10/30/2024 IEP does not contain a signature on the "Parent Signature" line at the end of the IEP.¹⁹⁹

125. Student's Reading Goal was to improve letter and word recognition skills, enabling them to read and understand basic texts of at least 50 sight words with 80% accuracy and demonstrating improved comprehension. Benchmark 1 states Student will accurately read and recognize at least 25 sight words including on, it, be, was, apple, and that. Benchmark 2 states Student will improve phonetic awareness by accurately identifying the sounds of at least 15 letters and blending sounds to read simple CVC words. Benchmark 3 states Student will demonstrate improved reading comprehension by correctly matching printed words with corresponding pictures (including previously missed words like bed, log, pan, bike, farm, and drum).²⁰⁰
126. Student's Writing Goal was to improve writing skills to progress from the pre-phonetic stage to the early phonetic stage, enabling them to write at least 10 words and 3 simple sentences with 80% accuracy. Benchmark 1 was to correctly trace and copy all uppercase and lowercase letters from a model. Benchmark 2 was to correctly write 10 dictated words (including it, red, old, hate, will, find) using appropriate capitalization and spelling. Benchmark 3 was to independently write 3 simple sentences using correct capitalization and spacing.²⁰¹
127. Student's Math Goal was to improve mathematical computation and reasoning skills, enabling them to solve double-digit addition and subtraction problems and demonstrate understanding of basic multiplication and division concepts with 80% accuracy. Benchmark 1 was to correctly solve at least 10 double-digit addition and subtraction problems. Benchmark

¹⁹⁹ Foster Parent 1's testimony; P-45, page P000375

²⁰⁰ P-45, page P000377

²⁰¹ P-45, page P000378

2 was to demonstrate an understanding of basic multiplication and division concepts by correctly solving simple problems (2×3 and $6 \div 2$). Benchmark 3 was to accurately complete tasks involving ordinal numbers, identifying and ordering numbers, and interpreting basic graphs (such as pictographs).²⁰²

128. Student's Social Emotional/Behavior Goal was to demonstrate improved self-regulation and social skills, reducing instances of elopement, name-calling, and threatening behavior, while increasing positive interactions with peers and adults. Benchmark 1 was to reduce instances of elopement and throwing objects. Benchmark 2 was to engage in positive interactions with peers, including using appropriate language and conflict resolution strategies, during structured activities. Benchmark 3 was to respond to questions with honesty and demonstrate accountability by accurately answering questions about actions or work.²⁰³
129. In December 2024 when the EDM emailed SEIF to request a dyslexia evaluation, SEIF did not recall receiving the notification that Student had an EDM back in September. SEIF was out at that time, so EDM contacted School 4's Principal and exchanged emails related to the request.²⁰⁴ The request for a dyslexia evaluation was forwarded to School 4's Psychologist and communications via email and phone ensued. During one of the phone calls, School 4's Psychologist realized that School 4 conducted an IEP meeting in October 2024 without EDM.²⁰⁵ Subsequent to those conversations, EDM received a Parental Prior Notice of District Refusal dated December 12, 2024 refusing to conduct a reevaluation due to concerns related to dyslexia. The reasons listed for the refusal included: that a reevaluation was conducted in October 2023 where the eligibility category determination of SLD was confirmed and continued; the current IEP addresses current educational needs; and none of the previous IEP's indicate an educational history of dyslexia on the special factors section of the IEPs.²⁰⁶
130. Student's 12/16/2024 Progress Report is marked "Satisfactory" for the math and social & behavioral goals. The reading and writing goals are missing from the progress report. No evidence was offered or admitted about when this Progress Report was sent to or received by the EDM.²⁰⁷

²⁰² P-45, page P000378

²⁰³ P-45, page P000379

²⁰⁴ SEIF's testimony; Foster Parent 1's testimony

²⁰⁵ EDM's testimony

²⁰⁶ P-46

²⁰⁷ R-24, page 16

131. DFS provided the Agency with Student's Neuropsychological Evaluation in February 2025, after which it was provided to EDM. EDM was dismayed and disappointed at the failure of DFS to provide the evaluation prior to that date.²⁰⁸ In February 2025, Foster Parent 1 became aware that EDM was appointed to Student after Student was admitted to the hospital and EDM emailed Foster Parent 1 to let Foster Parent 1 know that EDM had been trying to get in touch with the school and the school was not responding to those attempts. Thereafter, Foster Parent 1 started sending the information that Foster Parent 1 received to EDM. Prior to that, Foster Parent 1 had not been in contact with EDM. Foster Parent 1 told School 4's vice principal that things weren't being sent to EDM.²⁰⁹
132. On February 25, 2025, the EDM provided a copy of the Neuropsychological Evaluation to the SEIF and asked that Student be re-evaluated due to the information contained in the Evaluation diagnosing Student with ASD, Intellectual Disability, fine motor delay, specific learning disorders: mathematics and reading. SEIF received a copy of the Neuropsychological Evaluation in February 2025 but had not seen or received a copy of the evaluation prior to that date. After receiving the Neuropsychological Evaluation, SEIF forwarded it to the school psychologist, but does not know what happened with the evaluation afterwards.²¹⁰
133. School 4's Covering Psychologist received EDM's email request for a re-evaluation. After receiving the Neuropsychological Evaluation, School 4 asked EDM if they were available for a meeting on March 5, 2025. School 4 did not provide EDM with a written refusal to evaluate Student for ASD, did not re-evaluate Student, did not hold a new IEP meeting or change Student's placement after receipt of the Neuropsychological Evaluation.²¹¹
134. After contacting EDM, School 4's Covering Psychologist set up a scope of evaluation meeting to determine what eligibility categories they wanted to consider and how they were going to proceed at that time because Student was not in school due to hospitalization. School 4's Covering Psychologist recalls that there was an agreement to conduct assessments for the eligibility categories of ID, ASD and Student's current eligibility category of SLD, but that they would wait to send a consent for evaluation until after Student returned to school. Because School 4's Covering Psychologist and another covering psychologist were just providing

²⁰⁸ EDM's testimony

²⁰⁹ Foster Parent 1's testimony

²¹⁰ EDM's testimony; P-53

²¹¹ EDM's testimony

school coverage, they were told that the EDM would reach back out to the school team once Student returned to school and then the school team or the EDM would reach back out to the covering psychologists. School 4's Covering Psychologist did not say who told them that information and acknowledged that the school would typically know whether a student is attending school.²¹² EDM's recollection of the virtual meeting with School 4's Covering Psychologist differed significantly. EDM's primary takeaway from the meeting, which occurred in March of 2025, was that Student would not be disenrolled from school while being hospitalized. EDM did not have the understanding that School 4's Covering Psychologist agreed to re-evaluate Student once the student was back in school, nor did EDM realize that EDM needed to contact the District once Student was back at school. EDM does not recall receiving any communication from District that they agreed to reevaluate Student.²¹³ Student's Cumulative Folder contains documentation that Student's last day before hospitalization was February 11, 2025 and Student returned on March 24, 2025.²¹⁴ The March meeting was not documented in Student's Status Record and no documentary evidence was offered or admitted related to the meeting that occurred in March 2025.²¹⁵

135. Upon School 4 Psychologist's review of Student's 10/23/2020 BASC-3 results during the hearing, the psychologist stated that this alone would not give rise to a suspicion of ASD but would cause concern because Atypicality and Self-Help skills are in the clinically significant range, therefore School 4 Psychologist would have needed additional information to give rise to a suspicion of ASD. School 4's Covering Psychologist would have had a discussion with the team about what the behavioral concerns looked like and where they came from and then considered that additional information.²¹⁶ The BASC-3 assessment is a standardized questionnaire designed to measure emotional and behavioral functioning across a variety of areas and within multiple environments. It is not meant to be a diagnostic tool but rather a data collection tool to identify possible areas of difficulty.²¹⁷ When a student falls in the "at risk" range, they monitor the student to make sure it does not continue to persist to an adverse degree. When a student falls in the "clinically significant" range, that is a larger concern that they

²¹² School 4's Covering Psychologist's testimony

²¹³ EDM's testimony

²¹⁴ R-21, pages 6-7

²¹⁵ R-5

²¹⁶ School 4's Covering Psychologist's testimony; P-13

²¹⁷ P-13, page P000086

might want to consider intervening with. The BASC-3 assessment alone is not used for a particular eligibility, but it can be used for ASD, for emotional disturbance, or for a student with SLD that also has behavior concerns. Anytime there is a behavioral concern, School 4's Covering Psychologist gives a BASC-3.

136. Upon review of Student's 10/26/2023 MDT and the BASC-3 scores in comparison to the 10/23/2020 scores during the hearing, School 4's Covering Psychologist noted the scores are similar but the 2023 scores would have raised more concerns for School 4 Psychologist because the teacher F index score, a measure used to evaluate validity of responses, was in the extreme caution range. High scores on this would either indicate the presence of extraordinary maladaptive behavior or suggest that the teacher rated the child's performance more severely than warranted. If other concerns arise during an evaluation conducted by School 4's covering Psychologist, the psychologist has another scope meeting with the team to report those concerns, and make sure the team agrees to open the scope to look at an additional eligibility category.²¹⁸
137. District does not diagnose dyslexia, instead they look for indicators on standardized assessments, in the areas of decoding, encoding and fluency.²¹⁹
138. Student's 5/20/2025 Progress Report is marked "Satisfactory" for the writing and social emotional/behavior goals. The math and reading goals are missing from the progress report. No evidence was offered or admitted about when or if this Progress Report was provided to the EDM.²²⁰
139. While Student did make some progression towards the last quarter and end of the school year, over the entire school year, Student went back to the levels from the beginning of the school year because due to the behaviors during the middle of the school year and the lack of work.²²¹
140. EDM sent a second request for education records on May 28, 2025. As of the filing of the Complaint, on June 6, 2025, EDM never received any raw data for Student, only received a handful of progress reports (but none from the 2024-2025 school year), no communications

²¹⁸ School 4's Covering Psychologist's testimony; R-25, page 5 of 8

²¹⁹ School 4's Covering Psychologist's testimony

²²⁰ R-24, page 17

²²¹ STAR Teacher's testimony; P-45

stored in the Google Workspace, no academic plans, or full health records.²²² No additional evidence was offered or admitted related to whether EDM received additional records prior to the 5-business day disclosures that were exchanged prior to the Statute of Limitations hearing on August 15, 2025.

Seventh Grade 2025-2026 School Year

141. Student remains enrolled at School 4 for the 2025-2026 school year.²²³ A report dated August 13, 2025 was authored by Expert Witness after three meetings with Student and reviewing notes and impressions of IEP reports dated 11-10-20 to 10-30-24 and Progress reports from 5-24-24 to 3-8-24.²²⁴ The last known IEP for Student is the 10/30/2024 IEP.

Expert Witness

142. Expert Witness has both a doctorate and a master's degree in educational psychology and technology from the University of Southern California. Expert Witness trained in the Orton-Gillingham method and structured literacy and is a certified practitioner, which required intensive training for dyslexia structured literacy. Expert Witness also averages one additional training in dyslexia language processing weekly. Expert Witness's teaching experience includes teaching in elementary school, substitute teaching, teaching children with dyslexia, and most recently, acting as an intervention specialist at an elementary school. Expert Witness works with students from kindergarten to college.²²⁵

143. Orton-Gillingham is a methodology first developed to meet the challenge for struggling readers and is the foundation of all other programs that help with language processing. Orton-Gillingham remediation rewires the brain so it can connect the symbols and sounds. The most common misconception Expert Witness hears from parents is that dyslexia is seeing letters backwards. Dyslexia is not a visual processing disorder. A student can have visual processing challenges with it, but dyslexia is language and sound based.²²⁶

144. Expert Witness's report cogently summarizes the following points: (i) In the first IEP report provided (11-10-20), it's noted that Student's conversational speech is appropriate for age and/or grade level. This discrepancy alone should have required employing explicit, intensive

²²² HO-1

²²³ R-3

²²⁴ Expert Witness's testimony; P-65

²²⁵ Expert Witness's testimony; P-64

²²⁶ Expert Witness's testimony

instruction for reading, especially since any speech irregularities appear to be successfully remediated.²²⁷ (ii) In the later grades after returning from covid, it is noted that the student is displaying strong expressive, oral language comprehension, with frustration about speech sound challenges. These all point to dyslexia and/or a related phonological or reading challenge. (iii) At the beginning of 2nd grade, student is described as a student who wanted to learn, has strong oral language and comprehension, The IEP notes when student is focused, student's strength is oral comprehension, recalling specific details from a passage or story when read aloud. Common attributes of students with dyslexia display this discrepancy. (iv) The IEPs and progress reports document a 5-year road from 2nd to the beginning of 7th grade with very little significant change reported and goals remaining the same. (v) The emerging picture is that of a struggling reader with strong verbal skills and well-developed vocabulary which is a typical profile for a student with dyslexia, especially at this late stage of education.²²⁸

145. Interpretations by Expert Witness include: difficulty understanding how this student was not receiving specialized instruction and intervention for phonological processing or dyslexia during these 5 years; the records provided display almost no progress achieved in the areas of reading and writing; the records do not include a methodology or specialized instruction provided to Student; and the contrast with the strong verbal skills and oral language comprehension demonstrated is one of the key discrepancies that signals to remediate at the basic phonemic awareness and work level reading level.²²⁹

146. Expert Witness's first-hand experience with Student included three different virtual meetings with Student. Expert Witness did not come to Student's home or school to observe the student. During the first meeting Student was unable to get close to rhyming words (one of the earliest detectable indicators of a language processing [disorder] or dyslexia) or do phoneme manipulation, isolating the first letter of a word (which is the simplest and first task that students in pre-K or kindergarten are expected to master at the beginning of the year). However, Student found it easy to memorize lyrics very quickly after hearing them in a song and had an ability to grasp word meaning and utilize them independently. Student's Court Appointed Special Advocate (CASA), Education Advocate, and Foster Parent 1 were present

²²⁷ Expert Witness would not generally expect RTI to last for two academic years of instruction because there is not much of a response if you are staying in the cycle that is supposed to be a steppingstone.

²²⁸ Expert Witness's testimony; P-65, page P000458

²²⁹ Expert Witness's testimony; P-65, page P000458

during the meeting. Student made progress during the second and third meetings with Expert Witness. EDM, Education Advocate, one of Petitioners' attorneys, and Foster Parent 1 were present during the second meeting. EDM, Education Advocate, one of Petitioners' attorneys and a DFS case worker was present during the third meeting. Due to Student having oral expression and oral language, the issue with word level reading is unexpected. While Expert Witness cannot speak to whether there has been adequate instruction, Student otherwise meets the definition of dyslexic under International Dyslexia Association's definition, which is basically the same as Nevada's definition of dyslexia. Based on Expert Witness's observations of Student, Expert Witness did not suspect that Student has ASD or an intellectual disability.²³⁰

147. Student does not have a current reading level and is at the pre-alphabetic stage. Student's brain does not yet have the letter-sound code necessary to read. Throughout Student's educational history, there was no focus on the first step of learning the letter sounds and the letters and mastering that step. When Student was unable to master that step the records do not indicate that anyone voiced a concern that something was amiss because Student has strong oral expression and comprehension and good vocabulary, surprisingly due to the Student's historical circumstances. If the adequate instruction had been given, you would expect Student to be reading. It is uncommon for parents to understand that students can be remediated.²³¹

148. Impacts of delayed remediation can strongly impact children by receiving early, explicit, direct instruction based on evidence-based principles. Additional reading will not accomplish remediation and will exacerbate the problem. Continually attempting a task that they are not prepared for will lead to a decrease in motivation for learning in general and a decrease in self efficacy which is correlated with a decrease in mental effort. When a student lacks ability to find success at a task, especially repeatedly, they will withdraw from trying consciously and often unconsciously. Students with a language processing disorder need to be taught a different way for the sounds and symbol connection to register, as their brain is not wired to understand this.²³²

149. Many schools won't consider a student eligible for services until they are 2 years behind grade level.²³³ As students enter the mid to upper elementary grades, the gap widens, and

²³⁰ P-65, pages P000460-461

²³¹ Expert Witness's testimony

²³² P-65, page P000463

²³³ School Psychologist's testimony; P-65, page 000464

students begin to fail, not just fall behind peers. It's often too late to get them on track to effectively read to access the curriculum in multiple subject areas.²³⁴

150. Children with lower IQs can learn how to read. Reading is a process that must come together, not something that comes naturally, and for most individuals, you have to give instructions to get different parts of the brain to work together. The percentage usually cited is 97-98% of all children will read with proper instruction and the proper person giving instruction. Student can become a reader with appropriate instruction with a qualified instructor and could eventually read chapter books. A qualified instructor would be an individual with the necessary credentialing, experience, and in this case, a literacy expert that understands cognition and all the pieces that come together, customized for Student, based on what Student has learned previously and Student's interests. When "starting from scratch" with a student Expert Witness varies where to start based on each individual and what they can and cannot do. For example, you look at whether they can recall any letters; you may look at their writing; sometimes you want to start with similar letters while other times you want to separate them out based on sounds; it varies even at the letter level with a student that has the deficits that Student has.²³⁵

151. The term Dyslexia is often used to describe the absence of word level reading in a student despite having adequate instruction and verbal expression, and therefore it is unexpected that they would have this weakness. Dyslexia can be viewed as a spectrum, on one end, someone could have a very mild disability where they can't get straight just some letters or sounds, or where they might confuse chunks of words, for example, they read backpack as packback, and they may also have challenges with writing and spelling, and then there is the other end of the spectrum where it is problematic to learn every single letter and sound, and even though it can be remediated, it will always be something they have. It is a language/hearing disability and there are many elements. It is important for an educator to know where on the spectrum a student falls because to properly teach that student, you must first determine where their particular need is. There is no report or medical diagnosis that tells the educator what is wrong. First you see indicators, then you drill down to the foundational elements, which are very simple, and you work at getting the student to master those foundational elements. If a student

²³⁴ P-65, page P000464-465

²³⁵ Expert Witness's testimony

cannot master the level at which you start, then you go down to something more basic, and once that level is mastered, you start back at that level and continually build up from there.²³⁶

152. There are indicators of dyslexia across Student's academic career including the following:
- a. Student's 10/23/2020 MDT: Student was in the second grade and could only read the student's first name; performed at the first percentile on a standardized test; begin disruptive in class, acting out, and being easily distracted (classic avoidance responses); and Easy CBM probes demonstrating an inability to read at grade level.²³⁷
 - b. Student's 11/10/2020 IEP: Teacher observations note that Student knows less than 5 letter names and sounds and is unable to read simple CVC words; Student often refuses to work with the teacher and struggles to remain focused. Typical second grade students know all the letters in the alphabet and all the letter sounds. They can identify the beginning, middle and end of a story and read text on a second-grade level. Due to Student's deficits in reading, Student is unable to keep up with grade level reading curriculum.²³⁸
 - c. Student's 5/13/2022 IEP: Teacher observations note that Student wants to learn, but has a difficult time remaining focused for any extended period of time; has made some progress since the beginning of the year with letter recognition and letter sounds, but has not mastered all of the lower and uppercase letters of the alphabet; all text is read aloud to Student because Student cannot read even 2 letter sight words. Because Student has not mastered the letters of the alphabet, Student is unable to identify any sight words, even from a pre-K list. Per the reading standards of the third-grade curriculum, students are expected to read various types of literature and respond to literature-based questions. Since Student has not mastered all the letters of the alphabet, and requires all text to be read aloud, Student will have difficulty making progress toward the curriculum standards based on reading fluency skills.²³⁹

²³⁶ Expert Witness's testimony

²³⁷ Expert Witness's testimony; R-10

²³⁸ Expert Witness's testimony; R-6

²³⁹ Expert Witness's testimony; R-8

- d. Student's 5/11/2023 IEP: According to the most recent reading MAP scores, Student scored 150 and placed at the 1st percentile in comparison to grade level peers. The average score of a student in 4th grade should be 205. Student's Core Phonics survey, a tool to assess basic elements, shows the following scores: uppercase letters 26/26; lowercase letters 26/26; consonant sounds 19/21; long vowel sounds 5/5; short vowels 4/5; and short vowels in CVC words 0/15. This demonstrates a very obvious discrepancy – if there is proficiency in identifying short vowels but not identifying them in the words, that is a classic indicator of dyslexia or SLD because in isolation, Student is seeing just one thing, but when seeing letters with other letters there is a lack of organization and it just looks like several things on a page that don't identify anything. Teacher observations note that Student can recognize and read all the letters of the alphabet, is able to say all of the consonant sounds except q and w, struggles with reading 3 letter CVC words and cannot state the beginning, medial and ending sounds.²⁴⁰
- e. Student's 10/26/2023 fifth grade MDT Report notes Student could not read the following words: on, it, be, was, apple and that. These are words a first grader can be expected to read. While Student was able to “read” a stop sign and a recycle bin, because these are symbols and visual representations, it is common to be able to recognize symbols that are seen all over the place.²⁴¹
- f. Student's 10/30/2024 IEP: Teacher observations note Student can read certain small words and uses phonics to sound out words the student does not recognize; Student often confuses letters like “V” and “U” and only has a base knowledge of alphabet phonic sounds. Student cannot read complete sentences. According to the standards, students in 6th grade are expected to identify key ideas, details, craft and structure and read and comprehend literature independently and proficiently. They know and apply grade-level phonics and word analysis skills in decoding words and read with sufficient accuracy and fluency to support comprehension.²⁴²

²⁴⁰ R-9, pages 4-5; Expert Witness's testimony

²⁴¹ Expert Witness's testimony; P-33, page P000278

²⁴² Expert Witness's testimony, P-34, page P000374

153. Student's Reading Goals²⁴³ in the 11/10/2020 IEP are inappropriate based on Student's present levels at that time. A goal cannot be established to read CVC reads unless the letters are mastered. The second goal (phonics) would be a hefty goal even if Student was getting super intense instruction supported throughout the day. Having worked with Student recently, Student has not met these two goals from the second grade.
154. Student's Reading Fluency Goal²⁴⁴ in the 5/13/2022 IEP is not reading fluency – it is memorization of a list of words, so it is labeled incorrectly and is not a goal that would help Student work towards reading. The benchmarks or short-term objectives include a range of number of sight words from a Dolch or Fry's sight word list Student should be able to read, orally recite and use in a complete sentence. However, the first 30 words on the Dolch or Fry's list are not really sight words, they are frequency words (such as a/an/at/the). This singular goal was not an appropriate reading goal for Student.²⁴⁵
155. The significance of being able to read by the third grade is to ensure a student is in line with the expectations with peers; have access to the curriculum, activities and exercises being done; socially in a larger school setting this is when students are starting to become more independent and starting to have school activities; at this point, the gap is widening so much between those who can read and those who can't, and some of the strategies that some kids depend on like looking at pictures and being able to guess, which is something that is taught in many schools as a strategy for poor readers, is no longer working because the texts are more complex, have less pictures and bigger words. A person with Dyslexia is just looking at things and being asked questions all day that make no sense and it becomes intensified by third grade.²⁴⁶
156. "Read by 3" is based on the idea that if you are not reading by the third grade it gets exponentially more difficult to catch up. The consequences are more severe, so there is a focus on getting all kids to be able to read by third grade. The likelihood that you will catch up if not reading proficiently for grade level by third grade is about 4-5% in their school career and

²⁴³ FOF 44; FOF 45: Reading Goal was to increase reading foundational skills by sounding out/reading the beginning consonants, medial vowels, and ending consonant sounds in CVC words, achieving a criteria of 4 out of 5 trials. Reading Phonics Goal was to increase letter identification of uppercase and lowercase letters and production of all letter sounds, achieving a criteria of 80% accuracy.

²⁴⁴ FOF 65: Reading Goal was to increase reading skills by identifying and understanding the meaning of 30 sight words by orally expressing the words in a sentence achieving a criterion of 4 out of 5 trials.

²⁴⁵ Expert Witness's testimony; R-8, pages 9-10

²⁴⁶ Expert Witness's testimony

drops down every year after kindergarten. For the 4-5% that are able to catch up those students need systematic, explicit instruction, that is comprehensive to the point that every element of their day is centered around their growth. So, for example, while in a music class or extracurricular activity, allowances are made, not as an accommodation, but as a supplement to their growth to scaffold them for the skills they are working on building. It is very complex to get the students the help that they need that will actually work for them. When a student has failed for so long and their efficacy is so low that their automatic response is to shut out and not participate, it takes a lot to get that student to become a learner again, to participate and believe that they will be able to successfully complete the task and a lot of that has to do with environment. If a student is in the same environment where they have failed for so long, not only do they know how people might see them as the kid who can't read, or the kid with a behavior problem, it also impacts how people are treating that student.²⁴⁷

157. Under the Consideration of Special Factors section of the May 11, 2023 IEP under the question, "Does the student have a Specific Learning Disability and Dyslexia?" the box is marked "no."²⁴⁸ However, it was not accurate to say that Student did not have Dyslexia based on the indicators of dyslexia contained in the present levels of the IEP.²⁴⁹ Student would have benefited from explicit direct instruction that is systematic, sequential and cumulative. Student's Reading Goal in the 5/11/2023 IEP²⁵⁰ was not appropriate for Student because it was a reading comprehension goal for a regular student that could read. Student was not ready for a comprehension goal because Student could not read. It may have been an appropriate goal as a language comprehension goal where Student heard the story and then answered questions about what the student heard, but not as a reading goal. By fourth grade it was surprising that Student did not have any decoding goals.²⁵¹

158. Based on Expert Witness's personal experience with Student, if the word STOP was placed in front of Student, but not on a hexagon, Expert Witness would not expect Student to be able to read the word because Expert Witness conducted a similar exercise with Student. During

²⁴⁷ Expert Witness's testimony

²⁴⁸ FOF 74

²⁴⁹ Expert Witness's testimony

²⁵⁰ FOF 76: Reading Goal was to increase the ability to answer a variety of questions about a text such as multiple choice and written response with the use of non-fiction and fictional texts and assignments with at least 80% accuracy.

²⁵¹ Expert Witness's testimony; R-9, page 9 of 21

the exercise, the different letters of Student's name were placed in separate boxes and Student could no longer read the student's name, even though Student recognized the name when written normally. Just that slight difference in how it was represented created a situation where Student did not recognize the name.²⁵²

159. Expert Witness works with students from kindergarten through adults including several middle school students. When a middle school student cannot access the curriculum, the student's attitude towards school changes because it's like torture to go to a place where they are not happy, where they suffer and struggle and their attitude deteriorates as a result.²⁵³

160. Student's 10/26/2023 IEP notes under teacher observation that Student can write a complete sentence, but errors are noted on spelling, punctuation, and capitalization. Based on Expert Witness's first-hand experience with Student, Expert Witness does not believe that Student could compose a complete sentence but perhaps copied a sentence.²⁵⁴

161. Expert Witness is familiar with the Program as a standard curriculum created in the science of reading age that we are in and that it is a Tier 1 program. A Tier 1 reading program would not be appropriate for Student's deficits in the fifth grade if that was all Student was receiving. It would not have been sufficient because Student needs systematic explicit instruction at Student's pacing, customized and proscriptive to everything Student is doing. Even with the best program in the world, if it is not administered and executed by someone that is skilled in doing it specifically for a particular student, it could result in zero progress. Conversely, if you have the most skilled instructor and no program, they could teach someone to read. For example, Expert Witness could teach someone to read with a pencil and paper or a whiteboard. The Program is not even close to what Student needs as it is a Tier 1 instructional approach for a regular education student.²⁵⁵

162. Under the Consideration of Special Factors section of the 10/26/2023 IEP under the question, "Does the student have a Specific Learning Disability and Dyslexia?" the box is marked "no."²⁵⁶ However, it was not accurate to say that Student did not have Dyslexia based on the indicators of dyslexia contained in the present levels of the IEP. Student would have

²⁵² Expert Witness's testimony

²⁵³ Expert Witness's testimony

²⁵⁴ Expert Witness's testimony; P-34, page P000282

²⁵⁵ Expert Witness's testimony

²⁵⁶ FOF 89

benefited from explicit direct instruction that is systematic, sequential and cumulative in the fifth grade. From Expert Witness's observations, there is no indication Student received that type of instruction nor is the methodology that was used listed in the 10/26/2023 IEP. Student's first Reading Goal in the 10/26/2023²⁵⁷ IEP is almost the same goal as the previous IEP during the fourth grade and is not appropriate for Student given Student's needs in fifth grade. Student's second Reading Goal²⁵⁸ does not make sense and appears to be a lot of phonological processing terms thrown together.²⁵⁹

163. Expert Witness agrees with STAR Teacher's statement in the 10/30/2024 IEP under "Statement of Student Strengths" that Student is a student who wants to learn. Expert Witness saw this information mentioned consistently throughout Student's academic records. When Expert Witness worked with Student, the student showed an enthusiasm to learn how to read. When Expert Witness noted incorrect grammar in Student's conversation, Student immediately corrected the sentence showing the capacity and eagerness to be a reader.²⁶⁰

164. Under the Consideration of Special Factors section of the 10/30/2024 IEP under the question, "Does the student have a Specific Learning Disability and Dyslexia?" the box is marked "no."²⁶¹ However, this was not accurate based on the indicators of dyslexia contained in the present levels and teacher observations contained in the IEP. The one and only Reading Goal in Student's 10/30/2024 IEP²⁶² makes no sense. The second benchmark for the goal states, "Student will improve phonetic awareness by accurately identifying the sounds of at least 15 letters and blending sounds to read simple CVC words." There are approximately 44-46 letter sounds in the English language. The use of the word "identify" in the benchmark is vague and is not specific to what they were looking for. The Reading Goal was written poorly and was not appropriate as it talks about blending which cannot happen until after Student can identify the basic alphabet and the long and short sounds that go with it. Even if Student recognized 50 sight words, it could mean that Student memorized those words which would

²⁵⁷ FOF 91: Reading Goal was to increase the ability to answer a variety of questions about a text such as multiple choice and written response, with the use of non-fiction and fictional texts and assignments with at least 80% accuracy.

²⁵⁸ FOF 92: Second Reading Goal was to increase ability to recognize, blend, and identify sounds to demonstrate an understanding of spoken words, syllables, and sounds (phenomes) achieving a criteria of 80% accuracy.

²⁵⁹ Expert Witness's testimony; P-34

²⁶⁰ Expert Witness's testimony; P-45, page P000375

²⁶¹ FOF 124

²⁶² FOF 125: Reading Goal is "will improve letter and word recognition skills, enabling them to read and understand basic texts of at least 50 sight words with 80% accuracy and demonstrating improved comprehension."

equate to a good visual memory but is not reading. No methodology was mentioned in this IEP.²⁶³

165. Remediation for a student in middle school needs to consider all the circumstances and variables with the social makeup demands and developmental things that make learning difficult for just the average student, so the challenges are greater and being a student that is more atypical is heightening that vulnerability. Any type of intervention needs to be supercharged and be a part of every element of the day to be successful.
166. For Student, Expert Witness's report listed the following recommendation: Student will require intervention on many levels, which should involve the majority of the school day, weaving in the various elements needed to rewire the brain to decode (reading) and encode (writing and spelling) language at a basic elementary school level. This will take years of intense intervention and a supportive, language-rich environment.²⁶⁴ The center of this remediation is specific Orton-Gillingham based lessons requiring 60-90 minutes per day, 4-5 days per week. Additionally, Student will require support for learning differences, taking into account cognitive considerations and motivation, which may be undiagnosed due to the lack of reading all of these years and motivation. Any individual working with Student in at least the core subject areas should be a certified practitioner of the Orton-Gillingham method or a program rooted in this approach. This means that they will need to take the building blocks to make sure that Student can hear the letters and the different parts of the word, and you have to do a process to help Student differentiate exactly how many sounds there are first, what are the graphemes and letters that go with them, and all of the phonological beginning part that precedes knowing the letters, but also look at the knowledge that Student is bringing to the table. Start with the letters and sounds, and then bring in the background knowledge, vocabulary, and morphology (English spellings go more by the meaning of the word than the actual sounds). Understanding morphology is very important for struggling readers to allow them to access the language and the meaning of the words because their cognition is so full, so morphology allows them to gain comprehension and understanding as they are reading. There are many elements that must be brought in and balanced at the same time and then again with the writing and with the spelling. Unless there is a specific school for dyslexia Student will not

²⁶³ Expert Witness's testimony; P-45, page P000377

²⁶⁴ P-65, page P000470

get this throughout the day where that scaffolding needs to continue. Continuing to attend the same school system can trigger negative emotions and prevent Student from succeeding.²⁶⁵

167. Further recommendations include: (1) an immersive environment that uses consistent methodology throughout the school day and beyond. Student will require complete restructuring of not only how to read, spell and write, but also academic content missed due to lack of proper remediation in the early years of elementary school; (2) Student will need executive function coaching and a team of professionals coordinating to rebuild self efficacy (belief that you can complete a task) and self concept as a student to once that can be successful and gain attention for positive accomplishments in lieu of the common practice learned to get attention for negative behaviors. A program with clear and specific accountability with quick wins will help jump start restoration as a functioning student who can contribute to the environment in a positive way during the long remediation process; (3) a structured extra-curricular experience to explore Student's passion for music and singing will provide an outlet to enrich restoration as a student that can participate in regular school activities, contribute and thrive in learning. The practices employed during the academic day should be included during this activity and all others; (4) An immersive boarding school experience is the only alternative to provide what is necessary for Student to recover, whatever is possible, from the years of being in a school system without the necessary skill of being a reader and writer. These are not just accommodations but a way to support Student's growth and neural connections to allow the rewiring of the brain that allow Student to focus on the student's interests and put energy in a positive direction. Supports need to include not just understanding instructors, but peers that are understanding as well as a nurturing environment where Student does not feel like the student is swimming upstream and this does not even include the consideration that Student has been in foster care. Because of Student's experiences in the foster care system, it adds an entirely different layer of difficulty and challenge in being in a stable environment and providing what the student needs and making the student a priority. Student has so much potential to become more than just a reader and deserves the opportunity to fulfill that potential. With foster youth, trust is one of the biggest factors that hold them back from receiving things

²⁶⁵ Expert Witness's testimony

that are positive or things that can benefit them. Research shows that it can take 17-21 attempts by a caring adult to earn that trust.²⁶⁶

168. Expert Witness has no reason to think that District could meet Student's needs, even placing Student in a different middle school would not help. Student has been in a public school in the District for the entirety of the student's education, so remaining there would not be beneficial for the student. Any program provided in a school that has already not provided what the student needed for the entirety of the student's education will not benefit Student based on the prior testimony about the familiarity with the programs used by the District. Additionally, you need to consider other elements, like the student's peer group, how Student feels about fitting in along with the social element of being that age, and the lack of access to participate in extracurriculars. Remaining in a school where the expectations are the same for the student as they are for the rest of the population where Student cannot meet those standards will likely result in the student giving up. Because of the degree of damage to Student's self-efficacy, to the self-concept as a reader, social implications, and being in the District for the entire school career, Student requires an environment that is unblemished for the student to have the best chance of remediating. Our efficacy/belief in how successful we will be in a task is connected directly to how much mental effort we are applying towards that task. As a task is more difficult as we perceive it the amount of mental effort that we apply decreases. For Student to be in the best situation to get what is needed and to succeed and not have extraneous limitations from the environment, (which Student has already had numerous extraneous limitations that the student had no control over) Student needs and deserves an environment where the student can have a reset and become the learner that is inside that anyone who interacts with Student can see immediately.²⁶⁷

169. If Student is not given remediation, statistically it is likely that Student could end up in prison someday. About 80% of individuals in prison have dyslexia or language processing disorders. With no additional methodology, even at the District, based on Student's current pre-phonetic reading level there is no indication that the student would progress beyond that by the twelfth grade. There is no indication that Student could reach grade level reading by the twelfth grade. There is no indication that Student could even reach a sixth grade reading level.

²⁶⁶ P-65

²⁶⁷ Expert Witness's testimony

Even if given a program, without the necessary instructor, a computer program is not adequate. There is a lack of Orton-Gillingham providers in the state of Nevada.²⁶⁸

170. Student needs something that starts comprehensively at square one and then builds up and scaffolds Student to take on those responsibilities and participate based on how the student is developing and learning. Even adding someone of Expert Witness's caliber with one-on-one instruction daily would not suffice because continuation in the same environment equates to suffering and struggling for the student. Adding an Orton-Gillingham fellow to attend school with Student daily would also not suffice, as it has nothing to do with what occurs during the school day and could even be worse for the student to have someone tag along all day. Student needs a program that is systematic with fidelity (sticking to that specific program). "Systematic" means that there is a plan and a sequence and knowing there are certain building blocks that must be mastered before moving on to next steps. The way that the program is applied is going to depend on the success that the student is having. You may need to go back and review certain steps because the student has not mastered them yet. It is a balancing act between the program and the application of the same.²⁶⁹

171. To receive a FAPE, Student needs a structured literacy program with experienced instructors and staff that are also trained and well-experienced, if not certified, in all of the content areas so there is cohesion in the day along with a "whole child approach." Instructors must be able to layer in and build on the concepts consistently throughout the day, in a coordinated effort, that can be facilitated in an environment that provides that type of instruction. Everyone has a limited amount of working memory. Exclusively remote instruction would not be sufficient for Student because the amount of work needed is going to be intense. It's also not just about the work itself, but also the environment that Student needs to succeed.²⁷⁰

172. As a result of meeting and working with Student, Expert Witness did some research into possible dyslexia boarding schools that would also support Student's interests. Expert Witness could not find an appropriate dyslexia boarding school in the Pacific Northwest, but there were many on the East Coast. Expert Witness called and spoke to Boarding School 1, which is in

²⁶⁸ Expert Witness's testimony

²⁶⁹ Expert Witness's testimony

²⁷⁰ Expert Witness's testimony

New York, to have a professional conversation about the situations for students with dyslexia and how the West Coast doesn't have schools out here. Expert Witness also talked about Student specifically, including how there had been some testing for intellectual disability and autism that did not match up with personal observations. They talked about similar students that Boarding School 1 has attending their school. Although their website states that they do not accept students with intellectual disabilities, when they discussed Student and the specifics of Expert Witness's experiences with the student, the school acknowledged having students like that before. Based on Expert Witness's firsthand experience being on school boards, knowing a lot of professionals that work at schools for dyslexia, how they operate and how their student selection process works, Expert Witness stated that Boarding School 1 will consider each applicant individually and not consider just what's on paper, but also based on personal experience with the student reported to the school. Boarding School 1 had a good understanding of what students need to have an immersive experience to be able to progress and then become and see themselves as readers and would be a good fit for Student. While there could be other private dyslexia schools that could be appropriate for Student, Boarding School 1 is the only school that Expert Witness had time to contact. According to Boarding School 1's website, the tuition for boarding students is \$86,400 per year. There is a link on their website to apply for financial aid including the application with a step-by-step guide to assist families.²⁷¹

173. Pre-covid the cost of an Orton Gillingham tutor per year was an average of \$35,000. A current estimate of an Orton Gillingham tutor per year today would range between \$35,000 and \$50,000. However, that type of remediation would be for a student without all of the roadblocks and history that Student faces.²⁷²

174. EDM also reviewed some dyslexia boarding schools and agrees with Expert Witness that Student needs the services that only a dyslexia boarding school can provide. EDM found Boarding School 2 in EDM's home state that deals with autism and dyslexia and has a curriculum that can support Student's needs in those areas. EDM will help Student with the application process and believes that Student can get admitted into an appropriate boarding school. EDM did not fill out any boarding school applications or call any private dyslexia

²⁷¹ Expert Witness's testimony; Boarding School 1's website; P-65

²⁷² Expert Witness's testimony

schools for Student because Petitioners are waiting for the decision from this due process hearing and believes it would be preemptive to complete and submit applications.²⁷³

Expert Witness 2

175. Expert Witness 2 has a B.A. in Psychology, an M.S. in Education, an M.A. in Linguistics, an Ed.D. in Education with a certification in Dyslexia, certifications in teaching English to speakers of other languages and in structured literacy in the Orton-Gillingham approach. Expert Witness 2's professional experience is in literacy and dyslexia and owns a dyslexia training institute accredited by the National Dyslexia Association where they offer courses in structured literacy and reading comprehension. Expert Witness 2 has written three books about dyslexia, has been published and has been working one-on-one with students to remediate for 25 years. Expert Witness 2 has previously testified as a dyslexia and dyslexia remediation expert and was qualified as an expert all four times.²⁷⁴

176. Expert Witness 2 is familiar with the Nevada definition of Dyslexia under NRS 388.417(2) and agrees with Expert Witness 1 that Student meets the Nevada definition as well as the definition under the International Association of Dyslexia. Expert Witness 2 met with Student once for about 20 minutes, completed a records review and read Expert Witness's Report. Expert Witness 2 agrees with every finding in Expert Witness's Report and agrees that the only way that Student can receive a FAPE is by attending a boarding school that treats dyslexia.²⁷⁵

VI.

CONCLUSIONS OF LAW

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

ISSUE ONE

Whether District failed to evaluate Student for a reading disability under SLD, known as dyslexia, since October 20, 2020, under the Individuals with Disabilities Education Act (IDEA) and Nevada state law and if so, whether the failure resulted in a denial of a Free Appropriate Public Education (FAPE)?

²⁷³ EDM's testimony

²⁷⁴ Expert Witness 2's testimony; P-62

²⁷⁵ Expert Witness 2's testimony

LEGAL AUTHORITY

i. Requirement to Assess

The appropriateness of a student's eligibility should be assessed in terms of its appropriateness at the time of the child's evaluation and not from the perspective of a later time with the benefit of hindsight.²⁷⁶ When assessing whether an eligibility determination is “appropriate” under the IDEA, the Ninth Circuit looks to the time of the child's evaluation by a school district employing the “snapshot” rule that instructs the court to judge the appropriateness of the determination on the basis of the information reasonably available to the parties at the time of the IEP meeting and whether the team took the relevant information into account, not on whether or not it worked.²⁷⁷ 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. School districts cannot circumvent that responsibility by way of informal observations, nor can the subjective opinion of a staff member dispel such reported suspicion.²⁷⁸

The Ninth Circuit addressed the obligation to assess in depth in *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016). The Ninth Circuit found that the provisions of the IDEA and precedent establish that if a school district is on notice that a child may have a particular disability, it *must* assess that child for that disability, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment. That notice may come in the form of expressed parental concerns about a child's symptoms, of expressed opinions by informed professionals, or even by other less formal indicators, such as the child's behavior in or out of the classroom. 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. Rather, 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.²⁷⁹

Petitioners argue that the Ninth Circuit's reliance in *Avila v. Spokane Sch. Dist.*, 852 F3d 936, 977 (9th Cir. 2017) on the decision from the Eleventh Circuit in *Draper v. Atlanta Indep. Sch.*

²⁷⁶ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)

²⁷⁷ *L.J. v. Pittsburg Unified Sch. Dist.*, 835 F.3d 1168 (9th Cir. 2016)

²⁷⁸ *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016)

²⁷⁹ *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1121-1122 (9th Cir. 2016)

Sys., 518 F.3d 1275, is especially relevant in this case because the facts in *Draper* share many similarities with this matter. The student in *Draper* entered the school system as a seven-year-old child in the second grade, could not read, was writing at a kindergarten level, and did not know basic phonics, and though he was evaluated for intellectual delay at age 11, he was not evaluated for a specific learning disability even though he displayed signs of dyslexia. Five years later the district conducted a re-evaluation and found the student eligible for a specific learning disability, not intellectual disability.²⁸⁰

Under Nevada law, the District is required to ensure that pupils are assessed in all areas related to the suspected disability.²⁸¹ Specific learning disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which is not primarily the result of a visual, hearing or motor impairment, an intellectual disability, an emotional disturbance, or an environmental, cultural or economic disadvantage. The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. The disorder includes, without limitation, such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.²⁸²

Dyslexia is a neurological learning disability characterized by difficulties with accurate and fluent word recognition and poor spelling and decoding abilities that typically result from a deficit in the phonological component of language.²⁸³

Under Nevada law, the District is required to administer early literacy screening to each pupil enrolled in kindergarten or grade 1, 2 or 3 who has indicators for dyslexia and needs intervention. The assessment includes screening for (a) phonological and phonemic awareness; (b) sound-symbol recognition; (c) alphabet knowledge; (d) decoding skills; (e) rapid naming skills; and (f) encoding skills.²⁸⁴ Thereafter, if an assessment confirms that a pupil has indicators for dyslexia, the District is required to address the pupil's needs through the response to scientific, research-based intervention system of instruction. If the response to scientific, research-based intervention system of instruction determines that a pupil needs additional screening to determine

²⁸⁰ HO-14

²⁸¹ 20 USC § 1414(b)(3)(B); 34 CFR § 300.304(c)(4); NAC 388.340(4)(b)

²⁸² 20 USC § 1401(30); NAC 388.117

²⁸³ NRS 388.417(2)

²⁸⁴ NRS 388.439

whether the pupil has an SLD, including, without limitation, dyslexia, the pupil must receive additional testing by a trained professional using a norm-referenced test and the District shall perform a comprehensive evaluation for the pupil in addition to the required response to scientific, research-based intervention system of instruction.²⁸⁵

When developing an IEP for a pupil with dyslexia in accordance with NRS 388.419, the pupil's IEP team shall consider, without limitation, the following instructional approaches: (1) Explicit, direct instruction that is systematic, sequential and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil; (2) Individualized instruction to meet the specific needs of the pupil in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize pupil engagement; (3) Meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition; and (4) Multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice.²⁸⁶

ii. Individuals with Disabilities Education Act

Congress first enacted the IDEA in 1970 "to reverse this history of neglect" of disabled children in the United States. *Schaffer*, 546 U.S. at 52. Congress subsequently expanded the definition of children with disabilities to include specific learning disabilities, autism and traumatic brain injury, and children between the ages of three and nine who experienced developmental delays. These amendments furthered the IDEA's overarching substantive goal "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244-45 (2009) (noting the IDEA's express purpose as set forth in the statute and holding that "[a] reading of the Act that left parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services."). The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education."); see also 20 U.S.C. § 1412(a)(3)(B) ("Nothing in this chapter requires that children be classified by their disability so

²⁸⁵ NRS 388.441

²⁸⁶ NRS 388.443

long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.”).²⁸⁷ “Special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education.²⁸⁸ “Specially designed instruction” means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.²⁸⁹

Although courts are not bound by agency interpretations of statutes and regulations, they generally give them deferential consideration. The Office of Special Education and Rehabilitation Services (OSERS) received communications from stakeholders, including parents, advocacy groups, and national disability organizations, who believe that State and local educational agencies (SEAs and LEAs) are reluctant to reference or use dyslexia, dyscalculia, and dysgraphia in evaluations, eligibility determinations, or in developing an IEP under the IDEA. OSERS wrote a *Dear Colleague Letter* to clarify that there is nothing in the IDEA that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluation, eligibility determinations, or IEP documents. While the implementing regulations contain a list of conditions under the definition "specific learning disability," which includes dyslexia, the list is not exhaustive.²⁹⁰

Information about the child's learning difficulties, including the presenting difficulties related to reading, mathematics, or writing, is important in determining the nature and extent of the child's disability and educational needs. The IEP must address the child's needs resulting from the child's disability to enable the child to advance appropriately towards attaining his or her annual IEP goals and to enable the child to be involved in, and make progress in, the general education curriculum. Therefore, if a child's dyslexia, dyscalculia, or dysgraphia is the condition that forms the basis for the determination that a child has a specific learning disability, OSERS believes that there could be situations where an IEP Team could determine that personnel responsible for IEP

²⁸⁷ *E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings*, 758 F.3d 1162 (9th Cir. 2014)

²⁸⁸ 20 USC § 1401(29); 34 CFR § 300.39(a)(1); NAC 388.115

²⁸⁹ 34 CFR § 300.39(b)(3)

²⁹⁰ *Dear Colleague Letter*, 66 IDELR 188 (October 23, 2015, OSEP)

implementation would need to know about the condition underlying the child's disability (e.g., that a child has a weakness in decoding skills as a result of the child's dyslexia). OSERS further encourages States to review their policies, procedures, and practices to ensure that they do not prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in evaluations, eligibility, and IEP documents. Finally, in ensuring the provision of free appropriate public education, OSERS encourages SEAs to remind their LEAs of the importance of addressing the unique educational needs of children with specific learning disabilities resulting from dyslexia, dyscalculia, and dysgraphia during IEP Team meetings and other meetings with parents under IDEA.²⁹¹

ANALYSIS

i) *Dyslexia*

The IDEA mandates services tailored to a child's individual needs, not dictated by a particular diagnosis or classification.²⁹² Under Nevada law, the District is required to administer early literacy screening to each pupil enrolled in kindergarten or grade 1, 2 or 3 who has indicators for dyslexia and needs intervention and to ensure that pupils are assessed in all areas related to the suspected disability.²⁹³

In this case, the District was required to assess Student in all areas related to SLD and reading, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. Further, when developing an IEP for a pupil with dyslexia in accordance with NRS 388.419, the pupil's IEP team *shall* consider, without limitation, the following instructional approaches: (1) Explicit, direct instruction that is systematic, sequential and cumulative and follows a logical plan of presenting the alphabetic principle that targets the specific needs of the pupil; (2) Individualized instruction to meet the specific needs of the pupil in an appropriate setting that uses intensive, highly-concentrated instruction methods and materials that maximize pupil engagement; (3) Meaning-based instruction directed at purposeful reading and writing, with an emphasis on comprehension and composition; and (4) Multisensory instruction that incorporates the simultaneous use of two or more sensory pathways during teacher presentations and pupil practice.

²⁹¹ *Dear Colleague Letter*, 66 IDELR 188 (October 23, 2015, OSEP)

²⁹² *E.M. v. Pajaro Valley Unified Sch. Dist. Office of Admin. Hearings*, 758 F.3d 1162 (9th Cir. 2014)

²⁹³ 20 USC § 1414(b)(3)(B); 34 CFR § 300.304(c)(4); NAC 388.340(4)(b)

Here, a District IEP Team will only consider the instructional approaches listed on its' form IEP if the box is marked off for "SLD and Dyslexia," which is in contradiction to the requirement that services be tailored to a child's individual needs, and the requirements under Nevada law to conduct screening for dyslexia, and ensure that Student was assessed in all areas related to SLD and reading.²⁹⁴

The facts in *Draper* are distinguishable from the facts in this case. When the student in *Draper* was in the ninth grade and sixteen years old, he could only read at a third-grade level, performed at a third-grade level in arithmetic, and performed at a second-grade level in spelling.²⁹⁵ Similarly, Student is a thirteen-year old in the seventh-grade and as of October 2024, only had a base knowledge of alphabet phonic sounds and could not read complete sentences.²⁹⁶ Student's writing is in the pre-phonetic stage.²⁹⁷ The child in *Draper* was showing signs of dyslexia including writing letters, numbers and words backwards, but was not assessed for a specific learning disability.²⁹⁸ Here, Student was assessed for the eligibility categories of intellectual disability and specific learning disability and was found eligible under SLD.²⁹⁹ However, despite the fact that Student failed to progress from year to year despite interventions, despite Tier 1, 2 and 3 supports, and despite a change in placement, the District never even considered the instructional requirements listed in their form IEP when a student is found to have dyslexia in addition to an SLD.³⁰⁰ By failing to discuss whether student had indicators of dyslexia and failing to consider the instructional requirements required for students with SLD and dyslexia, District failed to assess Student in all areas of need as required by NRS 388.439 and NRS 388.441.

Student was referred for an early 3-year reevaluation by the first-grade classroom teacher in 2020 because Student received Tier II and III interventions since 2018 but was not responding to those extra supports and showed minimal skill retention and academic growth.³⁰¹ At the time of the reevaluation, Student knew less than ten letter names and sounds from the alphabet, and recognized a few numbers, though inconsistently.³⁰² Student's Reading and Math MAP scores fell

²⁹⁴ FOF 54; FOF 129

²⁹⁵ *Draper* at 1281.

²⁹⁶ FOF 124

²⁹⁷ FOF 124

²⁹⁸ *Draper* at 1281.

²⁹⁹ FOF 37

³⁰⁰ FOF 21; FOF 25; FOF 37; FOF 42; FOF 54; FOF 63; FOF 74; FOF 89; FOF 124

³⁰¹ FOF 21

³⁰² FOF 23

in the Low Achievement range, with low growth over the prior year, below the national average and in the 1st percentile.³⁰³ Student was administered the Kaufman Test of Educational Achievement, Third Edition (KTEA-3) which assesses student strengths and weaknesses relevant to achievement in reading, math, and written language. Results were in the very low range and below that of 0.1% same-grade peers in all areas assessed. Under the Supplemental Composite Score Table, Student fell in the very low range for phonological processing and letter & word recognition and in the below average range for the nonsense word decoding.³⁰⁴ Upon review of the 2020 MDT, Expert Witness found the following indicators for dyslexia: Student knows less than ten letter names and sounds and has concerns and deficits including cognition, reading, writing and math; Student could not read any words in January 2020, when in the first grade. By second grade, District had enough information from this 2020 MDT to determine that Student either had dyslexia or that more assessments were necessary because it's very clear that Student needed a very specialized, explicit, direct, repetitive, systematic instruction. A parent could not be expected to know what teaching methodology Student needed based on the information in this 2020 MDT.³⁰⁵

This Hearing Officer did not give weight to the fact that SPED Teacher did not suspect Student had dyslexia, as SPED Teacher's understanding of what dyslexia is does not correspond with the definition of Dyslexia under NAC 388.417(2).³⁰⁶ The reason that the SPED Teacher's testimony is important in this analysis is because (1) SPED Teacher was confused about the distinction between SLD and "SLD with dyslexia," (2) SPED Teacher was coached to mark the box "no" unless there was a doctor's diagnosis of dyslexia (as opposed to indicators of dyslexia), (3) SPED Teacher did not recognize indicators of dyslexia when revising an IEP that included information that Student (a) knows less than ten letter names and sounds from the alphabet, (b) can only recognize a few numbers inconsistently, (c) has concerns/deficits including cognition, reading, writing and math, (d) has MAP assessment scores that are within the unsatisfactory range for beginning of year grade level reading skills, (e) was performing in the 1st percentile range, (f) knows less than 5 letter names and sounds and (g) is unable to read simple CVC words; and (4) even with the aid of a colleague reviewing this IEP, no one noticed the foregoing indicators for

³⁰³ FOF 28

³⁰⁴ FOF 34

³⁰⁵ FOF 40

³⁰⁶ FOF 54

dyslexia.³⁰⁷ It is incredulous to believe that Guardian 2 knew or should have known that Student had indicators of dyslexia when SPED Teacher and a colleague did not know or suspect the same in May 2021. Absent an understanding that Student’s continued problems with reading and writing qualified as indicators of dyslexia, Guardian 2 did not have any reason to disagree with the eligibility of SLD in reading.

Guardian 1 and Guardian 2 followed the District’s guidance as the qualified educators of Student. Nothing in the record suggests that either Guardian had specialized knowledge or skills to further question the eligibility category of SLD. Guardian 1 and Guardian 2 might well have believed that Student was making progress based on the progress reports and information provided by District.³⁰⁸ **Nothing in the record shows that the possibility of dyslexia or indicators of dyslexia were ever discussed at any of the IEP meetings.** In order for a parent or person acting as a parent to have notice that Student was not receiving a special education and related services designed to meet their unique needs and prepare them for future education, employment and independent living, not only would they need to be aware of the insufficiency of the education being provided to Student, but also have knowledge that the same was causing harm to Student.

Here, year after year, District prevented Guardian 1 and Guardian 2 from being able to participate in informed decision-making regarding Student’s education by asserting that Student is not a Student with “SLD and Dyslexia,” thereby precluding Student from receiving the types of instructional approaches required to be considered by the IEP Team when a student is found to have dyslexia.³⁰⁹ It was not until an advocate from Agency reviewed Student’s educational records in October of 2024 that the possibility of dyslexia was raised to explain Student’s lack of progress in reading, writing and math.³¹⁰ Even after a request for a reevaluation based on that suspicion, the District denied the reevaluation citing that the refusal was due in part to the fact that none of the previous IEPs indicated an educational history of dyslexia on the special factors section.³¹¹

³⁰⁷ FOF 23; FOF 28; FOF 54

³⁰⁸ FOF 56; FOF 60; FOF 65; FOF 72

³⁰⁹ FOF 42; FOF 53; FOF 63; FOF 74; FOF 89; FOF 124; In 2024, the Nevada Department of Education issued a resource guide for each school district public school and charter school in Nevada covering topics like myths, assessments, accommodations, IEPs and instructional supports. Therein, they dispel the myth that dyslexia is different from specific learning disability in reading, stating that dyslexia is not distinct or unique from specific learning disability; that dyslexia is synonymous with word-level reading disability; and that while in some states, dyslexia is referred to as specific learning disability in basic reading, it means the same things.

<https://doe.nv.gov/offices/office-of-teaching-and-learning/dyslexia-guidance-documents>

³¹⁰ FOF 115

³¹¹ FOF 129

Guardian 1 and Guardian 2 could not be expected to know something that the trained educational professionals of District admit they never considered and refused to consider simply because it was not noted under the special factors section of the previous IEPs. District, however, had enough information and expertise to prompt an assessment for indicators of dyslexia or dyslexia as of October 23, 2020 and Nevada law places an affirmative responsibility on District to screen for dyslexia.

Therefore, District failed to evaluate Student for a reading disability under SLD, known as dyslexia, since October 20, 2020 and this procedural violation resulted in a denial of a FAPE.

- a. If yes (to Issue One): Whether District failed to indicate in Student’s 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 Individualized Education Program (IEPs) that Student was a student with SLD and Dyslexia, and if so, whether the failure of the IEP Team to consider the instructional approaches under NRS 388.443 was a procedural violation. If so, was there a denial of a FAPE?***

Here, there are indicators of dyslexia across Student’s academic career starting with the 10/20/2020 MDT that noted Student could only read the student’s first name in second grade, performed at the first percentile on a standardized test, was disruptive in class, acted out, was easily distracted, and demonstrated an inability to read at grade level.³¹² Additional indicators were noted in the 11/10/2020 IEP including the teacher observations that Student knew less than 5 letter names and sounds and was unable to read simple CVC words, often refused to work and struggled to remain focused.³¹³

In the 5/13/2022 IEP teacher observations noted that Student wanted to learn, had a difficult time remaining focused for any extended period of time, had still not mastered all of the lower and uppercase letters of the alphabet, had to have text read aloud to the student, and could not identify any sight words, even from a pre-K list in the third grade.³¹⁴

The 5/11/2023 IEP included Student’s most recent MAP scores which placed the student in the first percentile in comparison to grade level peers, and most telling of all the indicators, Student’s Core Phonics survey scores were inconsistent with the student’s inability to identify

³¹² FOF 152a

³¹³ FOF 152b

³¹⁴ FOF 152c

short vowels in words, which is a classic indicator of dyslexia, Further, teacher observations noted that although the student could recognize and read all the letters of the alphabet and was able to say the consonant sounds except for q and w, the student was struggling with reading 3 letter CVC words and could not state the beginning, medial and end sounds in the fourth grade.³¹⁵

The 10/26/2023 MDT report noted that the student could not read the words “on,” “it,” “be,” “apple,” and “that,” - words a first grader is expected to read but noted that the Student was able to recognize visual representations of words like a stop sign.³¹⁶

The 10/30/2024 IEP included teacher observations that noted could only read certain small words, often confuses letters like “V” and “U,” only has a base knowledge of alphabet phonic sounds, and cannot read complete sentences.³¹⁷

Year after year, Student’s IEP Teams did not even consider the instructional approaches under NRS 388.443 because Student had not been “diagnosed” with dyslexia, even though there were ongoing indicators of dyslexia contained within Student’s present levels in each of the IEPs and even though Student should have been retained in third grade for being a non-reader.³¹⁸ This procedural violation substantially interfered with the guardians and educational decisionmakers’ opportunity to participate in the IEP formulation process, resulted in the loss of educational opportunity for Student and actually caused a deprivation of educational benefits since Student’s second grade year. Student is now in the seventh grade and cannot read.

Therefore, the IEP Teams failure to indicate in Student’s 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 Individualized Education Program (IEPs) that Student was a student with SLD and Dyslexia, and the failure of the IEP Team to consider the instructional approaches under NRS 388.443 was a procedural violation which resulted in a denial of a FAPE.

ISSUE TWO

Whether District failed to evaluate Student for Autism Spectrum Disorder (ASD) since October 20, 2020, and if so, whether the failure resulted in a denial of a FAPE?

LEGAL AUTHORITY

³¹⁵ FOF 152d

³¹⁶ FOF 152e

³¹⁷ FOF 152f

³¹⁸ FOF 42; FOF 53; FOF 63; FOF 74; FOF 86; FOF 87; FOF 89; FOF 124

i. Requirement to Assess

The appropriateness of a student's eligibility should be assessed in terms of its appropriateness at the time of the child's evaluation and not from the perspective of a later time with the benefit of hindsight.³¹⁹ When assessing whether an eligibility determination is “appropriate” under the IDEA, the Ninth Circuit looks to the time of the child's evaluation by a school district employing the “snapshot” rule that instructs the court to judge the appropriateness of the determination on the basis of the information reasonably available to the parties at the time of the IEP meeting and whether the team took the relevant information into account, not on whether or not it worked.³²⁰ 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. School districts cannot circumvent that responsibility by way of informal observations, nor can the subjective opinion of a staff member dispel such reported suspicion.³²¹

The Ninth Circuit addressed the obligation to assess in depth in *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016). In *Timothy O.*, the school psychologist concluded that there was no need for Paso Robles to formally assess the student for any disorder on the autism spectrum because he saw the student use a “variety of facial expressions,” display emotions, and demonstrate his “skill at turn-taking.” The Ninth Circuit found that the provisions of the IDEA and precedent establish that if a school district is on notice that a child may have a particular disability, it *must* assess that child for that disability, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment. That notice may come in the form of expressed parental concerns about a child's symptoms, of expressed opinions by informed professionals, or even by other less formal indicators, such as the child's behavior in or out of the classroom. 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. Rather, 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.³²²

³¹⁹ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)

³²⁰ *L.J. v. Pittsburg Unified Sch. Dist.*, 835 F.3d 1168 (9th Cir. 2016)

³²¹ *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016)

³²² *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1121-1122 (9th Cir. 2016)

Autism spectrum disorder is a condition which (a) Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner; (b) Is usually apparent before the age of 3 years; and (c) Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.³²³

An evaluation for ASD must assess a pupil's health and medical status; developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses; cognitive abilities; social and emotional condition in multiple settings; academic achievement, adaptive skills; and speech, language and other communication skills of the pupil; and consider the sensory regulation, self-help and independent living skills, behavior problems, symbolic and imaginative play, activities and special interests, and motor skills of the pupil. Additionally, the eligibility team must consider the sensory regulation, self-help and independent living skills, behavior problems, symbolic and imaginative play, activities and special interests, and motor skills of the pupil.³²⁴

ANALYSIS

The first time that a surrogate parent or person acting as an educational decision maker in this matter had notice that Student should be assessed for eligibility under the autism category was in February 2025 when EDM received the Neuropsychological Evaluation Report after which the same was shared with District and a reevaluation was requested.³²⁵ While Case Worker 1 requested the neuropsychological evaluation on behalf of Student, Case Worker 1 did not suspect that Student was necessarily autistic. Case Worker 1 was unsure of Student's complete history and what, if any, diagnoses had been received in the past.³²⁶ There was no evidence in the record that Case Worker 1 ever mentioned the possibility of autism to District. Prior to February 2025, a referral question related to autism was never raised to or within the District. This Hearing Officer did not give weight to the fact that Expert Witness did not suspect that Student has ASD because that is not the Expert Witness's area of expertise and because ASD is a spectrum with a wide variety in the type and severity of signs, symptoms, and levels of support needed.

³²³ NAC 388.028

³²⁴ NAC 388.387

³²⁵ FOF 132

³²⁶ FOF 82

Student was referred for an early 3-year reevaluation by the first-grade classroom teacher in 2020 because Student received Tier II and III interventions since 2018 but was not responding to those extra supports and showed minimal skill retention and academic growth.³²⁷ The 2020 BASC-3 results rated Student as clinically significant in the areas of hyperactivity,³²⁸ aggression,³²⁹ conduct problems,³³⁰ externalizing problems, internalizing problems, attention problems,³³¹ learning problems, school problems, atypicality,³³² withdrawal, behavioral symptoms index, adaptability,³³³ study skills functional communication and adaptive skills and at risk in anxiety³³⁴ and social skills.³³⁵ The 2020 ABAS-3 results rated Student in the below average range for communication and academic skills, interpersonal and social competence skills, and independent and daily living skills.³³⁶

While the referral questions for the 2020 MDT did not include a concern that Student might have autism, Petitioners argue that there were enough indicators to trigger opening the scope of the evaluation to include autism including the clinically significant results in hyperactivity, aggression, conduct problems, externalizing problems, depression, internalizing problems, attention problems, learning problems, school problems, atypicality, withdrawal, behavioral symptoms index, adaptability, leadership, study skills functional communication, and adaptive skills as well as the at risk results in the areas of anxiety and social skills.³³⁷ In reviewing the eligibility requirements under the NAC in conjunction with the information available to District after completion of the 2020 MDT, the following table is helpful for the purposes of this analysis:

³²⁷ FOF 21

³²⁸ “Hyperactivity” is defined as overly active, speaks out of turn, has trouble staying seated, disrupts the schoolwork of other children. P-33, page P000277

³²⁹ “Aggression” is defined as argues when denied their own way, is overly aggressive, annoys others on purpose, threatens to hurt others, loses temper too easily. P-33, page P000277

³³⁰ “Conduct problems” is defined as gets into trouble, deceives others, sneaks around, uses others’ things without permission, breaks the rules, lies. P-33, page P000277

³³¹ “Attention problems” is defined as easily distracted, has a short attention span, has trouble concentrating, makes careless mistakes. P-33, page P000277

³³² “Atypicality” is defined as does strange things, seems out of touch with reality, says things that make no sense. P-33, page P000277

³³³ “Adaptability” is defined as does not accept things as they are does not adjust well to new teachers. P-33, page P000277

³³⁴ “Anxiety” is defined as easily stressed has panic attacks, worries about things that can’t be changed. P-33, page P000277

³³⁵ FOF 30

³³⁶ FOF 32

³³⁷ FOF 30

Required Assessments	Relevant Information	Support Opening Scope?
Health & Medical	Complete history unknown. ³³⁸	Yes
Developmental History	Student did not attend a school, such as preschool, before kindergarten. Student appeared to have post-traumatic stress-like symptoms, had a lot of difficulty in the classroom, eloped, used profanity, refused to engage in work and demonstrated communication delays. Student had minimal interactions that allowed Student to learn things that children normally learn during the developmental years prior to kindergarten. Student appeared unaccustomed to being in a school setting and being around larger groups of children and showed frustration or confusion because Student didn't understand how to properly play with others. Student showed a desire to learn basic social skills, but struggled to acquire some of the skills, even with the support provided. ³³⁹ Student did not answer all questions appropriately, for example, when asked about a favorite sport, the response was "green"; speech deficits were noted; Student has difficulty completing a 3-step direction. ³⁴⁰	Yes
Cognitive Abilities	Nonverbal Intelligence Index score was 72 and fell in the Moderately Below Average Range. ³⁴¹ Student's overall cognitive abilities scored over two standard deviations below the mean. ³⁴²	Yes
Social & Emotional Condition in multiple settings	Student demonstrated frustration with schoolwork which prompted bouts of crying, noncompliance, defiance, classroom disruptions, destruction of classroom materials, inattention, hyperactivity, profanity, and verbal aggression towards adults and peers. Observations of Student and teacher reports indicated that Student functioned below expectations of typical peers in the classroom. ³⁴³ BASC-3 rated Student as clinically significant in the following areas: hyperactivity, aggression, conduct problems, externalizing problems, depression, internalizing problems, attention problems, learning problems, school problems, atypicality, withdrawal, behavioral symptoms index, adaptability, leadership, study skills functional communication, and adaptive skills. Student was rated at risk in the areas of anxiety and social skills. ³⁴⁴ Social skills were below average and equal to 9% of same-age peers. Ability to interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed was also below average. ³⁴⁵	Yes

³³⁸ FOF 6; FOF 7; FOF 24

³³⁹ FOF 7

³⁴⁰ FOF 24

³⁴¹ FOF 26

³⁴² FOF 27

³⁴³ FOF 29

³⁴⁴ FOF 30

³⁴⁵ FOF 32

Academic Achievement	Student was referred for an early 3-year reevaluation by the first-grade classroom teacher in 2020 because Student received Tier II and III interventions since 2018 but was not responding to those extra supports and showed minimal skill retention and academic growth. ³⁴⁶ At the time of the reevaluation, Student could write Student's first name, knew less than ten letter names and sounds from the alphabet, and recognized a few numbers, though inconsistently. ³⁴⁷ Reading and Math MAP scores were within the unsatisfactory range for beginning of year grade level reading and math skills relative to common core standards, in the Low Achievement range, with low growth over the prior year, below the national average and in the 1 st percentile. ³⁴⁸ KTEA-3 results were in the very low range and below that of 0.1% same-grade peers in all areas assessed. ³⁴⁹	Yes
Adaptive Skills	Student's GAC was below average. ³⁵⁰ Breaking down the ABAS-3 further, the composite score for the conceptual domain standard summarizing performance across communication, functional academics and self-direction skill areas fell in the extremely low range and equal to or better than 2% of same-age peers. ³⁵¹	Yes
Speech, Language & Other Communication Skills	Communication abilities including speech, vocabulary, listening, conversation, and nonverbal communication skills were below average. ³⁵² Student's speech was generally intelligible, but errors were noticeable to the everyday listener. Student demonstrated a need for speech-language intervention in articulation. ³⁵³	Yes
And Consider:		
Sensory Regulation	No information provided.	N/A
Self-Help & Independent Living Skills	Practical domain scores were in the average range for practical skills, functioning at home, ability to protect self, and ability to perform self-care activities were all average. Ability to function and get around in the community was below average. ³⁵⁴	Neutral
Behavior Problems	On May 2, 2019, Student was given a Behavior Intervention Plan (BIP) because Student was not displaying 'on task' behaviors for any duration in the kindergarten classroom. ³⁵⁵ Student demonstrated frustration with schoolwork which prompted bouts of crying, noncompliance, defiance, classroom disruptions, destruction of classroom materials, inattention, hyperactivity,	Yes

³⁴⁶ FOF 21

³⁴⁷ FOF 23

³⁴⁸ FOF 28

³⁴⁹ FOF 34

³⁵⁰ FOF 31

³⁵¹ FOF 32

³⁵² FOF 32

³⁵³ FOF 35

³⁵⁴ FOF 32

³⁵⁵ FOF 12

	<p>profanity, and verbal aggression towards adults and peers. Observations of Student and teacher reports indicated that Student functioned below expectations of typical peers in the classroom.³⁵⁶ BASC-3 rated Student as clinically significant in the following areas: hyperactivity, aggression, conduct problems, externalizing problems, depression, internalizing problems, attention problems, learning problems, school problems, atypicality, withdrawal, behavioral symptoms index, adaptability, leadership, study skills functional communication, and adaptive skills. Student was rated at risk in the areas of anxiety and social skills.³⁵⁷ Behaviors continued to be used as an avoidance tactic if Student did not understand.³⁵⁸</p>	
Symbolic & Imaginative Play	<p>Student demonstrated very low range scores for short-term recall of visual and spatial relationships when asked to reproduce abstract figures with paper and pencil and within the low range on tasks that measured ability to construct patterns with blocks.³⁵⁹ Leisure skills needed for engaging in play and planning recreational activities were below average. Ability to interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed was also below average.³⁶⁰</p>	Yes
Activities & Special Interests	No information provided.	N/A
Motor Skills	<p>Student's spatial cluster scores which measure complex visual-spatial processing, responses which require moderate amount of eye-hand coordination for drawing or constructing block patterns fell in the very low range and equal to 0.1st percentile when compared to same-age peers.³⁶¹</p>	Yes

While the results of the BASC-3 results in and of itself, would not give rise to a suspicion of ASD, because both Atypicality and Self-Help skills were in the clinically significant range, it should have caused concern enough for the MDT Team to have additional discussions about the behavior, determine what, if any, additional information should be considered, and as a result, open the scope of the evaluation.³⁶²

Here, despite the fact that Student had 19 of 20 clinically significant or at risk factors under the BASC-3 which can indicate autism³⁶³ and 10 of the 13 factors that are considered for a finding

³⁵⁶ FOF 29

³⁵⁷ FOF 30

³⁵⁸ FOF 36

³⁵⁹ FOF 27

³⁶⁰ FOF 32

³⁶¹ FOF 27

³⁶² FOF 135

³⁶³ FOF 30; FOF 33

of eligibility under NAC 388.387 support opening the scope to consider whether Student was also eligible under the criteria for autism, the MDT Team failed to open the scope, complete all necessary assessments and apply the criteria pursuant to NAC 388.387.³⁶⁴ District had notice that Student might have autism as of October 23, 2020, and was required, pursuant to *Timothy O.*, to conduct a complete assessment for autism, rather than relying on what any particular member of the MDT Team did not see.³⁶⁵

Furthermore, upon comparison of Student's 10/23/2020 BASC-3 scores with the 10/26/2023 BASC-3 scores, concerns should have again risen because the F index score was in the extreme caution range, which would either indicate the presence of extraordinary maladaptive behavior or suggest that the teacher rated the child's performance more severely than warranted.³⁶⁶ Additional discussions should have ensued and the 10/23/2023 MDT Team should have opened the scope of the evaluation at that time in order to complete additional assessments.

The District argued that because Case Worker 1 completed the self-report caregiver questionnaire, the evaluation was not sound, however, the Private Psychologist made findings about Student's observations which were first-hand, including: Student had difficulty understanding and retaining instructions; Student took instructions in an overly rigid manner and instructions would have to be repeated; Student spoke and acted immature; Student made a variety of repetitive motions and was shaking their body by the end of the evaluation; Student demonstrated a dysregulated and inconsistent vocal tone and volume; Student did not have typical eye contact and actually demonstrated overly intense eye contact; Student was unable to demonstrate typical gross and fine motor skills; as the evaluation progressed Student became more behaviorally dysregulated and demonstrated an increased rate of nonsensical vocalization, repetitive motor movements, and demonstrated rigidity; and Student demonstrated a lack of understanding of humor and social stories.³⁶⁷ Further, Private Psychologist conducted a clinical interview and noted: Student shared that the student does not like loud noises, when asked how someone becomes a singer or enters the music field, responded with phrases which did not make sense in conversational speech, then began talking about a particular music artist as if the artist were an area of stereotypical interest, and brought up certain statements several times during the

³⁶⁴ FOF 33

³⁶⁵ FOF 33

³⁶⁶ FOF 136

³⁶⁷ FOF 104

evaluation process which indicated a stereotypical interest indicative of ASD. When asked about school, Student responded with a phrase which did not make sense in that context, which the student took far too literally saying, “My teacher says I can’t talk about my business.” Student had taken this instruction so literally that the student felt like they could not share what the student’s likes and dislikes were. Student told the Private Psychologist that the student did not have a lot of friends, partly because the student does not understand the humor or what is said by peers. Student talked about hobbies and interests in a very immature and shallow manner. When asked about other emotions, Student’s responses were sparse and were very limited in depth.³⁶⁸ There is no indication in the Evaluation that there was a heavy reliance on the questionnaire completed by Case Worker 1.

The failure to assess Student for all areas of suspected disability violates the IDEA’s procedural requirements, and as a result resulted in the loss of educational opportunities for Student causing a deprivation of educational benefits.

Therefore, District failed to evaluate Student for Autism Spectrum Disorder (ASD), since October 20, 2020, and this procedural violation resulted in a denial of a FAPE.

ISSUE THREE

Whether Student’s IEPs dated 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 were reasonably calculated to meet Student’s unique needs relating to reading, writing, math, and behaviors since May 21, 2021, and if not, whether the failure resulted in a denial of a FAPE?

LEGAL AUTHORITY

i. Reasonably Calculated

The IDEA requires a substantially adequate program of education to all eligible children. This requirement is satisfied, and a child has received a FAPE, if the child’s IEP sets out an educational program that is “reasonably calculated” to enable the child to receive educational benefits and to make progress appropriate in light of the child’s circumstances. The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. This fact-intensive exercise will be informed not only by the expertise of school officials but also by the input of the child’s parent or guardians.

³⁶⁸ FOF 109

Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether it is ideal. The IEP must aim to enable the child to make progress. A focus on the particular child is at the core of the IDEA. The instruction offered must be “specially designed” to meet a child’s “unique needs” through an IEP, which is not a form document. It is constructed only after careful consideration of the child’s present levels of achievement, disability, and potential for growth.³⁶⁹ If, however, the views of school personnel regarding an appropriate educational placement for a disabled child were conclusive, then administrative hearings conducted by an impartial decisionmaker would be unnecessary.³⁷⁰

Rowley sheds light on what appropriate progress will look like in many cases. The Court recognized that the IDEA requires that children with disabilities receive education in the regular classroom “whenever possible.” When this preference is met, “the system itself monitors the educational progress of the child.” “Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material.” Progress through this system is what our society generally means by an “education.” And access to an education is what the IDEA promises.³⁷¹

Rowley had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. A child’s IEP need not aim for grade-level advancement if that is not a reasonable prospect. But that child’s educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.³⁷²

When all is said and done, a student offered an educational program providing “merely more than *de minimis*” progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to “sitting idly ... awaiting the time when they were old enough to ‘drop out.’” The IDEA demands more. It requires an educational program reasonably calculated to enable a child

³⁶⁹ *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 37 S.Ct. 988, 995-996, 999 (2017).

³⁷⁰ *Los Angeles Unified Sch. Dist. v. A.O. by & through Owens*, 92 F.4th 1159, 1175 (9th Cir. 2024)

³⁷¹ *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 400-401, 37 S.Ct. 988, 995-996, 999-1000 (2017).

³⁷² *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 402, 137 S.Ct. 988, 1000 (2017).

to make progress appropriate in light of the child's circumstances.³⁷³ The program must be designed to convey a “meaningful benefit” to the student.³⁷⁴

Circumstances that may indicate that the child's IEP is not reasonably calculated to provide a meaningful educational benefit include, but are not limited to, the following: the child is displaying a pattern of behaviors that impede his or her learning or that of others and is not receiving any behavioral supports; or the child experiences a lack of expected progress toward the annual goals that are related to his or her disciplinary removals or the lack of behavioral supports, and the child's IEP is neither reviewed nor revised.³⁷⁵

ii. Denial of a FAPE

Petitioners rely in part on the Ninth Circuit Court of Appeals case, *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, (9th Cir. 2012) when a student’s third grade teachers and special education staff relied on an IEP that was developed and implemented for the student in second grade school year. The Ninth Circuit Court of Appeals agreed with the district court and the hearing officer that second grade IEP was outdated and obsolete, and that it either lacked benchmarks or the benchmarks were outdated. They concluded that an IEP developed for a second grader is not reasonably calculated to ensure educational benefits to that student in his third-grade year. Even if the student’s teachers and aides attempted to overlay third grade expectations onto the prior year’s IPE goals and objectives, it was unclear whether their efforts were appropriate or adequate because the second grade IEP did not provide an accurate assessment of the student’s present level of performance during his third-grade year. The court was not persuaded that an IEP designed to address second grade educational standards and objectives was reasonably calculated to enable the student to achieve passing marks in his third-grade year and then advance to fourth grade. The court conclude that the student was denied a FAPE because the outdated IEP did not satisfy the *Rowley* “educational benefit” standard. However, the student in *Anchorage* received educational instruction in a regular classroom environment with special education support and services unlike Student, who is in a self-contained classroom. Therefore, Petitioners’ reliance on this case is misplaced.

³⁷³ *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 402–03, 137 S. Ct. 988, 1001 (2017)

³⁷⁴ *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)

³⁷⁵ *Dear Colleague Letter*, 68 IDELR 76 (OSEP August 1, 2016)

ANALYSIS

The questions here are (1) whether the goals were appropriately ambitious in light of Student’s circumstances, (2) whether Student had the chance to meet challenging objectives, (3) whether Student received instruction that aimed so low it would be tantamount to “sitting idly ... awaiting the time when they were old enough to ‘drop out, and (4) whether the program was designed to convey a “meaningful benefit” to the student.

i. Reading Goals

The following are Student’s Reading Goals and Progress Reports from year to year beginning in 2020 through 2024:

11/10/2020 IEP	
Reading Goal	increase reading foundational skills by sounding out/reading the beginning consonants, medial vowels, and ending consonant sounds in CVC words, achieving a criteria of 4 out of 5 trials ³⁷⁶
Reading Phonics Goal	increase letter identification of uppercase and lowercase letters and production of all letter sounds, achieving a criteria of 80% accuracy ³⁷⁷
5/14/2021 IEP - This was a revision solely to address the post-Covid transition ³⁷⁸	
5/24/2021 Progress Report³⁷⁹	
Reading Goal Progress	“Unsatisfactory” for Benchmark 1, sound out beginning consonant sound in a CVC word, is marked and notes more time is needed on this goal; Student cannot sound out beginning consonant sounds in short CVC words at this time
Reading Phonics Goal Progress	“Satisfactory” for Benchmark 1, identify and produce the sounds for the letters AA-Ff, and notes Student can make the letter sounds of A, B, O, P, S, and Z
10/22/2021 Progress Report³⁸⁰	
Reading Goal Progress	“Satisfactory” for Benchmark 1, to sound out beginning consonant sound in a CVC word, and notes Student needs more time on this goal as the student has not mastered all the letters of the alphabet for upper and lower case letters
Reading Phonics Goal Progress	“Satisfactory” for Benchmark 1, identify and produce the sounds for the letters Aa-Ff with a notation to see the previous comment under the Reading Goal
1/20/2022 Progress Report³⁸¹	

³⁷⁶ FOF 44

³⁷⁷ FOF 45

³⁷⁸ FOF 53

³⁷⁹ FOF 56

³⁸⁰ FOF 57

³⁸¹ FOF 59

Reading Goal Progress	“Unsatisfactory” for the Reading Goal for all three Benchmarks ³⁸² and notes that Student has made little to no progress toward this goal. Student requires constant redirection during whole group instruction and makes little to no effort to complete assigned tasks during independent instruction. Student still has not mastered all the letters in the alphabet which impacts the student’s ability to even read 3 letter words
Reading Phonics Goal Progress	“Unsatisfactory” for all four Benchmarks ³⁸³ and notes Student has made little to no progress toward this goal, with the same additional comments listed under the Reading Goal
4/4/2022 Progress Report³⁸⁴	
Reading Goal Progress	“Satisfactory” for the Reading Goal, with no specific Benchmarks or comments listed
Reading Phonics Goal Progress	“Satisfactory” for Benchmarks 1 and 2, identifying and producing the sounds for the letters Aa-Ff and Gg-Mm, stating Student has made progress toward this goal, however, Student is unable to read a two-letter word
5/13/2022 IEP	
Reading Goal	increase reading skills by identifying and understanding the meaning of 30 sight words by orally expressing the words in a sentence achieving a criterion of 4 out of 5 trials ³⁸⁵
12/16/2022 Progress Report³⁸⁶	
Reading Goal Progress	“Satisfactory” and states Student is learning new sight words, but due to behavior is not practicing daily
5/11/2023 IEP	
Reading Goal	increase the ability to answer a variety of questions about a text such as multiple choice and written response with the use of non-fiction and fictional texts and assignments with at least 80% accuracy ³⁸⁷
7/18/2023 Progress Report³⁸⁸	
Reading Goal Progress	“Satisfactory” and states Student is maintaining progress on this goal
10/26/2023 IEP	
Reading Goal	increase the ability to answer a variety of questions about a text such as multiple choice and written response, with the use of non-fiction and fictional texts and assignments with at least 80% accuracy ³⁸⁹

³⁸² Sound out beginning consonant sound in a CVC word, sound out ending consonant sound in a CVC word, sound out the medial vowel sound in a CVC word

³⁸³ Identify and produce the sounds for the letters AA-FF, Gg-MM, Nn-Ss, and Tt-Zz

³⁸⁴ FOF 60

³⁸⁵ FOF 65

³⁸⁶ FOF 73

³⁸⁷ FOF 76

³⁸⁸ FOF 83

³⁸⁹ FOF 91

Reading Goal 2	increase ability to recognize, blend, and identify sounds to demonstrate an understanding of spoken words, syllables, and sounds (phenomes) achieving a criteria of 80% accuracy ³⁹⁰
12/06/2023 Progress Report³⁹¹	
Reading Goal Progress	“Unsatisfactory” for all Benchmarks
Reading Goal 2 Progress	“Unsatisfactory” for all Benchmarks, and the only comment noted was that Student was doing better but still working on the weaknesses
3/08/2024 Progress Report³⁹²	
Reading Goal Progress	“Satisfactory” and notes Student is continuing to make good progress and that the student would benefit from reading nightly
Reading Goal 2 Progress	“Satisfactory” and notes Student is continuing to make good progress and that the student would benefit from reading nightly
4/9/2024 IEP – This was a revision solely to add P2 placement to the SDI ³⁹³	
10/11/2024 Progress Report³⁹⁴	
Reading Goal Progress	*Not included in the Progress Report
Reading Goal 2 Progress	*Not included in the Progress Report
10/30/2024 IEP	
Reading Goal	improve letter and word recognition skills, enabling them to read and understand basic texts of at least 50 sight words with 80% accuracy and demonstrating improved comprehension ³⁹⁵
12/16/2024 Progress Report³⁹⁶	
Reading Goal Progress	*Not included in the Progress Report
5/20/2025 Progress Report³⁹⁷	
Reading Goal Progress	*Not included in the Progress Report

Student’s Reading Goals in the 11/10/2020, 5/13/2022, and 10/30/24 IEPs were appropriate in light of Student’s circumstances; but were too high or not appropriate in the 5/11/23 and 10/26/23 IEPs. Student did not have the chance to meet challenging objectives in any of the IEPs due to the failure of District to recognize that Student had indicators of dyslexia, failed to

³⁹⁰ FOF 92
³⁹¹ FOF 99
³⁹² FOF 100
³⁹³ FOF 101
³⁹⁴ FOF 119
³⁹⁵ FOF 125
³⁹⁶ FOF 130
³⁹⁷ FOF 138

consider the instructional approaches required by Nevada law. Therefore, the program was not designed to convey a “meaningful benefit” to Student.

ii. Writing Goals

The following are Student’s Writing Goals and Progress Reports from year to year beginning in 2020 through 2024:

11/10/2020 IEP	
Writing Goal	increase writing skills by being able to write their last name and the lowercase and uppercase letters of the alphabet with correct letter size and formation independently achieving a criteria or 4 out of 5 trials ³⁹⁸
5/14/2021 IEP - This was a revision solely to address the post-Covid transition ³⁹⁹	
5/24/2021 Progress Report⁴⁰⁰	
Writing Goal Progress	*Not included in the Progress Report
10/22/2021 Progress Report⁴⁰¹	
Writing Goal Progress	Satisfactory” for Benchmark 1, using a model, Student will write the student’s last name using correct letter size and formation, and notes Student is still working on this goal and has not mastered all the letters of the alphabet which impacts the ability to write the student’s last name without using a model
1/20/2022 Progress Report⁴⁰²	
Writing Goal Progress	“Satisfactory” for Benchmark 2, write the uppercase letters of the alphabet using correct letter size and formation, noting that Student will attempt to write the letters in the alphabet on a separate sheet of paper but is still not identifying all the letters on the student’s own; the student has not mastered writing the last name correctly, and still requires a model and guided practice for that task
4/4/2022 Progress Report⁴⁰³	
Writing Goal Progress	“Unsatisfactory” for meeting Benchmark 1, to write the student’s last name using correct letter size and formation, and notes Student has not made progress with this goal although attempts to work one-on-one have been made; Student is still unsure of all of the letters in the student’s name; Student needs to practice with flash cards for letters of the alphabet as well as continue working on the online programs that are based on skill level
5/13/2022 IEP	

³⁹⁸ FOF 47

³⁹⁹ FOF 53

⁴⁰⁰ FOF 56

⁴⁰¹ FOF 57

⁴⁰² FOF 59

⁴⁰³ FOF 60

Written Expression Goal	increase writing skills by developing 2–3-word sentences with beginning capitalization and end punctuation achieving a criterion of 75% ⁴⁰⁴
12/16/2022 Progress Report⁴⁰⁵	
Written Expression Goal Progress	“Satisfactory” and notes that Student is able to copy all the letters of the alphabet, sight words, and a simple sentence
5/11/2023 IEP	
Written Expression Goal	increase written expression skills by independently writing simple sentences, using correct uppercase/lowercase letters and punctuation when provided a model or sentence starter achieving a criteria of 80% accuracy ⁴⁰⁶
7/18/2023 Progress Report⁴⁰⁷	
Written Expression Goal Progress	*Not included in the Progress Report
10/26/2023 IEP	
Written Expression Goal 1	increase skills by independently writing simple sentences, using correct uppercase/lowercase letters, and punctuation when provided a model or a sentence starter, achieving a criteria of 80% accuracy ⁴⁰⁸
Written Expression Goal 2	increase writing skills by writing opinion pieces on topics or text, supporting a point of view with at least 80% accuracy ⁴⁰⁹
12/06/2023 Progress Report⁴¹⁰	
Written Expression Goal 1 Progress	“Unsatisfactory”
Written Expression Goal 2 Progress	“Unsatisfactory”
3/08/2024 Progress Report⁴¹¹	
Written Expression Goal 1 Progress	“Satisfactory”
Written Expression Goal 2 Progress	*Not included in the Progress Report
<i>4/9/2024 IEP</i> – This was a revision solely to add P2 placement to the SDI ⁴¹²	
10/11/2024 Progress Report⁴¹³	
Written Expression Goal 1 Progress	*Not included in the Progress Report
Written Expression Goal 2 Progress	*Not included in the Progress Report

⁴⁰⁴ FOF 66

⁴⁰⁵ FOF 73

⁴⁰⁶ FOF 77

⁴⁰⁷ FOF 83

⁴⁰⁸ FOF 93

⁴⁰⁹ FOF 94

⁴¹⁰ FOF 99

⁴¹¹ FOF 100

⁴¹² FOF 101

⁴¹³ FOF 119

10/30/2024 IEP	
Writing Goal	improve writing skills to progress from the pre-phonetic stage to the early phonetic stage, enabling them to write at least 10 words and 3 simple sentences with 80% accuracy ⁴¹⁴
12/16/2024 Progress Report⁴¹⁵	
Writing Goal Progress	*Not included in the Progress Report
5/20/2025 Progress Report⁴¹⁶	
Writing Goal Progress	“Satisfactory”

Student’s Writing Goals in the 11/10/20, 5/13/22, and 10/30/24 IEPs were appropriate in light of Student’s circumstances; but were too high or not appropriate in the 5/11/23 and 10/26/23 IEPs. Student had the chance to meet challenging objectives in the 11/10/20, 5/13/22, and 10/30/24 IEPs, but because the goals were not appropriate in the 5/11/23 and 10/26/23 Student did not have the chance to meet challenging objectives. Due to the failure of District to recognize that Student had indicators of dyslexia and failed to consider the instructional approaches required by Nevada law, the program was not designed to convey a “meaningful benefit” to Student.

iii. Math Goals

The following are Student’s Math Goals and Progress Reports from year to year beginning in 2020 through 2024:

11/10/2020 IEP	
Math Goal	increase foundational math skills by counting to 20 with one-to-one correspondence achieving a criteria of 80% ⁴¹⁷
5/14/2021 IEP - This was a revision solely to address the post-Covid transition ⁴¹⁸	
5/24/2021 Progress Report⁴¹⁹	
Math Goal Progress	“Satisfactory” for Benchmark 1, count to 1-10 with one-to-one correspondence
10/22/2021 Progress Report⁴²⁰	
Math Goal Progress	“Satisfactory” for Benchmark 2, Student will count to 1-15 with one-to-one correspondence, and states Student is able to count up to 20 but cannot consistently identify all of the numbers beyond 12
1/20/2022 Progress Report⁴²¹	

⁴¹⁴ FOF 126

⁴¹⁵ FOF 130

⁴¹⁶ FOF 138

⁴¹⁷ FOF 48

⁴¹⁸ FOF 53

⁴¹⁹ FOF 56

⁴²⁰ FOF 57

⁴²¹ FOF 59

Math Goal Progress	“Satisfactory” for Benchmark 3, count to 1-20 with one-to-one correspondence, noting that Student is capable of counting to 20 but still does not recognize all of the numbers after 12 on a consistent basis when seeing it written down
4/4/2022 Progress Report⁴²²	
Math Goal Progress	“Satisfactory” for meeting Benchmark 2, to count to 1-15 with one-to-one correspondence, and notes Student has made significant progress towards this objective, however the student still requires more time because the student has not mastered the numbers past 15 with consistency
5/13/2022 IEP	
Math Goal	increase math skills by solving problems involving measurement and estimation of intervals of time ⁴²³
12/16/2022 Progress Report⁴²⁴	
Math Goal Progress	Satisfactory” and notes Student is learning the analog clock but due to behavior is not practicing daily
5/11/2023 IEP	
Math Goal	increase ability to add and subtract single and multi-digit numbers achieving a criteria of 80% accuracy ⁴²⁵
7/18/2023 Progress Report⁴²⁶	
Math Goal Progress	*Not included in the Progress Report
10/26/2023 IEP	
Math Goal	increase the ability to add and subtract single and multi-digit numbers, with and without regrouping achieving a criteria of 80% accuracy ⁴²⁷
12/06/2023 Progress Report⁴²⁸	
Math Goal Progress	“Unsatisfactory” and notes Student is doing a better job with addition and subtraction when having objects to add and subtract from
3/08/2024 Progress Report⁴²⁹	
Math Goal Progress	“Satisfactory”
<i>4/9/2024 IEP – This was a revision solely to add P2 placement to the SDI⁴³⁰</i>	
10/11/2024 Progress Report⁴³¹	
Math Goal Progress	*Not included in the Progress Report
10/30/2024 IEP	
Math Goal	to improve mathematical computation and reasoning skills, enabling them to solve double-digit addition and subtraction problems and

⁴²² FOF 60

⁴²³ FOF 67

⁴²⁴ FOF 73

⁴²⁵ FOF 78

⁴²⁶ FOF 83

⁴²⁷ FOF 95

⁴²⁸ FOF 99

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⁴³⁰ FOF 101

⁴³¹ FOF 119

	demonstrate understanding of basic multiplication and division concepts with 80% accuracy ⁴³²
12/16/2024 Progress Report⁴³³	
Math Goal Progress	“Satisfactory”
5/20/2025 Progress Report⁴³⁴	
Math Goal Progress	*Not included in the Progress Report

Student’s Math Goals in the 11/10/20, 5/13/22, 5/11/23 and 10/26/23 IEPs were appropriate in light of Student’s circumstances; but were too high or not appropriate in the 10/30/24 IEP. Student had the chance to meet challenging objectives in the 11/10/20, 5/13/22, 5/11/23 and 10/26/23 IEPs, but because the goals were not appropriate in the 10/30/24 IEP, Student did not have the chance to meet challenging objectives. Overall, the program was designed to convey a “meaningful benefit” to Student.

iv. Behavior Goals

The following are Student’s Behavior Goals and Progress Reports from year to year beginning in 2020 through 2024:

11/10/2020 IEP	
Behavior Goal	decrease inappropriate behavior when feeling upset about a stressful situation, by choosing and implementing a previously taught calming strategy (“Stop, think, do,” “Feel your heart,” etc.) and then return to the task at hand within 10 minutes or less achieving a criteria of 4 out of 5 trials ⁴³⁵
5/14/2021 IEP - This was a revision solely to address the post-Covid transition ⁴³⁶	
5/24/2021 Progress Report⁴³⁷	
Behavior Goal Progress	“Satisfactory” for Benchmark 1, use the cue “stop, think, do” to remind Student to make good/safe choices and return to task within 15 minutes, and notes depending on the situation, Student is able to return to most tasks within 15 minutes after an upsetting event
10/22/2021 Progress Report⁴³⁸	
Behavior Goal Progress	“Unsatisfactory” for Benchmark 1, use the cue “stop, think, do” to remind Student to make good/safe choices, Student will return to task within 15 minutes, stating that Student requires a lot of redirection throughout the day, although the student has a Behavior Intervention Plan with incentives to work for, the student rarely gets to pick a prize

⁴³² FOF 127
⁴³³ FOF 130
⁴³⁴ FOF 138
⁴³⁵ FOF 49
⁴³⁶ FOF 53
⁴³⁷ FOF 56
⁴³⁸ FOF 57

1/20/2022 Progress Report⁴³⁹	
Behavior Goal Progress	“Unsatisfactory” for Benchmark 1, use the cue “Stop, think, do” to remind Student to make good/safe choices and return to task within 15 minutes, noting Student still struggles with this and needs to be redirected to attend to tasks several times during a class period, it not motivated by earning rewards and often yells out, “I don’t care” or “I don’t want anything anyways.
4/4/2022 Progress Report⁴⁴⁰	
Behavior Goal Progress	“Unsatisfactory” for Benchmark 1, use the cue “Stop, think, do” to remind Student to make good/safe choices and return to task within 15 minutes, noting Student requires a lot of redirection throughout the day, is easily distracted, and when the student does not feel confident in a task, reacts impulsively, which causes a disruption to the learning environment
5/13/2022 IEP	
Social & Behavioral Goal	increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis, by achieving a criterion of 80% accuracy ⁴⁴¹
12/16/2022 Progress Report⁴⁴²	
Social & Behavioral Goal Progress	“Unsatisfactory” and notes that Student is often breaking school rules, and elopes from the classroom
5/11/2023 IEP	
Social & Behavioral Goal 1	increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis, by achieving a criterion of 80% accuracy ⁴⁴³
Social & Behavioral Goal 2	increase the ability to display productive school behavior by using strategies to control emotions and increase positive behavior across school campus and classrooms on a daily basis by achieving a criterion of 80% ⁴⁴⁴
7/18/2023 Progress Report⁴⁴⁵	
Social & Behavioral Goal 1 Progress	*Not included in the Progress Report
Social & Behavioral Goal 2 Progress	*Not included in the Progress Report
10/26/2023 IEP	
Social & Behavioral Goal	to increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis by achieving a criterion of 80% accuracy ⁴⁴⁶

⁴³⁹ FOF 59

⁴⁴⁰ FOF 60

⁴⁴¹ FOF 68

⁴⁴² FOF 73

⁴⁴³ FOF 79

⁴⁴⁴ FOF 80

⁴⁴⁵ FOF 83

⁴⁴⁶ FOF 96

12/06/2023 Progress Report⁴⁴⁷	
Social & Behavioral Goal Progress	“Unsatisfactory” and notes that they still get outbursts from Student when the student is instructed to do things the student does not want to do
3/08/2024 Progress Report⁴⁴⁸	
Social & Behavioral Goal Progress	“Satisfactory”
4/9/2024 IEP – This was a revision solely to add P2 placement to the SDI ⁴⁴⁹	
10/11/2024 Progress Report⁴⁵⁰	
Social & Behavioral Goal Progress	“Satisfactory”
10/30/2024 IEP	
Social Emotional/Behavior Goal	demonstrate improved self-regulation and social skills, reducing instances of elopement, name-calling, and threatening behavior, while increasing positive interactions with peers and adults ⁴⁵¹
12/16/2024 Progress Report⁴⁵²	
Social & Behavioral Goal Progress	*Not included in the Progress Report
5/20/2025 Progress Report⁴⁵³	
Social & Behavioral Goal Progress	“Satisfactory”

Student’s Behavioral Goals in the 11/10/20 and 5/13/22 IEPs were appropriate in light of Student’s circumstances; but were too high or not appropriate in the 5/11/23, 10/26/23 and 10/30/24 IEP. District failed to get to the underlying root cause of the behaviors which were due in large part to Student’s inability to read. Student had the chance to meet challenging objectives in the 11/10/20 and 5/13/22 IEPs, but because the goals were not appropriate in the 5/11/23, 10/26/23 and 10/30/24 IEP, Student did not have the chance to meet challenging objectives. Due to the failure of District to recognize that Student had indicators of dyslexia, failed to consider the instructional approaches required by Nevada law, and failed to get to the root cause of the behaviors, the program was not designed to convey a “meaningful benefit” to Student.

Therefore, Student’s IEPs dated 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 were not reasonably calculated to meet Student’s unique needs relating to reading,

⁴⁴⁷ FOF 99

⁴⁴⁸ FOF 100

⁴⁴⁹ FOF 101

⁴⁵⁰ FOF 119

⁴⁵¹ FOF 128

⁴⁵² FOF 130

⁴⁵³ FOF 138

writing, and behaviors since May 21, 2021, and resulted in a denial of a FAPE. Student's IEPs dated 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 were reasonably calculated to meet Student's unique needs relating to math since May 21, 2021. The 11/10/20 IEP was the precursor to the goals in the 5/14/21 IEP which was a revision that did not change the goals.

ISSUE FOUR

Whether Student's 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 IEPs repeated Student's reading and behavior goals and failed to include services to assist with Student's behaviors, and if so, whether the failure resulted in a denial of a FAPE?

LEGAL AUTHORITY

i. Behavioral Services and Supports

In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.⁴⁵⁴ Incidents of child misbehavior and classroom disruptions, as well as violations of a code of student conduct, may indicate that the child's IEP needs to include appropriate behavioral supports. This is especially true when a pattern of misbehavior is apparent or can be reasonably anticipated based on the child's present levels of performance and needs. To the extent a child's behavior including its impact and consequences (e.g., violations of a code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures) impede the child's learning or that of others, the IEP Team must consider when, whether, and what aspects of the child's IEP related to behavior need to be addressed or revised to ensure FAPE. If the child already has behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP team should meet to consider whether the child's behavioral supports should be changed.⁴⁵⁵ IEP Teams should determine whether behavioral supports should be provided in any of three areas: (1) special education and related services, (2) supplementary aids and services, and (3) program modifications or supports for school personnel.⁴⁵⁶ School personnel may need training, coaching, and tools to appropriately address the behavioral needs of

⁴⁵⁴ 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); NAC 388.284(2)(b)

⁴⁵⁵ *Dear Colleague Letter*, 68 IDELR 76 (OSEP August 1, 2016)

⁴⁵⁶ 34 CFR § 300.320(a)(4)

a particular child. Supports for school personnel may be designed, as appropriate, to better implement effective instructional and behavior management strategies and specific behavioral interventions that are included in the child's IEP.⁴⁵⁷

It is incumbent upon IEP Teams to implement IDEA's procedural and substantive requirements to ensure that children with disabilities receive the behavioral supports they need to enable them to advance appropriately toward attaining the annual goals specified in their IEPs and to be involved in and make progress in the general education curriculum.⁴⁵⁸ A failure to implement these procedural requirements or provide needed behavioral supports to a child with a disability could result in the child not receiving a meaningful educational benefit, and therefore constitute a denial of FAPE.⁴⁵⁹

ii. Denial of a FAPE

A determination of whether there is a denial of FAPE is a fact-based determination, to be made on a case-by-case basis. Factors to consider include: whether the public agency has failed to follow the procedures IDEA requires when developing, reviewing, or revising the child's IEP, or has failed to consider and/or provide a child with a disability with necessary behavioral supports when the child's behavior impedes his or her learning or that of others; or whether the child's IEP is reasonably calculated to provide a meaningful educational benefit in the absence of behavioral supports.⁴⁶⁰ It is not enough to offer a student educational programming that provides “merely more than de minimis progress from year to year” resulting in instruction that aims so low that it is tantamount to “sitting idly...awaiting the time when they [are] old enough to drop out.”⁴⁶¹

ANALYSIS

i. Reading Goals

The following are Student’s reading goals from year to year beginning in 2020 through 2024:

11/10/2020 IEP	
Reading Goal	increase reading foundational skills by sounding out/reading the beginning consonants, medial vowels, and ending consonant sounds in CVC words, achieving a criteria of 4 out of 5 trials ⁴⁶²

⁴⁵⁷ *Dear Colleague Letter*, 68 IDELR 76 (OSEP August 1, 2016)

⁴⁵⁸ 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV); 1414(d)(3)(B)(i) and 1414(d)(3)(C).

⁴⁵⁹ *Dear Colleague Letter*, 68 IDELR 76 (OSEP August 1, 2016)

⁴⁶⁰ *Dear Colleague Letter*, 68 IDELR 76 (OSEP August 1, 2016)

⁴⁶¹ *Rowley*, 458 U.S., at 179, 102 S. Ct. 3034

⁴⁶² FOF 44

Reading Phonics Goal	increase letter identification of uppercase and lowercase letters and production of all letter sounds, achieving a criteria of 80% accuracy ⁴⁶³
<i>5/14/2021 IEP</i> - This was a revision solely to address the post-Covid transition ⁴⁶⁴	
5/13/2022 IEP	
Reading Goal	increase reading skills by identifying and understanding the meaning of 30 sight words by orally expressing the words in a sentence achieving a criterion of 4 out of 5 trials ⁴⁶⁵
5/11/2023 IEP	
Reading Goal	increase the ability to answer a variety of questions about a text such as multiple choice and written response with the use of non-fiction and fictional texts and assignments with at least 80% accuracy ⁴⁶⁶
10/26/2023 IEP	
Reading Goal	increase the ability to answer a variety of questions about a text such as multiple choice and written response, with the use of non-fiction and fictional texts and assignments with at least 80% accuracy ⁴⁶⁷
Reading Goal 2	increase ability to recognize, blend, and identify sounds to demonstrate an understanding of spoken words, syllables, and sounds (phenomes) achieving a criteria of 80% accuracy ⁴⁶⁸
<i>4/9/2024 IEP</i> – This was a revision solely to add P2 placement to the SDI ⁴⁶⁹	
10/30/2024 IEP	
Reading Goal	improve letter and word recognition skills, enabling them to read and understand basic texts of at least 50 sight words with 80% accuracy and demonstrating improved comprehension ⁴⁷⁰

As set forth under Issue 3, Student’s Reading Goals in the 11/10/20, 5/13/22, and 10/30/24 IEPs were appropriate in light of Student’s circumstances; but were too high or not appropriate in the 5/11/23 and 10/26/23 IEPs. The goals in the 11/10/20, 5/13/22 and 10/30/24 were, at their core, repeated goals based on Student’s failure to progress as shown throughout the progress reports.

ii. Behavior Goals

The following are Student’s reading goals from year to year beginning in 2020 through 2024:

11/10/2020 IEP	
Behavior Goal	decrease inappropriate behavior when feeling upset about a stressful situation, by choosing and implementing a previously taught calming

⁴⁶³ FOF 45
⁴⁶⁴ FOF 53
⁴⁶⁵ FOF 65
⁴⁶⁶ FOF 76
⁴⁶⁷ FOF 91
⁴⁶⁸ FOF 92
⁴⁶⁹ FOF 101
⁴⁷⁰ FOF 125

	strategy (“Stop, think, do,” “Feel your heart,” etc.) and then return to the task at hand within 10 minutes or less achieving a criteria of 4 out of 5 trials ⁴⁷¹
<i>5/14/2021 IEP</i> – This was a revision solely to address the post-Covid transition ⁴⁷²	
5/13/2022 IEP	
Social & Behavioral Goal	increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis, by achieving a criterion of 80% accuracy ⁴⁷³
5/11/2023 IEP	
Social & Behavioral Goal 1	increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis, by achieving a criterion of 80% accuracy ⁴⁷⁴
Social & Behavioral Goal 2	increase the ability to display productive school behavior by using strategies to control emotions and increase positive behavior across school campus and classrooms on a daily basis by achieving a criterion of 80% ⁴⁷⁵
10/26/2023 IEP	
Social & Behavioral Goal	to increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis by achieving a criterion of 80% accuracy ⁴⁷⁶
<i>4/9/2024 IEP</i> – This was a revision solely to add P2 placement to the SDI ⁴⁷⁷	
10/30/2024 IEP	
Social Emotional/Behavior Goal	demonstrate improved self-regulation and social skills, reducing instances of elopement, name-calling, and threatening behavior, while increasing positive interactions with peers and adults ⁴⁷⁸

Student’s behavior goals were essentially the same from 2022 through 2024. Student’s continued behavior issues that were triggered in large part by the failure to provide proper instruction in reading since at least 2020, compounded year after year and affected Student’s ability in every other class because Student could not read. Without the ability to read, the student cannot be expected to write or succeed in any subject matter that is taught conventionally.

This Hearing Officer finds the Expert Witness’s explanation credible related to the suffering and struggling that Student has gone through while remaining in the same school district that has failed to meet Student’s needs year after year, while taking into consideration other

⁴⁷¹ FOF 49

⁴⁷² FOF 53

⁴⁷³ FOF 68

⁴⁷⁴ FOF 79

⁴⁷⁵ FOF 80

⁴⁷⁶ FOF 96

⁴⁷⁷ FOF 101

⁴⁷⁸ FOF 128

elements, like the student's peer group, how Student feels about fitting in along with the social element of being that age, and the lack of access to participate in extracurriculars to be a logical explanation for Student's continued behavioral issues.⁴⁷⁹ Without getting to the root of the cause for the behaviors, Student could not be expected to make progress with the Behavioral and Social Goals, and the fact that they remained unchanged for years should have been a signal that what was provided to Student was not working and needed to be examined in more detail, well before Student reached the seventh grade.

Therefore, Student's 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 IEPs repeated Student's reading and behavior goals and failed to include services to assist with Student's behaviors and resulted in a denial of a FAPE.

ISSUE FIVE

Whether Student's 11/10/20, 5/14/21, 5/13/22, 5/11/23, 10/26/23, 4/9/24 and 10/30/24 IEPs failed to provide Student with measurable goals, which adequately describe current levels of performance and the extent to which the past goals were accomplished in reading, writing, math, and social/emotional/behavior, since October 20, 2020, and if so, whether the failure resulted in a denial of a FAPE?

LEGAL AUTHORITY

i. *Measurable Goals*

An IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability.⁴⁸⁰ It must also describe how the child's progress toward meeting the annual goals will be measured.⁴⁸¹ But there is no specific form of measurement required by statute or caselaw.⁴⁸² Thus, goals could be measured ordinally (e.g., no improvement/some improvement/ significant improvement), quantitatively, or in some other way. In developing the IEP, the IEP Team must consider several factors, including

⁴⁷⁹ FOF 168

⁴⁸⁰ 20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); NAC 388.284(1)(b)

⁴⁸¹ 20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3)

⁴⁸² *Cf. R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) (goal measurement can be "based on teachers' subjective observations").

the strengths of the child, the concerns of the parents for enhancing the education of the child, the results of the initial or most recent evaluation of the child, and the academic achievement, developmental, and functional needs of the child.⁴⁸³ In *Capistrano Unified Sch. Dist. v. S.W.*, the Ninth Circuit found in that case that the goals noted the evaluation methods, persons responsible for measuring the goals, benchmarks for progress, and that regular progress reports would be provided to the parents. Thus, the district court properly found that “goals were set and measured and the IEP included a description of how B.W.’s progress was to be measured.”⁴⁸⁴

Although courts are not bound by agency interpretations of statutes and regulations, they generally give them deferential consideration. An IEP for an eligible child with a disability under the IDEA must be aligned with the State’s academic content standards for the grade in which the child is enrolled. Research has demonstrated that children with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate instruction, services, and supports are provided. Conversely, low expectations can lead to children with disabilities receiving less challenging instruction that reflects below grade-level content standards, and thereby not learning what they need to succeed at the grade in which they are enrolled.⁴⁸⁵

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a FAPE that emphasizes special education and related services designed to meet the child’s unique needs and that prepare the child for further education, employment, and independent living. Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. An IEP must consider a child’s present levels of academic achievement and functional performance, and the impact of that child’s disability on his or her involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities. The State, however, is permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities.⁴⁸⁶

⁴⁸³ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a)(1)

⁴⁸⁴ *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125, 1135 (9th Cir. 2021)

⁴⁸⁵ *Dear Colleague Letter*, 66 IDELR 227 (November 16, 2015, OSEP)

⁴⁸⁶ *Dear Colleague Letter*, 66 IDELR 227 (November 16, 2015, OSEP)

ANALYSIS

The question here, is whether the IEPs included a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability and whether they described how the child's progress toward meeting the annual goals would be measured.

i. 11/10/2020 IEP

Student's Reading Goal was to increase reading foundational skills by sounding out/reading the beginning consonants, medial vowels, and ending consonant sounds in CVC words, achieving a criteria of 4 out of 5 trials. Benchmark 1 was to sound out beginning consonant sound in a CVC word. Benchmark 2 was to sound out ending consonant sound in a CVC word. Benchmark 3 was to sound out the medial vowel sound in a CVC word.⁴⁸⁷

*This Reading Goal was not a measurable goal based on Student's current levels of performance as indicated in the MDT and IEP, which included (1) KTEA scores in the very low range and below that of 0.1% same grade peers; (2) Student could not identify or name alphabet letters based on their sound, could not read CV words, CVC words, or basic sight words; and (3) teacher observations noted that Student knew less than ten letter names and sounds from the alphabet. Student needed to master the letters and sounds of the alphabet and the sound to symbol step before moving on to CVC words.*⁴⁸⁸

Student's Reading Phonics Goal was to increase letter identification of uppercase and lowercase letters and production of all letter sounds, achieving a criteria of 80% accuracy. Benchmark 1 was to identify and produce the sounds for the letters Aa- Ff. Benchmark 2 was to identify and produce the sounds for the letters Gg-Mm. Benchmark 3 was to identify and produce the sounds for the letters Nn-Ss. Benchmark 4 was to identify and produce the sounds for the letters Tt-Zz.⁴⁸⁹

This Reading Goal was a measurable goal that accurately reflected Student's current levels of performance as indicated in the MDT and IEP, which included (1) KTEA scores in the

⁴⁸⁷ FOF 44

⁴⁸⁸ FOF 34; FOF 23; FOF 147

⁴⁸⁹ FOF 45

very low range and below that of 0.1% same grade peers; (2) Student could not identify or name alphabet letters based on their sound, could not read CV words, CVC words, or basic sight words; (3) Student fell in the very low range for phonological processing and letter & word recognition and in the below average range for the nonsense word decoding; (4) Student was in the very low range of phonological processing skills, struggling to hear blend sounds, hear and create rhymes, match sounds, delete sounds, and segment words; and (5) Student could not identify or name alphabet letters based on their sound; could not read Consonant-Vowel (CV) words, Consonant-Vowel-Consonant (CVC) words, or basic sight words. Student needed to master the letters and sounds of the alphabet and the sound to symbol step before moving on to CVC words this Goal required Student to work on the entire alphabet and set forth the benchmarks that were expected to be met as the year progressed.⁴⁹⁰

Student's Writing Goal was to increase writing skills by being able to write their last name and the lowercase and uppercase letters of the alphabet with correct letter size and formation independently achieving a criteria or 4 out of 5 trials. Benchmark 1 was to write the student's last name using correct letter size and formation. Benchmark 2 was to write the uppercase letters of the alphabet using correct letter size and formation. Benchmark 3 was to write the lowercase letters of the alphabet using correct letter size and formation.⁴⁹¹

This Writing Goal was a measurable goal that accurately reflected Student's current levels of performance as indicated in the MDT and IEP, which included (1) KTEA scores in the very low range and below that of 0.1% same grade peers; (2) Student could not identify or name alphabet letters based on their sound, could not read CV words, CVC words, or basic sight words; (3) Student fell in the very low range for phonological processing and letter & word recognition and in the below average range for the nonsense word decoding; (4) Student was in the very low range of phonological processing skills, struggling to hear blend sounds, hear and create rhymes, match sounds, delete sounds, and segment words; and (5) Student could not identify or name alphabet letters based on their sound; could not read Consonant-Vowel (CV) words, Consonant-Vowel-Consonant (CVC) words, or basic sight words. Student needed to master the letters and sounds of the alphabet and the sound to symbol step before moving on to CVC words this Goal required Student to work on the entire alphabet and set forth the benchmarks that were expected to be met

⁴⁹⁰ FOF 34; FOF 147

⁴⁹¹ FOF 47

*as the year progressed. This Goal set benchmarks that were expected to be met as the year progressed.*⁴⁹²

Student's Math Goal was to increase foundational math skills by counting to 20 with one-to-one correspondence achieving a criteria of 80%. Benchmark 1 was to count to 1-10 with one-to-one correspondence. Benchmark 2 was to count to 1-15 with one-to-one correspondence. Benchmark 3 was to count to 1-20 with one-to-one correspondence.⁴⁹³

*This Math Goal was a measurable goal that accurately reflected Student's current levels of performance as indicated in the MDT and IEP, which included that Student recognized a few numbers, though inconsistently, and Math MAP scores within the unsatisfactory range for beginning of year grade level reading and math skills relative to common core standards, in the Low Achievement range, with low growth over the prior year, below the national average and in the 1st percentile. This Goal set benchmarks that were expected to be met as the year progressed.*⁴⁹⁴

Student's Behavior Goal was to decrease inappropriate behavior when feeling upset about a stressful situation, by choosing and implementing a previously taught calming strategy ("Stop, think, do," "Feel your heart," etc.) and then return to the task at hand within 10 minutes or less achieving a criteria of 4 out of 5 trials." Benchmark 1 was to use the cue "Stop, think, do" to remind Student to make good/safe choices so Student returns to task within 15 minutes. Benchmark 2 was to use the cue "Stop, think, do" to remind Student to make good/safe choices so Student returns to task within 12 minutes. Benchmark 3 was to use the cue "Feel your heart" when Student is getting excited as a reminder to calm down and to return to task within 15 minutes. Benchmark 4 was to use the cue "Feel your heart" when Student is getting excited as a reminder to calm down and to return to task within 12 minutes.⁴⁹⁵

*This Behavior Goal was a measurable goal that accurately reflected Student's current levels of performance as indicated in the MDT and IEP, which included the BASC-3 teacher rating scales. This Goal set benchmarks that were expected to be met as the year progressed.*⁴⁹⁶

⁴⁹² FOF 34; FOF 147

⁴⁹³ FOF 48

⁴⁹⁴ FOF 23; FOF 28

⁴⁹⁵ FOF 49

⁴⁹⁶ FOF 30

ii. 5/13/2022 IEP

Student's Reading Goal was to increase reading skills by identifying and understanding the meaning of 30 sight words by orally expressing the words in a sentence achieving a criterion of 4 out of 5 trials. Benchmark 1 was to read 1-8 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence. Benchmark 2 was to read 9-15 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence. Benchmark 3 was to read 16-22 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence. Benchmark 4 was to read 23-30 sight words from a Dolch or Fry's sight word list and orally recite the words and use the words in a complete sentence.⁴⁹⁷

*This Reading Goal was not a measurable goal for Student because Student still did not know every letter of the alphabet, the sounds that correspond, or mastered them. According to Student's 1/20/2022 Progress Report Student was marked "Unsatisfactory" for both Reading Goals and all benchmarks listed thereunder. Student's 4/4/2022 Progress Report stated Student was unable to read a two-letter word.*⁴⁹⁸

Student's Written Expression Goal was to increase writing skills by developing 2–3-word sentences with beginning capitalization and end punctuation achieving a criterion of 75%. Benchmark 1 was write all 26 uppercase letters of the alphabet achieving a criterion of 75%. Benchmark 2 was to write all 26 lowercase letters of the alphabet achieving a criterion of 75%. Benchmark 3 was to copy and write 1-8 sight words from the Dolch or Fry's pre-kindergarten list achieving a criterion of 75%. Benchmark 4 was to copy and write 9-16 sight words form the Dolch or Fry's pre-kindergarten list achieving a criterion of 75%. Benchmark 5 was to write 2 word sentences using sight words from Dolch or Fry's list achieving a criterion of 75%. Benchmark 6 was to write 3 word sentences using sight words from Dolch or Fry's list achieving a criterion of 75%.⁴⁹⁹

This Writing Goal was not a measurable goal for Student because Student still did not know every letter of the alphabet, the sounds that correspond, or mastered them. According to Student's 1/20/2022 Progress Report Student attempted to write the letters in the alphabet on a

⁴⁹⁷ FOF 65

⁴⁹⁸ FOF 59; FOF 60

⁴⁹⁹ FOF 66

separate sheet of paper but could not identify all the letters on the student's own, had not mastered writing the student's last name correctly, and still required a model and guided practice for that task. Student's 4/4/2022 Progress Report was marked "Unsatisfactory," and noted Student had not made much progress with this goal although attempts to work one-on-one have been made⁵⁰⁰.

Student's Math Goal was to increase math skills by solving problems involving measurement and estimation of intervals of time. Benchmark 1 was to identify the parts of an analog clock achieving a criterion of 75%. Benchmark 2 was to tell time to the hour on an analog clock achieving a criterion of 75%. Benchmark 3 was to tell time to the half hour on an analog clock achieving a criterion of 75%. Benchmark 4 was to tell time to the nearest minutes and measure time intervals in minutes achieving a criterion of 75%.⁵⁰¹

This Math Goal was not a measurable goal for Student because Student's 1/20/2022 Progress Report noted that Student was capable of counting to 20 but still did not recognize all of the numbers after 12 on a consistent basis when seeing them written down and Student's 4/4/2022 Progress Report noted Student had not mastered the numbers past 15 with consistency.⁵⁰²

Student's Social and Behavior Goal was to display productive school behavior by following adult directives across school campus and classrooms on a daily basis by achieving a criterion of 4 out of 5 trials. Benchmark 1 was to refrain from using profane language toward adults and peers and use kind words to express emotions achieving a criterion of 4 out of 5 trials. Benchmark 2 was to resolve conflicts without physical contact or inappropriate language (i.e. walk away, ignore, or state desired outcomes in a positive manner) achieving a criterion of 4 out of 5 trials. Benchmark 3 was to participate in competitive games play (academic or playground) until the end of the time period, regardless of the outcome (good sportsmanship) achieving a criterion of 4 out of 5 trials. Benchmark 4 was to identify and follow school and classroom rules and comply with adult directives within the 2nd request achieving a criterion of 4 out of 5 trials.⁵⁰³

The Behavior Goal was a measurable goal for Student because Student's 1/20/2022 Progress Report noted Student still struggle with the Goals set forth in the previous IEP and Student needed to be redirected to attend to tasks several times during a class period and the Student's 4/4/2022 Progress Report noted Student required a lot of redirection throughout the day,

⁵⁰⁰ FOF 59; FOF 60

⁵⁰¹ FOF 67

⁵⁰² FOF 59; FOF 60

⁵⁰³ FOF 68

*was easily distracted, and when the student did not feel confident in a task, reacted impulsively, causing a disruption to the learning environment. This Goal set benchmarks that were expected to be met as the year progressed.*⁵⁰⁴

iii. 5/11/2023 IEP

Student's Reading Goal was to increase the ability to answer a variety of questions about a text such as multiple choice and written response with the use of non-fiction and fictional texts and assignments with at least 80% accuracy. Benchmark 1 was to increase the ability to answer questions about a fictional text. Benchmark 2 was to increase the ability to answer questions about non-fictional text. Benchmark 3 was to increase the ability to ask questions about text the student reads.⁵⁰⁵

*This Reading Goal was not a measurable goal because the student was not ready for a comprehension goal when the student could not read.*⁵⁰⁶

Student's Written Expression Goal was to increase written expression skills by independently writing simple sentences, using correct uppercase/lowercase letters and punctuation when provided a model or sentence starter achieving a criteria of 80% accuracy. Benchmark 1 was to increase the ability to write sentences using correct punctuation. Benchmark 2 was to increase the ability to write sentences using correct letter formation. Benchmark 3 was to increase the ability to write sentences using correct noun/verb agreement.⁵⁰⁷

*This Written Expression Goal was not a measurable goal for Student because Student's 12/16/2022 Progress Report stated that the student is able to copy letters of the alphabet, sight words and a simple sentence and the student could not yet read.*⁵⁰⁸

Student's Math Goal was to increase ability to add and subtract single and multi-digit numbers achieving a criteria of 80% accuracy. No benchmarks or short-terms objectives were recorded.⁵⁰⁹

*This Math Goal was not a measurable for Student because it does not include any benchmarks for how Student would be able to progress over the year to accomplish this goal.*⁵¹⁰

⁵⁰⁴ FOF 59; FOF 60

⁵⁰⁵ FOF 76

⁵⁰⁶ FOF 157

⁵⁰⁷ FOF 77

⁵⁰⁸ FOF 73

⁵⁰⁹ FOF 78

⁵¹⁰ FOF 78

Student's first Social and Behavioral Goal was to increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis, by achieving a criterion of 80% accuracy. Benchmark 1 was to identify and follow school and classroom rules and comply with adult directives within the 2nd request achieving a criterion of 4 out of 5 trials, Benchmark 2 was to refrain from using profane language toward adults and peers and use kind words to express emotions achieving a criterion of 4 out of 5 trials. Benchmark 3 was to resolve conflicts without physical contact or inappropriate language (i.e. walk away, ignore, or state desired outcomes in a positive manner) achieving a criterion of 80% accuracy.⁵¹¹

*This Behavior Goal was a measurable goal for Student because Student's 12/16/2022 Progress Report noted Student often broke school rules and eloped from class. This Goal set benchmarks that were expected to be met as the year progressed.*⁵¹²

Student's second Social and Behavioral Goal was to increase the ability to display productive school behavior by using strategies to control emotions and increase positive behavior across school campus and classrooms on a daily basis by achieving a criterion of 80%. Benchmark 1 was to use strategies to control emotions by the use of breathing strategies, and a calm down corner. Benchmark 2 was to identify emotions in a variety of school settings. Benchmark 3 was to recognize emotions in a variety of school settings and state how the student is feeling.⁵¹³

*This Behavior Goal was a measurable goal for Student because Student's 12/16/2022 Progress Report noted Student often broke school rules and eloped from class. This Goal set benchmarks that were expected to be met as the year progressed.*⁵¹⁴

iv. 10/26/2023 IEP

Student's Reading Goal was to increase the ability to answer a variety of questions about a text such as multiple choice and written response, with the use of non-fiction and fictional texts and assignments with at least 80% accuracy. Benchmark 1 is to increase the ability to answer questions about a fictional text. Benchmark 2 is to increase the ability to answer questions about a non-fictional text. Benchmark 3 is to increase the ability to ask questions about text that the student reads.⁵¹⁵

⁵¹¹ FOF 79

⁵¹² FOF 73

⁵¹³ FOF 80

⁵¹⁴ FOF 73

⁵¹⁵ FOF 91

*This Reading Goal was not a measurable goal for Student because the student was not ready to answer a variety of questions about a text when the student could not read.*⁵¹⁶

Student's second Reading Goal was to increase ability to recognize, blend, and identify sounds to demonstrate an understanding of spoken words, syllables, and sounds (phenomes) achieving a criteria of 80% accuracy. Benchmark 1 is to isolate and pronounce the initial, medial vowel and final sounds (phonemes) in three-phonemes (CVC). Benchmark 2 is to add or substitute individual sounds (phonemes) in simple one-syllable words to make new words.⁵¹⁷

*This Reading Goal was not a measurable goal for Student because Student's easy CBM report stated Student was at the kindergarten and first grade levels, just identifying the letters and letter sounds. As of 9/20/2023 Student could read 21 letter sounds per minute. Student had issues with spelling, reading fluency and decoding. Student should have been retained in third grade for being a non-reader based on the "Read by 3" law.*⁵¹⁸

*Going into middle school the IEP Team was asked to strike a balance between what Student should be exposed to and also craft a goal that identified Student's needs to know initial and middle sounds in consonants, basic knowledge of vowel teams and CVC words. Student could not retain information for a long period of time, sometimes forgot what was learned from one day to the next. Student needed a lot of scaffolding and reinforcement. A core phonics screener should have been provided to Student and included in the present levels of the IEP.*⁵¹⁹

Student's Written Expression Goal was to increase skills by independently writing simple sentences, using correct uppercase/lowercase letters, and punctuation when provided a model or a sentence starter, achieving a criteria of 80% accuracy. Benchmark 1 was to increase the ability to write sentences using correct punctuation. Benchmark 2 was to increase the ability to write sentences using correct letter formation. Benchmark 3 was to increase the ability to write sentences using correct noun/verb agreement.⁵²⁰

This Written Expression Goal was not a measurable goal for Student because Student's 12/16/2022 Progress Report stated that the student is able to copy letters of the alphabet, sight

⁵¹⁶ FOF 157

⁵¹⁷ FOF 92

⁵¹⁸ FOF 87; FOF 89

⁵¹⁹ FOF 94

⁵²⁰ FOF 73

*words and a simple sentence and the student could not yet read. Student's 7/18/2023 Progress Report did not even include this Goal or if Student made any progress since 12/16/2022.*⁵²¹

Student's second Written Expression Goal was to increase writing skills by writing opinion pieces on topics or text, supporting a point of view with at least 80% accuracy. Benchmark 1 was to introduce the topic clearly, state an opinion, and create an organizational structure that develops the stated point of view. Benchmark 2 was to provide reasons supported by facts and details. Benchmark 3 was to effectively link the student's opinion and reason using words or phrases. Benchmark 4 was to provide a concluding statement or section related to the opinion stated.⁵²²

*This Written Expression Goal was not a measurable goal for Student because Student's 12/16/2022 Progress Report stated that the student is able to copy letters of the alphabet, sight words and a simple sentence and the student could not yet read. Student's 7/18/2023 Progress Report did not even include this Goal or if Student made any progress since 12/16/2022.*⁵²³

Student's Math Goal was to increase the ability to add and subtract single and multi-digit numbers, with and without regrouping achieving a criteria of 80% accuracy. Benchmark 1 was to increase fluency with basic addition and subtraction facts. Benchmark 2 was to increase ability to add and subtract with regrouping using models and place value strategies. Benchmark 3 was to increase ability to add and subtract multi-digit numbers without regrouping using place value strategies.⁵²⁴

This Math Goal was not a measurable goal for Student because the last Progress Report that addressed Student's ability to recognize numbers was the 4/4/2022 Progress Report and the 7/18/2023 Progress Report did not include the previous Math Goal or whether Student made any progress since 4/4/2022.

Student's Social and Behavioral Goal was to increase the ability to display productive school behavior by following adult directions across school campus and classrooms on a daily basis by achieving a criterion of 80% accuracy. Benchmark 1 was to identify and follow school and classroom rules and comply with adult directives within the 2nd request achieving a criterion of 4 out of 5 trials. Benchmark 2 was to refrain from using profane language towards adults and peers and use kind words to express emotions achieving a criterion of 80% accuracy. Benchmark

⁵²¹ FOF 83

⁵²² FOF 94

⁵²³ FOF 95

⁵²⁴ FOF 60; FOF 83

3 was to resolve conflicts without physical contact or inappropriate language achieving a criterion of 80%.⁵²⁵

*This Behavior Goal was not a measurable goal for Student because it is basically the same goal as the previous IEP and Student's 7/18/2023 Progress Report did not include any information about whether Student made progress on the previous two goals from the prior IEP.*⁵²⁶

v. 10/30/2024 IEP

Student's Reading Goal was to improve letter and word recognition skills, enabling them to read and understand basic texts of at least 50 sight words with 80% accuracy and demonstrating improved comprehension. Benchmark 1 states Student will accurately read and recognize at least 25 sight words including on, it, be, was, apple, and that. Benchmark 2 states Student will improve phonetic awareness by accurately identifying the sounds of at least 15 letters and blending sounds to read simple CVC words. Benchmark 3 states Student will demonstrate improved reading comprehension by correctly matching printed words with corresponding pictures (including previously missed words like bed, log, pan, bike, farm, and drum).⁵²⁷

*This Reading Goal was not a measurable goal for Student because Student could not read or write at the beginning of the school year and could not read even simple sentences. STAR Teacher had to start from scratch with Student, from the a, b, c's and worked on that for a few weeks before moving on to the sound of letters.*⁵²⁸

Student's Writing Goal was to improve writing skills to progress from the pre-phonetic stage to the early phonetic stage, enabling them to write at least 10 words and 3 simple sentences with 80% accuracy. Benchmark 1 was to correctly trace and copy all uppercase and lowercase letters from a model. Benchmark 2 was to correctly write 10 dictated words (including it, red, old, hate, will, find) using appropriate capitalization and spelling. Benchmark 3 was to independently write 3 simple sentences using correct capitalization and spacing.⁵²⁹

*This Writing Goal was not a measurable goal for Student because Student could not read or write at the beginning of the school year and could not write a basic sentence with a correct pronoun and a verb.*⁵³⁰

⁵²⁵ FOF 96

⁵²⁶ FOF 83

⁵²⁷ FOF 125

⁵²⁸ FOF 120

⁵²⁹ FOF 126

⁵³⁰ FOF 119

Student's Math Goal was to improve mathematical computation and reasoning skills, enabling them to solve double-digit addition and subtraction problems and demonstrate understanding of basic multiplication and division concepts with 80% accuracy. Benchmark 1 was to correctly solve at least 10 double-digit addition and subtraction problems. Benchmark 2 was to demonstrate an understanding of basic multiplication and division concepts by correctly solving simple problems (2×3 and $6 \div 2$). Benchmark 3 was to accurately complete tasks involving ordinal numbers, identifying and ordering numbers, and interpreting basic graphs (such as pictographs).⁵³¹

*This Math Goal was not a measurable goal for Student because Student's 12/06/2023 Progress Report was "Unsatisfactory" and stated that Student was doing a better job with addition and subtraction when the student had objects to add and subtract from.*⁵³²

Student's Social Emotional/Behavior Goal was to demonstrate improved self-regulation and social skills, reducing instances of elopement, name-calling, and threatening behavior, while increasing positive interactions with peers and adults. Benchmark 1 was to reduce instances of elopement and throwing objects. Benchmark 2 was to engage in positive interactions with peers, including using appropriate language and conflict resolution strategies, during structured activities. Benchmark 3 was to respond to questions with honesty and demonstrate accountability by accurately answering questions about actions or work.⁵³³

*This Behavior Goal was not a measurable goal for Student because it is basically the same goal as the previous two IEPs and Student's 12/06/2023 Progress Report was "Unsatisfactory" and noted Student still had outbursts when the student is instructed to do things that the student does not want to do.*⁵³⁴

Therefore, Student's IEP dated 11/10/20 failed to provide Student with a measurable reading goal; Student's 5/13/22 IEP failed to provide Student with measurable reading, writing and math goals; Student's 5/11/23 IEP failed to provide Student with measurable reading, writing, and math goals; Student's 10/26/23 IEP failed to provide Student with measurable reading, writing, math and behavior goals; and Student's 10/30/24 failed to provide Student with measurable reading, writing, math and behavior goals and therefore denied Student a FAPE by

⁵³¹ FOF 127

⁵³² FOF 99

⁵³³ FOF 128

⁵³⁴ FOF 99

failing to appropriately develop IEPs based on the individual needs of Student, considering Student's present levels of academic and functional performance.

ISSUE SIX

Whether District failed to appoint Student an Educational Surrogate pursuant to 20 U.S.C. § 1415(b)(2) when the court did not timely appoint an Educational Decision Maker (EDM) thereby denying meaningful parent participation from December 2022 to November 2023, and if so, whether the failure resulted in a denial of a FAPE?

LEGAL AUTHORITY

i. Appointment of Educational Surrogate

Each public agency must ensure that the rights of a child are protected when no parent can be identified, the location of a parent is not discovered after reasonable efforts, or the pupil is a ward of the State under the laws of the State.⁵³⁵ The duties of a public agency include the assignment of an individual to act as a surrogate for the parents and must include a method for determining whether the child needs a surrogate parents and for assigning a surrogate parent to the child.⁵³⁶ In the case of a child who is the ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements.⁵³⁷ A person selected as a surrogate parent must have no interest that conflicts with the interests of the pupil and have knowledge and skills that ensure the adequate representation of the pupil's interests.⁵³⁸ Except as otherwise provided in this subsection, the surrogate parent must not be an employee of the public agency which is involved in the education or care of the pupil, but he or she may be paid by the public agency to serve as the surrogate parent.⁵³⁹ The Office of Special Education Programs (OSEP) in the U.S. Department of Education agrees with this analysis. When providing guidance on the meaning of "parent" at 34 C.F.R. 300.30, OSEP stated: "The exclusion of an agency involved in the education or care of the child from serving as a parent is consistent with the statutory prohibition that applies to surrogate parents in sections 615(b)(2) and 639(a)(5) of the Act [IDEA}.... A private agency that contracts with a public agency for the education or

⁵³⁵ 20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519(a); NAC 388.283(1)(a)

⁵³⁶ 34 C.F.R. § 300.519(b)

⁵³⁷ 20 U.S.C. § 1415(b)(2)(A)(i); 34 C.F.R. § 300.519(c); NAC 388.283(2)

⁵³⁸ NAC 388.283(3)

⁵³⁹ 20 U.S.C. § 1415(b)(2)(A); 34 C.F.R. § 300.519(d); NAC 388.283(4)

care of the child, in essence, works for the public agency, and therefore, could not act as a parent under the Act".⁵⁴⁰

The surrogate parent shall represent the pupil in all matters relating to the identification of the pupil, the assessment of any special educational needs of the pupil, the educational placement of the pupil and the provision of a free appropriate program of public education to the pupil. The program must be provided for the pupil without any cost to the surrogate parent.⁵⁴¹ Reasonable efforts must be made to ensure that assignment of a surrogate parent not more than 30 days after a public agency determines the child needs a surrogate parent.⁵⁴²

ii. Denial of a FAPE

Not every procedural violation by a school district amounts to a denial of a FAPE. A hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or caused a deprivation of educational benefits.⁵⁴³

ANALYSIS

Guardian 2 was appointed as Student's educational decision maker and remained as such until passing away on May 10, 2023.⁵⁴⁴ However, upon the passing of Guardian 2, with no new educational decision maker appointed by the court, the District's obligation to appoint a surrogate parent was triggered. Instead of immediately appointing a surrogate parent for Student's May 11, 2023 IEP meeting or rescheduling the IEP meeting, the IEP meeting was held with Case Worker 1, who notified the IEP Team that listing a case worker as the legal guardian was incorrect.⁵⁴⁵ Case Worker 1 cannot serve as a surrogate parent pursuant to the IDEA and Nevada law.

Even with the knowledge that no educational decision maker or surrogate parent was present for the May 2023 IEP meeting, District did not appoint a surrogate parent for Student for the 2023-2024 school year but held a 3-year re-evaluation MDT and IEP meeting on October 26, 2023. Case Worker 1 signed the 2023 MDT as "caseworker" and initialed next to "parent

⁵⁴⁰ *In re: Student with a Disability*, 76 IDELR 20 (February 6, 2020); (Federal Register, Vol. 71, August 14, 2006, p. 46568).

⁵⁴¹ 34 C.F.R. § 300.519(g); NAC 388.283(5)

⁵⁴² 20 U.S.C. § 1415(b)(2)(B); 34 C.F.R. § 300.519(h)

⁵⁴³ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); NAC 388.310(11)

⁵⁴⁴ FOF 73

⁵⁴⁵ FOF 74

signature” and signed the IEP next to “parent signature.” Case Worker 1 reminded School 3 that the case worker should not be listed as the parent. Additionally, District received a *Letter of Authorization Packet* that states “DFS Representatives may participate in special education activities (such as IEP meetings) but are prohibited from acting as the parent at those activities and meetings.” Although Foster Parent 1 was also in attendance, Foster Parent 1 had not been appointed the educational decision maker or the surrogate parent. Student had only recently been placed with Foster Parent 1 and because of the limited amount of time with Student, Foster Parent 1 did not yet have the knowledge and skills to ensure adequate representation of the pupil’s interests.⁵⁴⁶ No evidence was presented by District that they verified Foster Parent 1 was appointed as the educational decision maker, or that Foster Parent 1 was willing to make educational decisions for Student prior to or at the IEP meeting. A new educational decision maker was not appointed by the court until after October 30, 2023.⁵⁴⁷

Therefore, District violated the IDEA and Nevada regulations requiring the appointment of a surrogate parent to ensure that Student’s interests were adequately represented and the violation resulted in a denial of a FAPE from May 10, 2023 to October 30, 2023.

ISSUE SEVEN

Whether District failed to include Student’s court appointed EDM in IEP meetings, and provide the EDM with progress updates since November 2023 and to provide the requested Student’s educational records since August 24, 2024, thereby denying meaningful parental participation, and if so, whether the failure resulted in a denial of a FAPE?

LEGAL AUTHORITY

i. Required IEP Team Members

IEP Team means a group of individuals composed of the parents of a child with a disability; not less than 1 regular education teacher of such child; not less than 1 special educational teacher of such child; a representative of the local education agency who’s is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the local educational agency; an individual who can interpret the

⁵⁴⁶ FOF 72; FOF 90

⁵⁴⁷ FOF 98

instructional implications of evaluation results, who may be a member of the team as already set forth; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever appropriate, the child with a disability.⁵⁴⁸

ii. Educational Records

The parents of a child with a disability must be afforded an opportunity to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.⁵⁴⁹ The parents of a pupil must be allowed to inspect and review any education records relating to their child which are collected, maintained or used by an agency with personally identifiable information. The agency with personally identifiable information shall comply with such a request for inspection and review without unnecessary delay and in any event: (a) Before any meeting regarding the pupil's individualized educational program or any hearing or resolution meeting pursuant to NAC 388.306 to 388.310, inclusive, as applicable; and (b) Not later than 45 days after the request has been made.⁵⁵⁰ Procedural violations, which prevent a parent from learning critical medical information render the accomplishment of the IDEA's goals -and the achievement of a FAPE - impossible.⁵⁵¹

Petitioners cite the Nevada Supreme Court's decision in *Clark County School District v. Eighth Judicial District Court* issued on March 6, 2025 in their Complaint, however on November 26, 2025, the Nevada Supreme Court granted a Petition for a Writ of Mandamus or Prohibition challenging a district court order directing the production of education records and withdrew the previous decision.⁵⁵² The Nevada Supreme Court concluded that not every email that mentions a student and is stored on a school's email server constitutes an education record under FERPA and its analogous Nevada statutes. Instead, an individual email may become part of a student's education records when the school district or its agent takes affirmative and intentional steps to treat the email as an institutional record and stores it with a designated individual in a designated place.

⁵⁴⁸ 20 U.S.C. § 1414 (d)(1)(B); 34 C.F.R. § 300.321(a)

⁵⁴⁹ 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a)

⁵⁵⁰ NAC 388.287(1)

⁵⁵¹ *Amanda J. v. Clark County School Dist.*, 267 F.3d 877, 891 (9th Cir. 2001)

⁵⁵² *Clark County School District v. Eighth Judicial District Court*, 141 Nev. Adv. Op. 58 (2025)

iii. Meaningful Parental Participation

The importance of parental participation in the IEP process is evident. Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. As the Supreme Court made clear in *Board of Education v. Rowley*: “It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard.”⁵⁵³ Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE.⁵⁵⁴

The critical nature of the provisions protecting parental involvement is highlighted when they are considered in light of the stated purposes of the IDEA. To accomplish the IDEA's goal of ensuring that "all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, those individuals who have first-hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process. The procedural safeguards facilitate this objective. They also help to ensure that the rights of children with disabilities and their parents or guardians are protected.”⁵⁵⁵

ANALYSIS

i. Failure to Include EDM in IEP Meetings

An amendment to Student’s IEP was completed on 4/9/2024 which added P2 placement to the Specially Designed Instruction page. The first page of the 4/9/2024 IEP mistakenly lists Case Worker 1 as the Parent/Guardian/Surrogate. Case Worker 1 was no longer assigned to Student and was not present at the IEP meeting. Foster Parent 1 is listed under the IEP Participants as “Parent/Guardian/Surrogate.” The 4/9/2024 Amended IEP does not have a signature on the “Parent Signature” page. No evidence was offered or admitted proving that District was aware of the educational decision maker appointed to Student from November 2023 to August 2024. The

⁵⁵³ *Shapiro ex rel. Shapiro v. Paradise Valley Unified*, 317 F.3d 1072 (9th Cir. 2003)

⁵⁵⁴ *Shapiro ex rel. Shapiro v. Paradise Valley Unified*, 317 F.3d 1072, 1079 (9th Cir. 2003)

⁵⁵⁵ *Amanda J. v. Clark County School Dist.*, 267 F.3d 877, 891 (9th Cir. 2001)

former educational decision maker did not testify, Case Worker 2 is no longer with DFS and did not testify, and Case Worker 3 was not assigned to Student until May 2024. However, Foster Parent 1 is not the educational decision maker for Student and was the only person listed as the Parent/Guardian/Surrogate on the 4/9/2024 Amended IEP.⁵⁵⁶

School 3 was notified via fax that EDM was appointed as Student's educational decision maker on August 27, 2023. No evidence was provided that the notification was forwarded from School 3 to School 4. However, Attorney for Petitioners subsequently emailed copies of the *Request for Student Health Office Records* and a *Release of Educational Records Authorization* signed by EDM, authorizing District to discuss and release Student's educational/medical records, or reports of any nature to the attorneys on September 12, 2024 to SEIF at School 4.⁵⁵⁷ At the very latest, School 4 had notice as of 9/12/2024 that EDM was the educational decision maker and should have been notified and included in the 10/26/2023 IEP meeting yet failed to do so. School 4's Psychologist even acknowledged as much during a phone conversation with EDM in December 2024.⁵⁵⁸

Therefore, District failed to include Student's educational decision maker, a required IEP Team member, in the 10/30/2024 IEP meeting.

ii. Educational Records

EDM was provided with two sets of records, the first set of records was picked up on or about 9/18/2024 and the second set of records were available for pick-up on 9/26/2024.⁵⁵⁹ A second request for records was made by EDM on May 28, 2025. No evidence was offered or admitted related to whether EDM received additional records prior to the 5-business day disclosures that were exchanged on August 15, 2025, and what records, if any, have still not been produced as of the date of this due process hearing.⁵⁶⁰ The first time that District was made aware of the Neuropsychological Evaluation was when EDM provided it to School 4 in February 2025.⁵⁶¹

The record is not clear and there is not enough evidence to determine whether the EDM was provided with progress updates since November 2023 and provided the requested Student's educational records since August 24, 2024.

⁵⁵⁶ FOF 101

⁵⁵⁷ FOF 114

⁵⁵⁸ FOF 129

⁵⁵⁹ FOF 114

⁵⁶⁰ FOF 140

⁵⁶¹ FOF 132

iii. Denial of a FAPE

Children in the foster care system are already at a disadvantage because they have been removed from their legal parent or guardian, or in this case, lost their parents. Specific regulations and laws were carved out to protect children that are made wards of the State to ensure that the children's rights to a FAPE are protected. Here, due to the failure of District to include a required member of the IEP Team in IEP meetings, which is a procedural violation, resulted in the loss of educational opportunity and seriously infringed the educational decision makers' opportunity to participate in the IEP formulation process. Upon appointment of EDM, along with a team of advocates, Student's dyslexia was finally brought to light along with the Student's diagnosis of ASD. Had the educational decision makers been involved in the IEP meetings, and at the very least, the 10/30/2024 IEP meeting, there is no telling where Student would be today. Instead, Student has suffered for an additional year while continuing to struggle with dyslexia and ASD, neither of which are reflected in Student's IEPs.

Therefore, the District's failure to include Student's educational decision maker, a required IEP Team member, in the 10/30/2024 IEP meeting was a procedural violation that resulted in a denial of a FAPE from April 9, 2024 to the present.

COMPENSATORY EDUCATION

Ninth Circuit case law holds that the district court has the power to "grant such relief as [it] determines is appropriate." 20 U.S.C. § 1415(e)(2). "[E]quitable considerations are relevant in fashioning relief."⁵⁶² When considering an equitable remedy and applying a fact specific analysis, there is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA, and be reasonably calculated to provide the educational benefits the school district should have supplied in the first place.⁵⁶³ Compensatory education is not a contractual remedy, but an equitable remedy, part of the court's resources in crafting "appropriate relief."⁵⁶⁴

This Hearing Officer also looked to the persuasive authority of other Circuits as well as guidance from OSEP related to compensatory education. Once the need for an award is

⁵⁶² *School Comm. of Burlington v. Department of Education*, 471 U.S. 359, 374, 105 S.Ct. 1996, 2005, (1985).

⁵⁶³ *Parents of Student W. v. Puyallup Sch. Dist.*, No. 3, 31 F.3d 1489, 1497 (9th Cir. 1994)

⁵⁶⁴ *Parents of Student W. v. Puyallup Sch. Dist.*, No. 3, 31 F.3d 1489, 1497 (9th Cir. 1994)

established, the impartial hearing officer is responsible for crafting an appropriate compensatory education award after a fact-based analysis. It is not the responsibility of either party to determine the appropriate relief.⁵⁶⁵

Under Part B of the Individuals with Disabilities Education Act (Part B), it is the responsibility of the SEA to ensure that each public agency, establishes and implements procedural safeguards that meet the requirements concerning impartial due process hearings, impartial hearing officers, hearing rights, hearing decisions, appeal rights, and stay put. In addition to meeting the requirements of the Part B regulations referenced above, the due process hearing system established by a State must provide a hearing officer with the authority to grant the relief necessary, under the particular facts and circumstances of each case, to ensure that a child receives the FAPE to which the child is entitled. *See* Letter to Margaret Kohn, published at 17 *EHLR* 522 (hearing officer has authority to award compensatory education where finding is made that a public agency has failed to provide FAPE to a particular student). The specific authority of hearing officers generally will be set forth in State law or regulation. Part B provides that each SEA must exercise general supervision over all educational programs for children with disabilities within the State and must ensure that such programs are administered in accordance with State education standards and Part B requirements. Therefore, it is ultimately the SEA's responsibility to ensure that hearing officers are provided the authority they need to grant relief necessary to the resolution of Part B complaints, that a hearing officer's orders are implemented, and that any actions necessary to enforce those orders are taken.⁵⁶⁶

Petitioners were placed on notice, both in the *Notice of Prehearing Conference* and the *Prehearing Report and Order* that with regard to remedies, they were expected to provide evidence to support the proposed resolution(s) in the Complaint.⁵⁶⁷ Unfortunately the evidence provided to this Hearing Officer related to the request for remedies was limited. Without evidence to support requested relief, this Hearing Officer cannot issue orders that can be enforced by the Nevada

⁵⁶⁵ *Reid v. District of Columbia*, 43 IDELR 32 (D.C. Cir. 2005) (requiring a fact-specific determination of a compensatory education award designed to elevate the student to the position he would be in if not for the denial of FAPE); and *Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. 2010) (stating that "the task of 'designing [the student's] remedy will require a fact-specific exercise of discretion by either the district court or a hearing officer,' ... not by the parties themselves").

⁵⁶⁶ *Letter to Armstrong*, 28 IDELR 303 (OSEP 1997)

Department of Education as required. Therefore, the orders herein below are based on the evidence that was offered and admitted into the record.

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

Petitioner's requested relief numbers 1 through 3 is not appropriate because there is no guarantee that the parties would agree to the results of any subsequent MDT evaluation and eligibility determination or an appropriate IEP based on the positions that each party took during this due process hearing. The entire point of this due process hearing would be for naught and would potentially end up in another due process complaint.

Petitioner's requested relief number 4 (e) is not appropriate because there is no way to ensure that Student would use all the services to which the Student is entitled absent orders that delineate the same, along with an order explaining what happens to any unused funds. This Hearing Officer does not have the evidence necessary to craft an order with this level of detail, and anything less would not be enforceable by the Nevada Department of Education.

Petitioner's requested relief number 4 (a) through (d) is not appropriate because this Hearing Officer does not have evidence to support the number of hours requested for the compensatory education and in fact, it is not supported by the evidence this Hearing Officer does have from Petitioners' Expert Witness explaining in detail what remedies would or would not be appropriate for this Student's unique needs and circumstances.

Petitioner's oral request for the District to pay for an unknown or a "to be determined" school is not appropriate because the order cannot give carte blanche to those responsible for Student to choose any school which may or may not be certified and which may or not be qualified and able to meet Student's needs.

Based on the evidence this Hearing Officer does have, **it is hereby ordered** that:

1. Student's placement shall be changed to a Residential Placement at Boarding School 1.
2. District shall pay for tuition (which shall include room and board, books uniforms, and meals), travel expenses to go to and from the school for each school year, and application fees for Student to attend Boarding School 1. Tuition shall be paid directly to the school. District shall pay the above for a period of 5 years to compensate for failing to provide Student with a FAPE since October 2020, to provide Student with the educational benefits

that would have accrued from special education services that District should have supplied in the first place.

3. DFS, and EDM, along with the support of the education team, shall complete the application for Student along with the required application for financial assistance contained on Boarding School 1's website.
4. DFS, EDM and District shall ensure that all education, and any other records required by Boarding School 1, are provided to Boarding School 1 by the deadline set by Boarding School 1.
5. If Boarding School 1 **requires** additional assessments or evaluations in the areas of dyslexia, ASD or intellectual disability, District shall pay for the same within 30 days of receiving notice from Boarding School 1 of the requirement. If Boarding School 1 needs the assessment/evaluation/report in less than the 30 days set forth in this order, then District shall comply with the timeline provided by Boarding School 1.

This seventh grade Student, who cannot read or write, who has indicators of dyslexia and autism (and a possible intellectual disability) who has been in the foster care system and has been failed by the District year after year cannot make progress if Student is relegated back to that same environment. Student needs to be immersed in an environment with a structured literacy program taught by experienced instructors and staff (also trained and well-experienced, if not certified) in all content areas so there is cohesion in the day along with a "whole child approach." Student needs instructors that can layer in and build on the concepts consistently throughout the day, in a coordinated effort, facilitated in an environment that provides that type of instruction. No evidence was offered or admitted that District can provide that type of environment and level of experienced instructors. No evidence was offered or admitted that there is any school in the state of Nevada that can provide that type of environment and level of experienced instructors. It is not reasonable or realistic for this Student to attend a district school all day long, where Student is not receiving an educational benefit in light of the student's circumstances, and then expect Student to work on compensatory education after school or on the weekends to try and appropriately educate Student to the level where the Student would be had the student not been deprived of a FAPE for the last five years.

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 19, 2025

/s/ Audrey J. Beeson
Hearing Officer

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