

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION UNIT**

**XXXXXXXXXXXX, Parents of
XXXXXXXXXXXX, Student**

PETITIONER

VS.

NO. H-24-40

Vilonia School District

RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

ISSUES PRESENTED:

Whether the above referenced school district (hereinafter "District" or "Respondent") provided or denied the above referenced student (hereinafter "Student") complied with the procedural and substantive requirements of the Individuals with Disabilities in Education Act of 2004, as amended (hereinafter referred to as "IDEA"); 20 U.S.C. §§ 1400-1485; 34 C.F.R. §300.111; ADE Spec. Ed. Rules §3.01, et seq, which requires analysis of the following sub-issues:

- (1) whether or not the two-year statute of limitations applies in this matter;
- (2) whether the facts support a violation of child find obligation pursuant to IDEA in failing to conduct a full and individual evaluation of Student;
- (3) whether the District failed to include required personnel, in Student's referral conference;
- (4) whether the facts support a violation of IDEA in failing to provide Student an individualized educational plan (hereinafter "IEP") and significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education ("FAPE") to Student.

PROCEDURAL HISTORY:

On March 5, 2024, the Arkansas Department of Education (hereinafter the “Department”) received a written request from XXXX (“Mother”) and XXXX (“Father”) XXXXXX (together “Parents”) to initiate due process hearing procedures on behalf of Student (“H-24-40”). Parents requested a due process hearing because they believed that the District failed to conduct a full and individual initial evaluation of Student when requested by Parents, and they believed that the District had reason to believe Student was a child with a disability as defined by IDEA. At the time H-24-40 was filed, Student (female) was fourteen years old, in ninth grade, and lived with Parents at a residence within the District.

In response to Parents’ request for a hearing, the Department assigned the case to this impartial Hearing Officer who initially scheduled the due process hearing in Case H-24-40 for April 10-12, 2024 if Parents and District failed to reach resolution. The parties did not meet for a resolution conference, the District provided some date options, but Petitioner did not schedule a conference. Prior to the prehearing conference, on March 28, 2024, Petitioner moved for a continuance based on a scheduling conflict with another due process hearing, there was no objection from the District, and the continuance was granted for good cause shown. After conferring with the parties regarding available dates, the hearing was rescheduled for May 22-23, 2024. Prior to the prehearing conference, Petitioner again filed a motion for continuance based on a scheduling conflict with another due process hearing, the District had no objection, and the continuance was again granted for good cause shown. The parties did discuss settlement terms during the week of August 12-16, 2024 but failed to resolve the matter. After consultation with the parties regarding available dates, the hearing was rescheduled for August 20-22, 2024.

A prehearing conference was held August 19, 2024 via zoom. Counsel for both parties participated and discussed unresolved issues to be addressed at the hearing and the witnesses and evidence to be presented. Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Debby Linton Ferguson, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. Petitioner had the burden of proving the allegations in this case.

The closed hearing began as scheduled and was held on August 20-22, 2024 and was completed the same day. Present for the hearing were Theresa Caldwell, attorney for Petitioner; Jay Bequette, Attorney for the District; Mother; Laura Sullivan, Special Education Director for the District (“LEA”); Lisa Adams, Assistant Special Education Director for the District (“Assistant SPED Director”). The following witnesses testified in this matter: Mother, Assistant Special Education Director for the District, Audra Alumbaugh (“Advocate”), Tammy Moore (“Assistant Principal” for the District), Edie Bomar (“Family & Consumer Science Teacher” for the District), Rochelle Flores (“Algebra Teacher” for the District), and Ginger West (“Dyslexia Coordinator”) for the District. At the conclusion of the hearing, both parties were requested to provide post-hearing briefs, and both timely submitted briefs in accordance with the deadline set by this hearing officer.

FINDINGS OF FACT:

1. Currently, Student is a fifteen-year-old female in the tenth grade; she was fourteen and in the Spring semester of her ninth-grade year when the Complaint was filed. *See* Complaint at p. 1. Student was an eighth grader in the 2022-2023 school year, a seventh grader in the 2021-2022 school year, and a sixth grader in the 2020-2021 school year. *Id.*

2. Student has resided with Parents within the District for the entirety of her education. *See* Tr. Vol. II p. 115.

3. Student has attended school at the District since preschool. *See* Tr. Vol. II p. 116; Dist. Ex. p. 214-215.

4. Student is educated in the general education setting. *See* Tr. Vol. II p. 116-144.

5. During first grade (2015-2016), Student received “As and Bs.” *See* Dist. Ex. p. 177.

6. In second grade (2016-2017), Student’s second grade teacher noticed Student was “not getting words right, and then when she would get them, she couldn’t remember what she read.” *See* Tr. Vol. II, p. 121-132. The second-grade teacher had Student screened for dyslexia on November 11, 2016, but Student passed the screener. *See* Dist. Ex. p. 51; Par. Ex. p. 9. Student’s grades were “As and Bs” except she received “Cs” in Language Arts, Reading and Math for the 4th nine weeks. *See* Dist. Ex. p. 178. Parent recalled that in May of 2017, Student’s reading levels were so low that her teacher warned that Student would have to work hard to avoid repeating second grade. *See* Par. Ex. p. 12; Tr. Vol. II p. 122-124. Parents paid a private tutor to assist Student with reading, and Student was able to pass the test to move forward to third grade. *See* Par. Ex. p. 12; Tr. Vol. II, p. 122-124.

7. In third grade (2017-2018), Student’s grades were “As and Bs” except Student received a “C” in Reading for the 4th nine weeks. *See* Dist. Ex. p. 179. Student’s ACT Aspire scores showed she was “Ready” in English, “In Need of Support” in Reading and Science, and “Close” in Math. *See* Dist. Ex. p. 167, 210-211.

8. In fourth grade (2018-2019), Student’s fourth grade teacher noticed Student was struggling with reading and requested that the District perform a second dyslexia screening. *See* Par. Ex. p. 54; Tr. Vol. II p. 124. In March of 2018, Student again passed the screening,

again suggesting she was not a child with dyslexia. *See* Dist. Ex. p. 54; Tr. Vol. II p. 124. Student's grades reflected Student's struggles: Math grades ranged from 66 to 85, Science grades ranged from 77 to 99, Literacy grades ranged from 70 to 75, Social Studies grades ranged from 70 to 85, she received all 100s in Health, Art, Music, PE and Computer. *See* Dist. Ex. p. 180. Student began fourth grade with a STAR Reading "Grade Equivalent" ("GE") of 2.9 and finished fourth grade with a GE of 4.4. *See* Dist. Ex. p. 160. Student's ACT Aspire Scores showed she was "Close" in Math and Science, and "In Need of Support" in Reading in the Spring of 2019. *See* Dist. Ex. p. 208-209.

9. During Student's fourth grade year, on February 18, 2019, Parents obtained a private evaluation by the Conway Psychological Assessment Center ("CPAC") in Conway, Arkansas at their own expense in an effort to determine why Student continued to struggle with reading. *See* Dist. Ex. p. 1-18; Par. Ex. p. 28-45.

10. The CPAC examiner noted that Student obtained the following national percentile ranks on the ACT Aspire in April of 2018: English: 39th, Reading 26th, Science 13th, and Math: 30. *See* Dist. Ex. p. 3. The CPAC examiner also noted that Student's grades were "As and Bs," but the examiner only had grades from the first nine weeks of fourth grade and noted she received a "70" in Language Arts. *See* Dist. Ex. p. 3.

11. The CPAC examiner administered the WISC-5 as a measure of Student's intelligence and cognitive processing, and Student had a full-scale IQ of 101, which was in the 53rd percentile and in the normal range. *See* Dist. Ex. p. 4; Par. Ex. p. 32-33. Student's verbal comprehension and vocabulary were higher than most of her peers, and her short-term working memory, problem solving or fluid reasoning skills, and processing speed were on par with most of her peers. *See* Dist. Ex. p. 4-5. However, the Student fell below most of

her peers in visual processing skills, including recognizing patterns, reading graphs, spelling, spacing, poor use of lines, difficulty aligning math columns, poor spatial memory, poor estimation skills, and a tendency to miss subtle social cues. *See* Dist. Ex. p. 5.

12. Student's WIAT-III measures of achievement in reading, math and written expressions revealed that Student's reading decoding, spelling, and sentence writing skills were below those of her peers. *See* Dist. Ex. p. 5-6; Par. Ex. p. 33-34.

13. Student's CTOPP-2 scores reflected that her phonological processing skills were better than most of her peers. *See* Dist. Ex. p. 6; Par. Ex. 34-35.

14. Student's orthographic processing (the ability to rapidly and accurately form images of individual letters and the spelling patterns in our language and memory) was slightly below her peers in recognizing letters written backward but well below her peers in visual memory of symbolic written material, such as recalling letters in words presented briefly. *See* Dist. Ex. p. 6-7. The examiner noted this was a characteristic of surface or visual dyslexia. *Id.*

15. A Parent and a teacher completed the BASC-3 as a measure of Student's social and emotional behavior. *See* Dist. Ex. p. 7-8. Parent rated Student as clinically significant in hyperactivity and attention problems and at-risk in conduct problems and depression. *Id.* The teacher rated Student at-risk in attention problems and learning problems. *Id.* In adaptive skills, Parent rated Student at-risk in adaptability, leadership, and activities of daily living. *Id.* The teacher rated Student at-risk in adaptability, social skills, leadership, and study skills. *Id.* On the content scales, Parent rated Student clinically significant in executive functioning and at-risk in developmental social disorders, emotional self-control, negative emotionality, and resiliency, and the teacher rated Student at-risk in emotional self-control,

executive functioning, and resiliency. *Id.* On the executive functioning indexes, Parent rated Student as elevated in executive functioning, attention control, and behavioral control, and the teacher did not rate the Student as elevated on any of the indices. *Id.*

16. On BYI-2, Student scored below average in depression and anger. *See Dist. p. 9.*

17. On the anxiety measure, RCMAS-2, Student's defensiveness was elevated indicating she was under-reporting her symptoms of anxiety. *See Dist. Ex. p. 9-10.*

18. The IVA-2 measures attention difficulties and impulse control; Student showed difficulty with auditory attention and slight difficulty with visual attention. *See Dist. Ex. p. 10.* The examiner further reported Student has difficulty with sustained attention to visual and auditory information, is impulsive, and is hyperactive. *See Dist. Ex. p. 11.*

19. As a measure of Student's executive functioning strengths and weaknesses, Parent and a teacher completed a CEFI rating in which both Parent and teacher rated Student's executive functioning skills slightly below expected, and both Parent and teacher rated Student as low average or below in attention, initiation, organization, planning, self-motivation, working memory, and overall. *See Dist. Ex. p. 11-12.*

20. The examiner administered the D-KEFS to measure higher level cognitive functioning, and Student scored "well below expected" in number-letter switching (scaled score of 2) and switching (scaled score of 1) and slightly below expect in inhibition, indicating weak cognitive flexibility. *See Dist. Ex. p. 12; Par. Ex. 40.*

21. After examining Student's results on each measure, the examiner diagnosed Student with a Specific Learning Disorder with Impairment in Reading (surface dyslexia), Attention-Deficit Hyperactivity Disorder ("ADHD"), and other Specified Anxiety Disorder. *See Dist. Ex. p. 13-14; Par. Ex. p. 41-42.* A DSM-5 diagnosis of a Specific Learning Disorder in

Reading is characterized by a persistent impairment in the major area of reading for at least six months despite targeted help: difficulty reading (e.g., inaccurate, slow and only with much effort) or difficulty understanding the meaning of what is read. *Id.* The DSM-5 states that the difficulties start when academic or work demands become greater. *Id.* The CPAC examiner reported that surface dyslexia resulted from “weakness in orthographic processing or the ability to rapidly and accurately form images of individual letters and the spelling patterns of our language in memory, which negatively [effects] her ability to accurately decode regular and irregular words in print and spell accurately.” *Id.* As a result, “which she sees a word/word part (even one seen many times before), it does not register as familiar or activate its sound. Consequently, this person depends on sounding words out for spelling and acquires sight words more slowly.” *Id.* Student’s phonological processing skills were better than most of her peers and not a weak area that would be characteristic of typical dyslexia. *See* Dist. Ex. p. 13. Student’s surface dyslexia impairs her visual processing skills and causes her to struggle recognizing patterns, reading graphs, spelling, spacing, poor use of lines, aligning math columns, poor spatial memory, and poor estimation skills. *See* Dist. Ex. p. 5.

22. Shortly after receiving the Student’s CPAC evaluation, Parent provided a copy to the principal or counselor of Frank Mitchell Intermediate School in the District. *See* Tr. Vol. III, p. 134.

23. Consistent with the recommendation from CPAC, the Counselor for the District completed a Section 504 Referral for Student on March 5, 2019; the Counselor checked the box: “No referral to special education is necessary. No evidence exists to indicate the

presence of a disability as defined by the IDEA.” *See* Dist. Ex. p. 14, 19. The Counselor also checked the box: “The student will be evaluated for possible Section 504 eligibility.” *Id.*

24. A Section 504 Conference was held for Student on March 8, 2019 based on Student’s diagnosis of Surface Dyslexia. *See* Dist. Ex. p. 21. The Dyslexia Coordinator reviewed the CPAC evaluation with the Section 504 team. *See* Dist. Ex. p. 21; Tr. Vol. II, p. 135-36. It was noted that Student had “been screened by [the District] in the past and did not qualify for Characteristics of Dyslexia.” *See* Dist. Ex. p. 21. Consistent with the CPAC evaluation, the Section 504 plan identified the Student’s disabilities as “Surface Dyslexia, ADD, and Anxiety.” *See* Dist. Ex. p. 20-21. The District reported that surface dyslexia “affects her reading, working, and learning in the classroom. She also has ADD and anxiety.” *Id.* Student’s Section 504 plan provided accommodations and supports, including dyslexia interventions via a VSD Dyslexia Interventionist at least three days per week, 45 minutes per session in the Arkansas Department of Education approved “Connections: OG in 3D” program utilized by the District. *See* Dist. Ex. p. 20. Parent signed stating she received a copy of the Parent and Student Rights under Section 504 at the meeting, and the document lists the right to “have evaluation, educational, and placement decisions made based upon a variety of information sources, and by persons who know the student, the evaluation date, and placement options . . .” *See* Dist. Ex. p. 22-23.

25. Thereafter, Student began the Dyslexia intervention program at the District, called Connections in March or April of 2019, and she completed Lesson 1 on April 15, 2019. *See* Tr. Vol. I, p. 197; Par. Ex. p. 154. Parent was provided with Student’s progress reports in Connections during her four years in the program. *See* Tr. Vol. III, p. 9.

26. In fifth grade (2019-2020), Student's Literacy grades ranged from 70 to 87, Social Studies ranged from 95 to 66, Science ranged from 73 to 70, Math ranged from 62 to 80, and she had 100s in Health, Art, PE, Computer and Music. *See Dist. Ex. p. 181.* Student began the year with a Star Reading GE of 4.3 and finished the year with a GE of 4.6. *See Dist. p. 160.* Her Star Math GE began the year at 3.7 and finished the year at 4.9. *See Dist. Ex. p. 158.*

27. In sixth grade (2020-2021), Student's grades improved and were "As and Bs" except for a C the second nine weeks in Literacy and Cs the second, third, and fourth nine weeks in Reading. *See Dist. Ex. p. 182.* Student's STAR reading testing at the beginning of the year reflected a GE of 4.0 and 4.5 at the end of the year, although Student was at 5.3 and 5.5 on two mid-year tests. *See Dist. Ex. p. 159-160; Par. Ex. p. 52.* Student's Star math GE was 4.5 at the beginning of the year and 5.5 at the end of the year. *See Dist. Ex. p. 157-158.* Student's ACT Aspire assessments in the Spring of sixth grade demonstrated that she was "Exceeding" in English and "Close" in Science and Math; however, she was "In Need of Support" in Reading. *See Par. Ex. p. 61.*

28. In seventh grade (2021-2022), Student Literacy grades ranged from 71 to 83, Math grades ranged from 69 to 81, Science grades ranged from 70 to 78, and Social Studies/Arkansas History/KeyCode grades ranged from 79 to 84. *See Dist. Ex. 183.* Student's Star Reading was a GE of 5.8 at the beginning of the year and 6.4 at the end of her seventh-grade year. *See Dist. Ex. p. 159; Par. Ex. p. 52.* Student's STAR math assessment in seventh grade showed that Student performed consistently at a GE of greater than seventh grade and greater than tenth grade on two occasions, in both December 2021 and in March 2022. *See Dist. Ex. p. 157; Par. Ex. p. 50.* Student was absent 32 days during her seventh-grade year. *See Tr. Vol. II, p. 107.*

29. In eighth grade (2022-2023), Student's Literacy grades ranged from 70 to 83, Social Studies grades ranged from 63 to 80, Math grades ranged from 67 to 80, and Science grades ranged from 74 to 91. *See* Dist. Ex. p. 184. On the STAR Reading testing at the beginning of eighth grade, Student was a 5.6 GE and was a 4.2 GE on May 17, 2023, although she tested at a GE of 6.3 a month earlier on April 10, 2023. *See* Dist. Ex. p. 159; Par. Ex. p. 52. Student's Star Math scores reflected a GE of 5.8 at the beginning of the year and at the end of the year; however, Student's Star Math GE was 7 in December of eighth grade. *See* Dist. Ex. p. 157; Par. Ex. p. 52. Student's ACT Aspire testing, in the Spring of eighth grade, showed she was "Close" in English, "Ready" in reading, "Close" in math, and "In Need of Support" in Science. *See* Dist. Ex. p. 169; Par. Ex. p. 62. Student was absent 27 days during her eighth-grade year. *See* Tr. Vol. II, p. 107.

30. In January and February of 2023, the Student was given another Level 2 dyslexia screener. *See* Dist. Ex. p. 151-153. The results of the screener reflected that the Student did not demonstrate one or more of the primary reading characteristics of dyslexia in addition to a spelling deficit because her spelling scores were average. *See* Dist. Ex. p. 153. Student's scores did not reflect a deficit in phonological processing; her scores were average. *Id.*

31. On February 10, 2023, it was recommended that the Student exit the District's dyslexia intervention program because she had completed the program after four years of intervention, and Students "reevaluation and/or post-testing shows growth to be closer to grade level proficiency standards," as well as Student demonstrating "self-monitoring/self-correction behaviors as evidenced through informal observation by teacher and/or interventionist." *See* Dist. Ex. p. 154-155. Parents gave written permission for the Student to exit the Connections program. *See* Dist. Ex. p. 154-155. The 504 Plan was also reviewed

on February 10, 2023, and the 504 Plan confirmed that Student would continue to receive “the same accommodations in the classroom to be successful.” *See* Dist. Ex. p. 36.

32. As Student had completed the Connections program and testing suggested no characteristics of dyslexia, the District dismissed her from Connections, the Vilonia School District Characteristics of Dyslexia Intervention Program on February 14, 2023. *See* Tr. Vol. I, p. 197-98; Par. Ex. p. 114-115.

33. In ninth grade (2023-2024), Student’s Physical Science grades ranged from 70 to 76, Spanish grades ranged from 93 to 96, Agriculture Systems grades ranged from 40 to 84, Algebra grades ranged from 55 to 66, English grades ranged from 79 to 86, Civics grades ranged from 80 to 82, and FACS grades ranged from 70 to 89. *See* Dist. Ex. 185. Student’s STAR Reading reflected a GE of 5.7 in September of 2023 and 7.2 in December of 2023. *See* Dist. Ex. p. 159. Student was absent 36 days during her ninth-grade year, most of which were “school business” or “medical.” *See* Dist. Ex. p. 172-176. Because Student was struggling in Algebra I in ninth grade, Algebra Teacher had Student in an “intervention period” starting the in first nine weeks of school where she spent extra time and provided on-on-one instruction for Student. *See* Tr. Vol. II p. 44, 51.

35. The District conducted annual reviews of the Student’s Section 504 Accommodation Plan (“504 Plan”) in her fifth, sixth, seventh, eighth, and ninth grade years. *See* Dist. Ex. p. 24, 29, 33, 35, and 37. Parents attended each of the meetings, and the minutes reflect a discussion of Student’s progress and needs. *See* Dist. Ex. p. 24, 29, 33, 35 and 37. The 504 Plan was adjusted and revised at times to reflect the Student’s needs. *Id.*

36. Parents and District staff communicated back and forth regarding Student’s education over the years. *See* Par. Ex. p. 7, 9-19, 24-27; Tr. Vol. III p. 22. Teachers were in

contact with Parent regarding Student's grades and the need for tutoring if Student was struggling. *See* Tr. III p. 16-17.

37. In January of 2024, Parents requested a full and individual initial evaluation because of Student's ongoing struggles with reading. *See* Par. Ex. p. 9.

38. Approximately one year after Student's dismissal from Connections, on February 1, 2024, Parent made a special education referral for Student and requested a comprehensive evaluation. *See* Par. Ex. p. 1; Dist. Ex. p. 42; Tr. Vol. I, p. 87.

39. On February 20, 2024, the District held a referral conference for Student, and the committee discussed the Student's 504 Plan, classes and most recent Algebra grade, a "60." *See* Parent Ex. p. 4-6; 68. The team agreed that a Universal Math screener would be administered to determine any issues was the most appropriate first step; pending the results of Student's assessment, the team would reconvene to further discuss the special education referral if needed. *See* Par. Ex. p. 4-6; Dist. Ex. p. 45-47. The Notice of Action states: "Student has struggled in her math class and Student has received lower scores in Algebra compared to her other classes. Mom felt that there is a discrepancy between math and her other subjects. Student has completed the Connections Dyslexia program in the spring of 2023. . . Student ended the 8th grade with a C average in math." *See* Par. Ex. p. 4. The option was considered to continue with the referral process for evaluation, but the evaluation was declined at this time to allow for additional screening. *Id.* The committee also discussed options for tutoring from various teachers before school and after school." *Id.* "No evaluation needed" was checked on the form, as well as "no rights presented." *See* Par. Ex. p. 6. However, the Assistant Principal testified she presented Parent Rights but marked the form incorrectly; she did concede that she did not explain Parent's Rights. *See* Tr. Vol. I, p. 111-

113. Parent, Dyslexia Coordinator, Family and Consumer Sciences Teacher, Assistant Principal, and Student attended the meeting. *See* Par. Ex. p. 6. Assistant Principal called for Student to attend the meeting and objected when Parent asked if Student could leave. *See* Tr. Vol. II p. 102-105. Parent asked that the team not discuss the reason for Student's medical absences at the meeting. *See* Tr. Vol. II p. 34. At the meeting, Mother disagreed with the team decision and wanted a comprehensive evaluation, but the evaluation was denied. *See* Tr. Vol. I, p. 114, 193-194; Par. Ex. p. 6-8.

40. On February 21, 2024, Mother emailed the Assistant Principal to again request a comprehensive evaluation and to complain that notice of action was not consistent with her memory of the discussion that took place at the referral conference. *See* Par. Ex. p. 7. The Assistant Principal informed Mother that the math screener discussed the previous day was scheduled to be administered on February 23, 2024. *Id.* Mother informed the Assistant Principal that she would not consent to the math screener but would only provide consent for a comprehensive evaluation. *Id.*

41. On February 28, 2024, another referral conference was scheduled for March 14, 2024 to further discuss the referral for special education. *See* Dist. Ex. p. 47.

42. The second 2024 referral conference did not occur because, on March 5, 2024, Parent filed her due process complaint ("Complaint") seeking a comprehensive evaluation, an appropriate IEP to remediate Student's surface dyslexia, and compensatory education for the District's alleged violation of its child find obligation. *See* Complaint and 20 U.S.C. §1412(a)(3).

43. A due process hearing on the Complaint was conducted August 20-22, 2024. *See* Tr. Vol. I, II, III.

44. At the due process hearing, District staff admitted that its child find obligation required a referral conference based on the CPAC evaluation. *See* Tr. Vol. I, p. 146; Tr. Vol. III, p. 94, 96. The Assistant SPED Director also admitted that “in and of itself, no” a Section 504 conference does not meet the child find requirement that a referral conference be held. *See* Tr. Vol. III, p. 118.

45. The Assistant SPED Director, who is also a School Psychology Specialist, testified with regard to determining if a child has a Specific Learning Disability (“SLD”) that information would be gathered, an evaluation would be conducted, and the information would be taken to the evaluation committee for a determination of whether or not the student meets all the qualifying criteria for a Specific Learning Disability.” *See* Tr. Vol. III, p. 78-86. She opined that the 504 Plan may best serve the Student. *Id.* To determine if a student qualifies for special education under the category of SLD, the District may use the Regression Analysis and compare a student’s IQ to their achievement or look at a pattern of strengths and weaknesses. *Id.*

46. Student’s absences were a confounding factor for participants in the February 20, 2024 Referral Conference; the educators wondered if Student’s struggles might have been due to her absences. *See* Tr. Vol. I, p. 107-108, Tr. Vol. II p. 27-28, 96-97, 107, and 109-113. The Assistant SPED Director testified that absenteeism “is predictive of school failure,” and her concern was the number of days Student was absent “in light of all the other things she is struggling with,” referring to dyslexia and anxiety. *See* Tr. Vol. III p. 72-73.

47. At the hearing in this matter, Algebra Teacher testified that Student’s math grade increased throughout the year as she began giving more effort, as her Algebra Teacher reported. *See* Par. Ex. p. 68; Tr. II p. 40, 43, 67. Algebra Teacher believed Student would

succeed in Algebra II if Student put in the effort that she had toward the end of the year and attended class for the most part. *See Tr. Vol. II, p. 75.* Algebra Teacher was aware of Student's 504 Plan accommodations and provided them. *See Tr. Vol. II, p. 54-55.* Algebra Teacher attended Students' 504 Plan annual review meeting in November of 2023 and recommended adding accommodations such as highlighting words in math problems that would assist the Student in her class. *See Dist. Ex. 38; Tr. Vol. II, p. 56.* Algebra Teacher recalled Student having excessive absences. *See Tr. Vol. II, p. 60.*

48. The Assistant Principal who led the February 20, 2024 Referral Conference had no education, training or experience in special education, and Students was the first Referral Conference that Assistant Principal had done. *See Tr. Vol. I, p. 85, 111.* The Assistant Principal confirmed the group examined Student's grade in math and discussed Student's attendance because Student had missed a number of excused days due to FFA. *See Tr. Vol. I, p. 102-107.* The District would have had Student's ACT Aspire scores. *See Tr. Vol. I, p. 99.* The Assistant Principal did not recall knowing of Student's CPAC evaluation. *See Tr. Vol. I, p. 110.*

49. When asked about Student's 32 absences during her seventh-grade year, 27 absences during her eighth-grade year, and 36 absences during her ninth-grade year, Parent conceded that Student's absenteeism could impair her ability to perform in the classroom. *See Dist. Ex. p. 176; Tr. Vol. II p. 107; Tr. Vol. III p. 58-59.*

50. The Dyslexia Coordinator attended the special education referral conference on February 20, 2024; she has a Special Education Specialist degree in Pre-K through 12 and has taught special education prior to 2004. *See Tr. Vol. I, p. 141-143, 191.* She was aware of Students 2019 CPAC evaluation, and she admitted that the District should have held a referral conference and additional testing after receiving Student's CPAC evaluation. *See Tr.*

Vol. I, p. 145-149. She had never studied the term “surface dyslexia,” but she agreed Student might meet the criteria for a Specific Learning Disorder with Impairment in Reading. *See Tr. Vol. I, p. 152-154, 156.* She believed Connections had all the components needed to treat a student with characteristics of dyslexia and noted that Arkansas had approved the program. *See Tr. Vol. I, p. 155.* She admitted that Parent wanted a comprehensive evaluation, and she thought the referral committee decided to do the comprehensive evaluation, until she appeared at the hearing. *See Tr. Vol. I, p. 193-94, 208; Par. Ex. p. 4.* In dismissing Student from the Connections program, the Dyslexia Coordinator relied on testing that focused on Student’s phonological processing skills, which were above average, as they had been prior to receiving three years of dyslexia intervention. *See Tr. Vol. I p. 167-176.* She was not familiar with the Feifer Assessment of Reading as a measure of visual processing and orthographic processing. *See Tr. Vol. I, p. 177-179.* She agreed that Student’s writing sample reflected spelling errors. *See Tr. Vol. I, p. 184; Par. Ex. p. 64.* She could not recall whether she shared the data she had in Student’s dyslexia folder, but she recalled discussing a concern about math and Student catching up on missed assignments and there was no discussion of dyslexia testing at the referral conference. *See Tr. Vol. I, p. 192-196, 201; Par. Ex. 114-214.*

51. While she acknowledged that Student began receiving “the dyslexia intervention,” the Dyslexia Coordinator did not view the program as special education because it could be “in the General Education setting, the Special Education setting, or both.” *See Tr. Vol. I, p. 149.* The Dyslexia Coordinator explained, “To my knowledge, [Student] was not placed in special education.” *See Tr. Vol. I, p. 150.* “[T]he CPAC evaluation would have been enough for [Student] to start dyslexia intervention,” she said. *See Tr. Vol. I, p. 153.* Still, the Dyslexia

Coordinator admitted that the District had reason to believe that Student had a Specific Learning Disability (“SLD”). *See* Tr. Vol. I, p. 156.

52. The Dyslexia Coordinator identified Parent Ex. p. 21-23 as a “post-level two screening” conducted on January 25 and 27 and February 6, 2023. This was performed after the Student completed the Connections program “to see if [Student] still shows characteristics of dyslexia.” *See* Tr. Vol. I, p. 166, 174. The post-level two screening included a CTOPP-2, on which the Student scored average in all areas. *See* Tr. Vol. I, p. 169. The Dyslexia Coordinator admitted Student also scored average on the CPAC CTOPP-2. *See* Tr. Vol. I, p. 170-71, 173. The Dyslexia Coordinator could not identify anything on the post-level two screening indicating the Student’s deficits from surface dyslexia had been addressed. *See* Tr. Vol. I, p. 175-79. In reviewing the Student’s writing sample, the Dyslexia Coordinator could not explain why Student made many grammar and spelling errors. *See* Par. Ex. p. 64; Tr. Vol. I p. 184-85.

53. Student’s Family and Consumer Sciences Teacher attended Student’s February 20, 2024 referral conference, but she recalled that Student was going to receive a reading or math screener, a discussion of math, and Mother talking about the CPAC evaluation. *See* Tr. Vol. II, p. 18-24. She was aware of Student’s 504 Plan and acknowledged the 504 Plan stated Student has surface dyslexia, ADD and anxiety, and she testified that she provided Student with the accommodations listed on the 504 Plan. *See* Tr. Vol. II p. 17, 26.

54. Advocate has been trained on Connections and has taught the program, and she provided testimony on surface dyslexia and on the Connections program. *See* Tr. Vol. I, p. 43-44; Par. Ex. p. 114-214. Advocate stated that Connections was not the best dyslexia program for Student’s surface dyslexia and that Student’s writing sample with many grammar and

spelling errors was a “red flashing light” that Student’s surface dyslexia was not remediated by the Connections program. *See* Par. Ex. p. 64; Tr. Vol. I, p. 45-46. Further, Advocate explained that dyslexia screeners are designed to identify “a phonological processing deficit, which is the hallmark of dyslexia, but not a surface dyslexic.” *See* Tr. Vol. I, p. 65. Student’s sound system is intact; it is her visual (orthographic) processing that is not. *See* Tr. Vol. I p. 22, 24. The phonological screener will not detect Student’s type of dyslexia because her phonological process is intact. *See* Par. Ex. p. 127; Tr. Vol. I, p. 63, 65.

55. The Advocate further testified that surface dyslexia also causes problems in abstract math, like Algebra, because of all the symbols, letters and numbers, and Student’s struggles in Algebra were further evidence that her surface dyslexia had not been remediated. *See* Tr. Vol. I, p. 47-48. Noting Student’s failing grade in Algebra during her first nine weeks of ninth grade, the Advocate testified if Student had an IEP, the failing grade would have triggered a failure conference to discuss revising the IEP to address the lack of expected progress. *See* Tr. Vol. I p. 48. *See* 20 U.S.C. §1414(d)(4)(A)(ii)(I).

56. According to Advocate, the IXL report dated May 10, 2024 provided better information because it “points out the deficits.” *See* Par. Ex. p. 46-49; Tr. Vol. I, p. 49. Student’s overall math level of 610 meant Student was working at about a sixth-grade level in math. *See* Par. Ex. p. 46-49; Tr. Vol. I, p. 50. IXL identified three “recommended skills” that Student should be working on, and the Advocate stated those could be used as IEP goals if Student had an IEP. *See* Par. Ex. p. 46-49; Tr. Vol. I, p. 51-52. An IXL can be done for reading and can be used for progress monitoring; it shows where the deficits are that need remediation. *See* Tr. Vol. I, p. 54.

57. The Advocate testified that Student's surface dyslexia could not be just accommodated in a 504 plan and that Student needed intensive remediation "that focuses on morphology, word shapes, spelling, grammar . . . to try to teach her how to take the word in as a whole" or Student would continue to fall farther and farther behind. *See* Tr. Vol. I, p. 59, 79-80. However, accommodations of extended time, text to speech, speech to text, accompany oral directions with written directions, repeat oral instructions, enlarge print, enlarge work area on paper assignments, and highlighting signs and symbols. *See* Tr. Vol. I, p. 59-61. Preferential seating would be good for ADHD and anxiety. *Id.*

58. The Advocate recommended a comprehensive evaluation, including an occupational therapy evaluation for possible help with visual processing. *See* Tr. Vol. I, p. 42, 81. Because Student's abstract math classes would have "letters and numbers mixed," Student's unremediated surface dyslexia was interfering with her ability to perform. *See* Tr. Vol. I, p. 42. She needs intensive therapy on reading fluency and comprehension in a program like Wilson Just Words; the Connections program does not offer enough practice in fluency for Student. *See* Tr. Vol. I, p. 45, 80-81.

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Independent Sch. Dist. No. 283 v. S.D. ex rel. J.D.*, 88 F.3d 556, 561 (8th Cir. 1996); *Parrish v. Bentonville Sch. Dist.*, No. 5:15-CV-05083, at *8 (W.D. Ark. March 22, 2017). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor discrepancies in the testimony were not deemed to be intentionally deceptive. There were few inconsistencies in the testimony in this matter; however, inconsistencies did play a role in this hearing officer's decisions. The weight

accorded the testimony is not the same as credibility, and some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided.

The findings of fact were made as necessary to resolve the issues; therefore, not all of the testimony and exhibits were explicitly cited. In reviewing the record, the testimony of all witnesses, and each admitted exhibit's content were thoroughly considered in issuing this decision, as were the parties' post hearing briefs.

CONCLUSIONS OF LAW AND DISCUSSION:

The burden of proof falls on the party seeking relief. *See Sneitzer v. Iowa Dep't of Educ.*, 796 F.3d 942, 948 (8th Cir. 2015). In this matter, Parents alleged the following:

- (1) the District violated its child find obligation pursuant to IDEA when it failed to conduct a full and individual evaluation of Student: (a) after Student had ongoing struggles with reading; (b) after Parents requested an evaluation; and (c) after Parent provided independent evaluations regarding Student; (d) when Student continued to struggle academically after dismissal from the dyslexia intervention program.
- (2) the District failed to include required personnel in Student's referral conference;
- (3) the District violated IDEA in failing to provide Student an individualized educational plan (hereinafter "IEP") and significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education ("FAPE") to Student.

I. IDEA Statute of Limitations

As recently as 2020, the Eighth Circuit Court of Appeals confirmed that IDEA has a two-year statute of limitations and also that a District's failure to fulfill its child-find obligation was not a single event like a decision to expel a student but was a violation that

was “repeated well into the [two-year] limitations period. *See Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073 (8th Cir. 2020). As the Eighth Circuit Court of Appeals explained:

Assuming the parents knew or should have known they had a child-find claim when the Student was an eighth-grader, the District staff responsible for identifying the Student in the ninth and tenth grades likewise failed to fulfill their child-find obligation. In other words, the violation was not a single event like a decision to suspend or expel a student; instead, the violation was repeated well into the limitations period. Cf. *In re: Mirapex Prods. Liab. Litig.*, 912 F.3d 1129, 1132 (8th Cir. 2019) (noting that “breaches of continuing or recurring obligations” give rise to new claims with their own limitation periods). Any claim of a breach falling outside of the IDEA’s two-year statute of limitations would be untimely. But, because of the District’s continued violation of its child-find duty, at least some of the Student’s claims of breach of that duty accrued within the applicable period of limitation.

Id. at 1083-84. *See also Fitzgerald v. Camdenton R-III Sch. Dist.*, 439 F.3d 773, 776 (8th Cir. 2006).

Although Petitioner’s argument to extend the IDEA’s statute of limitations to back to March of 2019 when Parents “knew or should have known about the alleged action that forms the basis of the complaint” based on an interpretation of 20 U.S.C. § 1415(b)(6)(B) and 20 U.S.C. § 1415(f)(3)(C) was well articulated, the Ninth Circuit case of *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936, 944 (9th Cir. 2017) is not precedent. Further, Petitioner argues that the statute of limitations in this matter should be extended beyond two years prior to the date of the Complaint under the exceptions of misrepresentation or withholding of information set forth in 20 U.S.C. § 1415(f)(3)(D) arguing:

District did not provide Parents prior written notice as required by 20 U.S.C. § 1415(b)(3) that it was refusing to initiate an evaluation of Student, and the District did not provide Parents a copy of “Your Rights under the IDEA” required by 20 U.S.C. § 1415(d)(1)(A) notifying them of their right to request a due process hearing until February 20, 2024. *See* Parent Ex. p. 5. Therefore, the statute of limitations did not begin to run on Parents’ child find claim until February 20, 2024, and Parents are entitled to complete relief for the District’s child find violation starting March 11, 2019. Alternatively, the statute of limitations was tolled until February 20, 2024, pursuant to 20 U.S.C. §

1415(f)(3)(D)(ii) because the District withheld information from Parents that was required by the IDEA, namely prior written notice required by 20 U.S.C. § 1415(b)(3) and a copy of “Your Rights under the IDEA” required by 20 U.S.C. § 1415 (d)(1)(A).

However, 20 U.S.C. § 1415(d)(1)(A) requires that parents receive a copy of the procedural safeguards: (i) upon initial referral or parental request for evaluation, (ii) when a complaint is filed, or (iii) upon request by a parent. Here, there was no initial referral until the first parental request for evaluation and that occurred on February 1, 2024, just before the Complaint in this matter was filed. Further, IDEA regulations do not demand that the school preemptively advise parents of their right to have their child evaluated. *See* 20 U.S.C.A. § 1400; 34 C.F.R. § 300.304(a) and § 300.503. *See D.K. v. Abington School Dist.*, 696 F.3d 233, 248 (2012).

Based on the review of statutes, regulations, and cases cited above, this Hearing Officer finds that the period from March 5, 2022 to March 4, 2024 is within the statute of limitations in this matter but that child find may be a continuing violation that began prior to the two-year statute of limitations.

II. IDEA Procedural Issues

A. Child Find

Congress enacted the IDEA for purpose of ensuring that all children with disabilities have access to a FAPE. 20 U.S.C. § 1400(d)(1)(A). In order to ensure that all children with disabilities receive a FAPE, school districts are required to satisfy a “child find” obligation. 20 U.S.C. § 1412(a)(3). Specifically, districts must ensure that:

All children with disabilities residing in the States, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3)(A). A “child with a disability” means a child with one of thirteen qualifying conditions “who, by reason thereof[,] needs special education and related services.” 20 U.S.C. § 1401(3)(A). Child find extends to children who are suspected of having a disability and in need of special education, even though they are advancing from grade to grade and performing on grade level. 34 C.F.R. § 300.111(c)(1).

No Eighth Circuit case law was located that directly sets forth a standard for determining when a child should be “suspected of having a disability and in need of special education.” 34 C.F.R. § 300.111(c)(1). However, the Eighth Circuit did uphold a determination in *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1081-1083 (8th Cir. 2022) that a student’s mental health issues and absences triggered the District’s child find duties because Student’s absences due to emotional dysfunction put her behind her peers in earning credits needed to graduate and therefore adversely affected her educational performance. The District argues that for the application of the Sixth Circuit standard to establish a violation of a district’s child-find obligation, that a parent “must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” *See Bd. Of Educ. Of Fayette Cty. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007). A hallmark of any negligence determination, as set forth by the Sixth Circuit, is examining whether actions were “reasonable,” or in other words, should the District have reasonably suspected that the child might be a child with a disability in need of special education. This examination is consistent with the “reasonable suspicion” standard set forth in child find cases by the Tenth Circuit Court of Appeals and the Fifth Circuit Court of Appeals. *See D.T. by and through Yasiris T. v.*

Cherry Creek Sch. Dist. No. 5, 55 F.4th 1268 (10th 2022); *Leigh Ann H. v. Riesel Independent Sch. Dist.*, 18 F.4th 788 (5th Cir. 2021).

Whether a district has “reasonable suspicion” that a child may have a disability and be in need of special education is a fact intensive determination. In *D.T.*, the Tenth Circuit upheld a finding that the district’s child find duty under IDEA did not begin until the student’s emotional dysfunction manifested in the school environment, despite student’s hospitalization due to emotional disturbance, because the child was not in need of special education until his emotional disturbance resulted in an academic impairment. *D.T. by and through Yasiris T. v. Cherry Creek Sch. Dist. No. 5*, 55 F.4th 1268, 1273-74 (10th 2022). The Fifth Circuit held that a student’s mixed academic success and behavior issues did not “give rise to a reasonable suspicion that [the student] had an emotional disturbance.” *Leigh Ann H. v. Riesel Independent Sch. Dist.*, 18 F.4th 788 (5th Cir. 2021). The Third Circuit upheld a finding that the district did not violate its child-find duty under IDEA based on student’s responses to interventions, even though the student would have qualified as a child with a specific learning disability (“SLD”) if the district had utilized the discrepancy model SLD and examined the gap between the measure of student’s intelligence quotient and achievement. *J.M. v. Summit City Bd. Of Educ.*, 39 F.4th 126 (3rd Cir. 2022).

Once a child is identified as potentially having a disability, the child’s school district has a duty to conduct a full and individual evaluation to determine whether the child has a disability and needs special education and related services. 20 U.S.C. § 1414(a)(1)(A). The IDEA requires that initial evaluations and reevaluations meet certain requirements. 34 C.F.R. § 300.304. Specifically, a public agency must utilize a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the

child.” *Id.* at § 300.304(b)(1). In addition, evaluations and reevaluations must assess all areas related to Student’s suspected disability, “including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. *Id.* at § 300.304(c)(4). Pursuant to the Arkansas Dyslexia Resource Guide (“DRG”), if a student with a disability exhibits characteristics of dyslexia, the IEP committee would determine whether the student needs special education services in this area, if the student’s needs can be met through the district’s general education dyslexia intervention program, or if a combination of the two are needed. Ark. Dyslexia Res. Guide, p. 39.

1. 2015 to 2018

Although the period between 2015 and 2018 is outside the statute of limitations in this matter, as a violation of child find can be a continuing violation, the facts are examined herein to determine if the District should have had a “reasonable suspicion” that Student was a child with a disability in need of special education during this time. In 2015, when Student’s teacher noticed Student’s reading skills were below expectations given Student’s intelligence, the District screened Student for dyslexia. However, the dyslexia screener results reflected that the Student did not show characteristics of a child with dyslexia. These actions are consistent with the District fulfilling its child find duty.

In the hearing, Parent’s frustrations were palpable when she described how her struggled during this period and the concern Parent had when the teacher warned that Student might not pass second grade if her reading did not improve. To assist Student with reading during this time, Parents paid a private tutor, and Student was able to move forward into third grade. From the District’s point of view, Student put forth additional effort and

was able to succeed. Student's lowest grades in second and third grades were Cs in Language Arts or Reading.

Based on these facts and others detailed above, a preponderance of the evidence does not suggest that the District should have know that Student may have had a disability and been in need of special education during this time, particularly in light of their diligence referring Student for the dyslexia screener and her results.

2. September 2018 to March 2019

Again, this period falls outside the statute of limitations; however, the facts are examined to determine if a child find violation arose during this time that may have continued into the relevant two-year period at issue. Student's fourth grade teacher requested a second dyslexia screening because of Student's ongoing struggles with reading. In March of 2018, Student was screened again for dyslexia, but again, Student's screening results did not reflect characteristics of a child with dyslexia.

Again, in completing the second screener and in light of Student's passing score, a preponderance of the evidence supports that District complied with its child find duty during this period, although the fact that a second screener was requested makes it a closer call. Further, during fourth grade, Student's grades began to reflect Student's struggles. Math grades ranged from 66 to 85, Science grades ranged from 77 to 99, Literacy grades ranged from 70 to 75, Social Studies grades ranged from 70 to 85, she received all 100s in Health, Art, Music, PE and Computer. Student began fourth grade with a STAR Reading GE of 2.9 and finished fourth grade with a GE of 4.4. Student's ACT Aspire Scores showed she was "Close" in Math and Science, and "In Need of Support" in Reading in the Spring of 2019. Because Students grades and scores were so mixed and Student passed a second dyslexia screener, a

teacher would not necessarily have had a reasonable suspicion that Student had a disability and was in need of special education during this time. After all, in the teacher's mind, she had ruled out dyslexia, and Student had no other obvious signs of disability at that time.

3. March 11, 2019 to March 2024

Because Student was struggling greatly in fourth grade, Parents acted diligently to determine the basis of Student's struggles by obtaining an individual education evaluation ("IEE") from CPAC. On March 11, 2019, Parent provided the District with the Student's CPAC evaluation diagnosing Student with anxiety, ADHD, and a Specific Learning Disorder with Impairment in Reading (surface dyslexia), which meant Student might qualify as a student in need of special education under the categories of Other Health Impaired or Specific Learning Disability, as defined by the IDEA. See 20 U.S.C. § 1401(30). Notably, the District did not fail to act in response to Parent's production of the CPAC evaluation. Per the recommendations in the CPAC evaluation, the District promptly held a 504 conference and began accommodations and supports for Student with a 504 Plan.

Further, the District enrolled Student in the Connections dyslexia intervention program, and she began receiving dyslexia intervention for 45 minutes three times weekly. Pursuant to the Arkansas Department of Education's ("ADE") Dyslexia Resource Guide ("DRG") published in December of 2017, "[i]f the initial, level I, or level II dyslexia screening indicates that a student has characteristics of dyslexia, the Response to Intervention (RTI) process shall be used (A.C.A. § 6-41-603(c)(1))." See ADE Dyslexia Rules §13.00 and A.C.A. § 6-41-603 (requiring a DRG), DRG, p. 13, and ADE Dyslexia Rules, §§5.01 and 5.02. The DRG goes on to state specifically that dyslexia intervention services fall under the RTI framework. See ADE Dyslexia Rules, §3.07 (describing RTI). The RTI process is for all children struggling

in reading or math, regardless of whether they have characteristics of dyslexia. DRG, p. 13 (RTI for “all students”). A.C.A. §6-41-603(c)(1) requires school districts to first use the RTI process to try to remediate children with characteristics of dyslexia. See A.C.A. §6-41-603(c)(1); ADE Dyslexia Rules, §§5.01 and 5.02 (same). If the RTI process fails for a child with characteristics of dyslexia, the IDEA requires a full and individual initial evaluation of the child, see 20 U.S.C. § 1414(a)(1)(A), and based on the evaluation results, requires an IEP with an appropriate dyslexia program.

Petitioner argues that dyslexia intervention is “special education” as “specially designed instruction . . . to meet the unique needs of a child with a disability,” and that the District had an obligation to perform a comprehensive evaluation on Student before providing dyslexia intervention. 20 U.S.C. § 1401(29). See 34 C.F.R. §300.39; ADE Spec. Ed. Rules, §§2.68 and 2.69 (same). However, Petitioner agrees, “ [t]he RTI process is not special education for children with dyslexia. See ADE Dyslexia Rules, §3.07 (describing RTI). The RTI process is for all children struggling in reading or math, regardless of whether they have characteristics of dyslexia. DRG, p. 13 (RTI for “all students”). Thus, this Hearing Officer declines to find that the District violated its child find obligation when it did not perform a comprehensive evaluation of Student prior to placing her in the Connections dyslexia intervention program.

The District is permitted to meet its students needs for dyslexia intervention either with general education interventions or special education, and the District did attempt to meet Student’s needs in the general education setting with the Connections program between 2019 and Feb 2023. Connections is a dyslexia program approved by ADE. Based on Student’s scores on STAR testing, the Connections program appeared to have a positive

effect on Student's performance with her fifth grade STAR Reading GE of 4.6 and STAR Math GE of 4.9, almost at grade level. Student's grades remained mostly As and Bs with Cs in Science and one quarter of Literacy. In sixth grade, Student's grades improved to As and Bs except for Cs in Literacy and Reading, which reflected her continued struggles. Student tested twice in the fifth GE in STAR Reading and in fifth GE in STAR Math, again almost on grade level. Student's ACT Aspire assessments in the Spring of sixth grade demonstrated that she was "Exceeding" in English and "Close" in Science and Math; however, she was "In Need of Support" in Reading. In seventh grade (2021-2022), Student began to have D's in some classes, and her grades fell overall. Still, her STAR Reading level was at 6.4 GE and STAR Math level was above grade level on two tests given in seventh grade, and Student was absent 32 days during seventh grade. In eighth grade (2022-2022), Student's grades remained lower with some Ds and fewer As and Bs. Student's STAR Reading GE stagnated with a highest GE of 6.3, and her STAR Math high GE was 7 that year. Student missed 27 days of eighth grade. Because it likely appeared to District staff that Student's needs were being met through the dyslexia intervention program, it is easy to see why a comprehensive evaluation, IEP, or goals specific to Student's dyslexia did not appear to be necessary for Student at that time. District even performed two screeners prior to dismissing Student from Connections, which reflected that Student did not exhibit the characteristics of a child with dyslexia.

a. March 5, 2019 IEE

Although well meaning, the preponderance of evidence is clear that the District did fail its child find obligation to Student when it received Student's CPAC evaluation with a diagnosis of Specific Learning Disorder with Impairment in Reading (surface dyslexia),

Attention-Deficit Hyperactivity Disorder (“ADHD”), and other Specified Anxiety Disorder and did not perform a comprehensive evaluation completed to determine how Student’s disabilities might be impacting her academically. The District was aware that Student had not exhibited characteristics of a child with dyslexia on the screeners given in 2015 and 2018. In fact, Student exhibited areas of strength in areas in which other students with dyslexia generally exhibited weaknesses. Instead of performing a comprehensive evaluation to determine Student’s areas of weakness and what Student needed to remediate surface dyslexia, the District placed Student in the same Connections program that was intended to remediate the types of dyslexia that caused children to fail its dyslexia screeners. Instead of individualizing Student’s education, District applied a “one size fits all” dyslexia program with no determination of whether the Connections program would address the specific type of dyslexia Student had. As the Advocate stated and as is clear from Student’s continually declining achievement, the Connections program did not remedy Student’s surface dyslexia because Student’s dyslexia is visual and not phonological, as the District’s screeners were designed to detect.

The analysis of a Missouri District Court in *Knox On behalf of J.D. v. St. Louis City Sch. Dist.*, 2020 WL 3542286 (E.D. Miss. 2020) is instructive for this matter. In *Knox*, the District Court held that the school district did not violate its child find obligation in failing to evaluate the student in 2015 as a child with a possible diagnosis of Other Health Impaired or Emotional Disturbance, despite student’s ADHD diagnosis and transient behavior issues because there was no adverse academic effect; however, when the district failed to evaluate the student after receiving an independent education evaluation (“IEE”) in November of 2016, the district did violate its child find obligation and denied student FAPE beginning at

that time. *Id.* Further, the Assistant Special Education Director forthrightly admitted that the District was obligated to perform a comprehensive evaluation when presented with an IEE, and a 504 conference did not fulfill that obligation for the District.

Here, as in Knox, the District violated child find by failing to conduct a full and individual evaluation of the Student after receiving the CPAC evaluation on March 11, 2019. Since then, the District has held that IEE in its files and in the minds of staff, and thus, has continued to violate its child find obligation up to March 5, 2024, when Parents filed their due process complaint in this matter because it has yet to perform a comprehensive evaluation of Student.

b. Student's Absences

The District recounted that Student was absent 32 days in seventh grade, 27 days in eighth grade, and 36 days in ninth grade. District teachers were aware that some of the absences were due to Student's activities with FFA; however, the absentee record is clear that many of Student's absences were marked "medical." In light of Student's mixed grades and scores and the District's inability to put its thumb on Student's disability, it is understandable that District staff looked to Student's absences to perhaps explain away Student's academic struggles. However, Student's medical absences along with Student's diagnosis of anxiety disorder in the IEE were sufficient to create a reasonable suspicion that Student may have a disability and be in need of special education pursuant to the Eighth Circuit's holding in *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1081-1083 (8th Cir. 2022), as discussed above.

B. Required personnel in Student's referral conference and existing data review

Pursuant to ADE Regulation 4.04, when a child is referred to an LEA for special education services, a referral conference must be held by a district for the purpose of reviewing all existing information pertaining to the child and determining what actions should be taken. ADE Reg. 4.04. A school district is required “within seven (7) calendar days of the date that an LEA receives a written referral to schedule a referral conference at a time and place agreed upon by the parent(s).” ADE Reg. 4.03. In addition, the parent(s) must be provided with written notification of the referral and referral conference and must be given notice in sufficient time to make arrangements to attend the conference. ADE Reg. 4.03. Referral conferences must be attended by a minimum of three individuals, “including the principal or a designee and one teacher directly involved in the education of the child.” ADE Reg. 4.04. Following a referral conference, decisions of the team must be recorded on a Referral Conference Decision Form and signed by the principal or a designee, as well as all other participants in the conference. *Id.* At the conclusion of a referral conference, a district can choose to comprehensively evaluate a child, conduct a specialized evaluation of child, or not evaluate child at all. *Id.*

Here, regarding the February 20, 2024 referral conference, the District adhered to most of the applicable regulatory requirements. The conference was scheduled and held in a timely manner, notice was properly given and the required persons were included in the conference. However, the team of individuals that met for the referral conference did not perform a thorough review of Student’s information as required by ADE Reg. 4.02. If the team had examined Student’s standardized scores over the years and her CPAC evaluation, the information might have led them to perform the comprehensive evaluation. This Hearing

Officer finds procedural violation of IDEA on the part of the District as to the failure to review Student's information as required by ADE Reg. 4.02.

C. Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student.

"The IDEA explicitly requires school districts to include parents in the team that drafts the IEP to consider 'the concerns of the parents for enhancing the education of their child' and to address 'information about the child provided to, or by, the parents.'" *M.M. ex rel. L.M. v. Dist. 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Circ. 2012) (citing 20 U.S.C. § 1414(d)(3)(A)(ii), (d)(4)(A)(ii)(III)). In *Rowley*, the Court stated that "[i]t seems . . . no exaggeration to say that Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation at every state of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard." See *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982). However, the IDEA does not require a school district to accede to a guardian's demands without considering suitable alternatives; a district does not procedurally violate the IDEA simply by failing to grant a guardian's request. *Id. Knox* again provides instruction in its holding that the District prevented the Grandparent in that case from fully participating in the IDEA process in failing to consider the criteria for an OHI disability after the Grandparent produced an IEE evidencing the Student may be eligible due to a diagnosis of ADHD and the District declined to reevaluate student despite the newly produced IEE. *Knox On behalf of J.D. v. St. Louis City Sch. Dist.*, 2020 WL 3542286 (E.D. Miss. 2020)

Likewise, this Hearing Officer finds that a preponderance of the evidence establishes that the District impeded Parents' opportunity to participate in the decision-making process

regarding the provision of FAPE to Student by failing to perform a comprehensive evaluation of Student in light of Student's CPAC evaluation reflecting Specific Learning Disorder with Impairment in Reading (surface dyslexia), ADHD, and other Specified Anxiety Disorder. As discussed in Knox, this Hearing Officer finds that if the District had properly evaluated Student for OHI or SLD, Parents could have participated and provided additional information for the IEP on the exact struggles that Student was having, which could have led to the implementation of a dyslexia program more targeted to assist Student and perhaps strategies to assist with her anxiety and ADHD if it was determined that they were negatively impacting her education.

II. Substantive FAPE

As illustrated in *Knox On behalf of J.D. v. St. Louis City Sch. Dist.*, 2020 WL 3542286 (E.D. Miss. 2020), a violation of a district's child find obligation is a procedural violation of IDEA. For a child to be denied a FAPE, the procedural inadequacies must (1) impede the student's right to an appropriate education, (2) seriously hamper the Parents' opportunity to participate in the decision-making process, or (3) cause a deprivation of educational benefits. See *K.E. ex rel. K.E. v. Indep. Sch. Dist. No. 15*, 647 F.3d 795, 804-805 (8th Cir. 2011); 20 U.S.C. § 1415(f)(3)(E)(ii)(I)-(III). The District must offer "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." See *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999 (2017).

As this Hearing Officer found the District committed the procedural child find violation, this Hearing officer must consider whether the District substantively provided FAPE to Student after its first child find violation on March 11, 2018 that continues to date.

1. The District seriously hampered Parents' opportunity to participate in the decision-making process.

As discussed above in *Knox*, the District Court stated that “if the District had properly evaluated Student . . . , Grandmother ‘could certainly have participated [] and provided additional information for the IEP team. See *Knox On behalf of J.D. v. St. Louis City Sch. Dist.*, 2020 WL 3542286 (E.D. Miss. 2020). Here, as in that case, a preponderance of the evidence establishes that the District impeded Parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to Student by failing to perform a comprehensive evaluation of Student in light of Student’s CPAC evaluation reflecting “surface dyslexia.” As in *Knox*, this Hearing Officer finds that if the District had properly evaluated Student for SLD, Parents could have participated and provided additional information for the IEP on the exact struggles that Student was having, which could have led to the implementation of a dyslexia program more targeted to assist Student. Thus, the District’s procedural error resulted in a substantive denial of FAPE to Student.

2. The District violated IDEA in filing to provide Student an IEP resulting in her loss of educational benefit.

If a child’s team determines the child has a disability and is in need of special education, the child’s “IEP Team” prepares a comprehensive program which includes teachers, school officials, the local education agency (LEA) representative, and the child’s parents or guardians, and the IEP must be drafted in compliance with a detailed set of procedures. 20 U.S.C. §1414(d)(1)(B). An IEP must contain, among other things, “a statement of the child’s present levels of academic achievement,” “a statement of measurable annual goals,” and “a statement of the special education and related services to be provided to the child.” *Id.* § 1402(9). “Special education” is “specially designed instruction . . . to meet the unique needs of a child with a disability”; “related services” are the support services

“required to assist a child . . . to benefit from” that instruction. *Id.* §§ 1401(26), (29). A school district must provide a child with disabilities such special education and related services “in conformity with the [child’s] individualized education program,” or “IEP.” 20 U.S.C. §1409(9)(D). When formulating an IEP, a school district “must comply both procedurally and substantively with the IDEA.” *Rowley*, at 206-07.

As discussed above, the Arkansas Dyslexia Resource Guide provides that when a student with a disability exhibits the characteristics of dyslexia, the IEP committee can decide whether the student needs special education services in this area, if the student’s needs can be met through the district’s general education dyslexia intervention program, or if a combination of the two are needed. Ark. Dyslexia Res. Guide, p. 39. Here, the District addressed Student’s dyslexia diagnosis by providing intervention in the general education setting through the Connections program 45 minutes 3 times week from Spring of 2019 to Spring of 2023. As such, the District was not required to address Student’s dyslexia by providing specialized instruction in an IEP for Student absent a finding that Student met the qualifications as a student with a disability under IDEA under the category of SLD.

Here, a preponderance of the evidence supports a “reasonable suspicion” that Student may be a student with a disability under IDEA under the category of SLD or OHI. As detailed above, Student IQ is average while her achievement lagged approximately two years behind ’s achievement from seventh grade forward. Her education has been negatively impacted by the District’s inability to remediate Student’s dyslexia with the Connections program, as shown by the continued decline in her grades and standardized testing, particularly beginning in seventh (2021-2022) and eighth (2022-2023) grades when her grades dropped significantly to include her first Ds and her standardized testing in reading

stagnated at the sixth-grade level, as a result of her disability (or disabilities) were not being properly addressed. As the Advocate testified, Student needed intensive work in fluency and comprehension to remedy her surface dyslexia, and the Connections program did not provide that. In Advocate's opinion, Student needed a comprehensive evaluation, an OT evaluation, and a dyslexia program like Wilson Words. This Hearing Officer finds the Student's education was negatively impacted by the District's failure to provide Student an individualized education plan ("IEP"), which is a substantive denial of FAPE to Student.

Conclusion

Having considered Parents' allegations of procedural due process violations above and their impact on Student's education, it is the conclusion of this Hearing Officer that Student was denied FAPE as a result of District's procedural violations of the IDEA.

REMEDIES

This Hearing Officer has determined that the District violated its child find obligation under IDEA beginning when it failed to perform a comprehensive evaluation and implement strategies to remediate Student's surface dyslexia when Parent provided Student's IEE from CPAC on March 11, 2019 and subsequently denied FAPE to the Student no later than seventh grade, which fell in 2021-2022, when Student's grades began to suffer more severely with Ds and her GE on standardized testing stagnated at the sixth grade level. Thus, the District denied Student FAPE for the entirety of the two-year period provided by the statute of limitations between about March 5, 2022 to March 4, 2024. Next, this Hearing Officer must determine whether Student is entitled to compensatory education to the extent necessary to put the Student in the position in which she would have been had she been provided FAPE.

A hearing officer has broad discretion regarding the remedy granted in cases where a student is denied FAPE by a school district. Similarly, regarding compensatory education, “[w]hether District is able to provide FAPE prospectively is irrelevant to an award of compensatory education.” *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1085 (8th Cir. 2020). The purpose of compensatory education is “restorative,” and damages are “strictly limited to expenses necessarily incurred to put Student in the education position [she] would have been had the District appropriately provided a FAPE.” *Id.* at 1086.

CONCLUSION

Considering all the facts discussed above, it is the opinion of this Hearing Officer that the District denied Student FAPE from March 5, 2022 to March 4, 2024. Thus, the District shall compensate Student by providing Student with a comprehensive re-evaluation by CPAC, District provision of any diagnostic components necessary to consider whether Student qualifies as a student with a disability in need of special education under the categories of OHI or SLD no later than 30 days after receiving the CPAC reevaluation, a comprehensive OT evaluation, and a comprehensive vision evaluation targeted toward any visual processing disorder or deficits in visual skills that could be treated with vision therapy. The District shall reimburse Parents for the expense of the CPAC and vision evaluations and for the expense of any therapies recommended in the evaluations that the District is unable to provide, including co-pays and mileage. The District should hold a facilitated placement conference, and the recommendations from each of these evaluations should be followed by the District. The District shall provide Student with dyslexia intervention utilizing the Wilson Words program at a number of minutes, weekly times, and for a period required for program fidelity until Student completes the program or graduates,

whichever may occur first. The intervention shall be provided by a person knowledgeable and qualified to teach the program and shall begin within 60 days of the entry of this order. This award of compensatory education is in addition to any special education minutes prescribed for Student in any future IEP and should be implemented to the extent possible during Student's school breaks and to a limited extent in after school tutoring, as this hearing officer recognizes that Student may require time to attend to other needs and activities.

Further, the District shall require its teachers at all levels undergo a continuing education course focused on the child find obligations under IDEA and identification of signs of potential disabilities that may be out of the ordinary such as absences and surface dyslexia being specifically addressed. District principals, assistant principals, and any staff leading referral conferences for 504 Plans or IEPs are also to undergo a continuing education course focused on the proper procedures, forms and information to be covered.

FINAL CONCLUSIONS AND ORDERS:

Upon consideration of all the testimony and evidence, this Hearing Officer finds that a preponderance of the evidence establishes a finding in favor of the Parents that District violated the child find obligations of IDEA, as well as other procedural violations, and failed to provide the Student a FAPE as a result of the procedural violations of IDEA from March 5, 2022 to March 4, 2024, as detailed above. The District is hereby ordered to take the following actions regarding Student:

1. The District shall compensate Student by reimbursing Parent for a comprehensive re-evaluation of Student to be completed by CPAC and a comprehensive vision evaluation targeted toward any visual processing disorder or deficits in visual skills that could be treated with vision therapy. The District shall reimburse Parents for the expense of the

CPAC and vision evaluations, including co-pays and any mileage, within 30 days of Parent's production of receipts. For two years from the date of this order, the District shall further reimburse Parents for any therapies recommended in the evaluations and the vision evaluation that the District is unable to provide, including co-pays and mileage at the rate of 52 cents per mile.

2. Upon receipt of the CPAC reevaluation, the District shall timely provide of any diagnostic components necessary to consider whether Student qualifies as a student with a disability in need of special education under the categories of OHI or SLD, along with a comprehensive OT evaluation focused on whether OT could assist with student's surface dyslexia.

3. Upon timely completion of necessary diagnostic components, the District shall hold a facilitated placement conference for Student through the Arkansas Special Education Mediation Project operated by the UALR Bowen School of Law, and the recommendations from the CPAC, vision, OT and other evaluations and assessments shall be followed by the District.

4. As compensatory education, the District shall provide Student with dyslexia intervention utilizing the Wilson Words program or a program recommended by CPAC, at Parents' choice, at a number of minutes, weekly times, and for a period required for program fidelity until Student completes the program or graduates, whichever may occur first. The intervention shall be provided by a person knowledgeable and qualified to teach the program and shall begin no later than 60 days after the entry of this order.

5. The above award of compensatory education are in addition to any special education minutes prescribed for Student in any future IEP and should be implemented to the extent possible during Student's school breaks and to a limited extent in after school tutoring, as

this hearing officer recognizes that Student may require time to attend to other needs and activities.

6. Further, the District shall require its teachers at all levels undergo a continuing education course focused on the child find obligations under IDEA and identification of signs of potential disabilities that may be out of the ordinary such as absences and surface dyslexia being specifically addressed. District principals, assistant principals, and any staff leading referral conferences for 504 Plans or IEPs are also to undergo a continuing education course focused on the proper procedures, forms and information to be covered.

7. Parents also alleged that the District's conduct constitutes disability discrimination in the pursuant to §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a) or Title II of the Americans' with Disabilities Act, 42 U.S.C. § 12131-12165, along with other allegations. This Hearing Officer has no jurisdiction over disability discrimination claims or other allegations beyond the scope of IDEA. See ADE Spec. Ed. Rules §10.02.22.1. Therefore, to the extent Parents' due process complaints raise disability discrimination claims or other matters beyond the scope of this hearing officer's jurisdiction, those claims are dismissed without prejudice.

FINALITY OF ORDER AND RIGHT TO APPEAL:

The decision of this Hearing Officer is final and shall be implemented unless a party aggrieved by it shall file a civil action in either federal district court or a state court of competent jurisdiction pursuant to the Individual's with Disabilities Education Act within

ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, Special Education and Related Services; Procedural Requirements and Program Standards, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

IT IS SO ORDERED THIS 27th day of September, 2024.

/s/ Debby L. Ferguson
Hearing Officer