

**WYOMING DEPARTMENT OF EDUCATION  
SPECIAL PROGRAMS DIVISION  
DUE PROCESS HEARING**

**In Re the Matter of:**

**Case #: H-002-19**

**(the Student) by and through  
his/her parent and/or guardian,**

**Petitioners,**

**vs.**

**DECISION and ORDER**

**Teton County School District #1,**

**Respondent.**

---

**APPEARANCES**

For Petitioners:

Allison H. Colgin, Esq.  
Levy Coleman Brodie, LLP  
1110 Maple Way  
P.O. Box 7372  
Jackson, Wyoming 83002

John H. Robinson, Esq.  
Robinson Stelting Welch Bramlet, LLC  
172 Center Street, Suite 202  
P.O. Box 3189  
Jackson, Wyoming 83001

For Respondent:

Tammy M. Somogye, Esq.  
Lathrop GPM LLP  
10851 Mastin Boulevard, Building 82, Suite 1000  
Overland Park, Kansas 66210-1669

Alison J. Foster, Esq.  
Lathrop GMP LLP  
1515 Wynkoop Street, Suite 600  
Denver, Colorado 80202

Sara E. Van Genderen, Esq.  
Geittmann LarsonSwift LLP  
155 E. Pearl, Suite 200  
P.O. Box 1226  
Jackson, Wyoming 83001

**HEARING OFFICER:** Robert “Bob” Mullen  
Casper, Wyoming

Note: The Record consists of all filings received by the Hearing Officer, correspondence between the Parties and the Hearing Officer, correspondence related to the case between the Wyoming Department of Education (WDE) and the Hearing Officer, Transcripts of all proceedings, and Exhibits (both admitted and offered but declined). Transcripts and exhibits are placed at the back of the Record. Otherwise, the Record is assembled chronologically. Unless otherwise stated, “Tr.” refers to a Due Process Hearing transcript, and “Ex.” refers to an exhibit. The Due Process Hearing was held on the following nine days and the corresponding transcript volumes are January 14 (Vol. 1), 15 (Vol. 2), 16 (Vol. 3), 17 (Vol. 4), 20 (Vol. 5), 21 (Vol. 6), 22 (Vol. 7), 23 (Vol. 8), and 24 (Vol. 9), 2020.

Key to Acronyms:

CFR	Code of Federal Regulations
ELA	English Language Arts
FAPE	Free and Appropriate Public Education
GORT	Gray Oral Reading Test
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
LRE	Least Restrictive Environment
SLD	Specific Learning Disability
U.S.C.	United States Code
WDE	Wyoming Department of Education
WADE	Wilson Assessment of Decoding and Encoding
WIAT	Wechsler Individual Achievement Test
WIST	Word Identification Spelling Test

## **CASE SUMMARY**

I found all witnesses to be credible and well-intentioned. Some perspectives and recollections differed, but I detected no element of intentional deceit.

Petitioners, like other attentive and engaged parents, want their child to have the best chance to realize academic potential and to be empowered to choose vocations and avocations in life that are fulfilling. Predictably, they want help from their child's educators in that effort. A public school system's vision statement might well establish as its mission, as does Respondent's, ensuring that all students have the foundation for success and are challenged to reach their full potential. These desires and aspirations are alive and genuine for Petitioners and the members of Respondent's staff who testified. However, the desires and aspirations of the Parties do not describe the legal requirements and constraints a Wyoming public school system contends with today in the context of its obligation to provide children with disabilities a free and appropriate public education under the Individuals with Disabilities Education Act. That body of law does not guarantee any particular level of educational success. Instead, it is directed toward ensuring that students with disabilities have access to education. This observation is not intended to suggest that Respondent's efforts should be or that they are currently limited to responsibilities under IDEA, but only to serve as preamble to what follows, that this Decision focuses on the requirements of the law, rather than the components of an optimal education.

The Student, by all accounts, is remarkable; bright, hard-working, likable, engaged with life and learning. The Student's difficulties reading and using words were detected and confirmed by the 2nd grade, and eligibility for special education and related services was confirmed at that time. The Student spent RD, RD, and RD grades at a private school, as a result of which, in combination with contributions by private tutors, the Student made progress toward compensating for the brain disfunction which underlies those reading and word use difficulties.

When grant funding tied to the private school's focus on a favored methodology to address the Student's difficulties dried up, Petitioners returned the Student to Respondent for RD grade. There, the plan which had been developed at the private school was more or less continued, including a methodology it had used.

Near the end of a RD grade school year of intensive reading intervention at the Middle School, and with the benefit of multiple points of data, Respondent determined that a less restrictive course of education for the Student warranted discussion, and at an IEP Team meeting on June 6, 2019, that was announced. Petitioners disagreed.

As a consequence, further IEP Team discussion and deliberation occurred. Even so, Respondent members of the Team remained convinced that the less restrictive method of providing assistance to the Student was called for, although some of those individuals doubted the need for special education services of any sort. A decision was made, over the continued objection of Petitioners, that with the beginning of the Student's 7th grade year less restrictive methodologies was to be deployed, but still within the purview of IDEA.

Petitioners filed a Request for Due Process Hearing on October 21, 2019 in which they identified six issues they wished to have determined. The Student's interim placement was established, and a schedule developed around the possibility that the Parties efforts toward informal resolution, including mediation, would be unable to resolve their differences and a Due Process Hearing would be required.

At the Parties request, the schedule which established dates for the Due Process Hearing and issuance of a decision extended past the time frame preferred by applicable law. The Scheduling Order which proceeded the conference at which dates for that Due Process Hearing and a decision were to be established, advised the Parties:

The Due Process Hearing will take place on the date(s) identified at the Pre-Hearing Scheduling Conference unless the matter is resolved or settled prior to the hearing.  
(no emphasis added)

The Scheduling Conference was held on November 8, 2019, and a ten day Due Process Hearing was scheduled to begin January 14th and to conclude January 27, 2020.

On December 11, 2019 Respondent filed a Motion asking that the Due Process Hearing be continued. Although Petitioners' consent had apparently been requested, they did not join in Respondent's Motion and the Motion was denied.

After consulting with the Parties, a Final Pre-Hearing Conference was scheduled for January 7, 2020. On that date, ten minutes before the Conference, Petitioners filed a Motion for Leave to Amend Due Process Complaint Pursuant to 34 CFR § 300.508(d)(3)(ii) and related material (collectively referred to as "Motion to Amend"), stating that after filing the original Request Petitioners had determined a need to have the Student further evaluated and that they had obtained that private evaluation which had taken place on December 16, 17, and 19, by pediatric neuropsychologist Jayme Nieman-Kimel.

At the Final Pre-Hearing Conference, the Hearing Officer advised the Parties that he had not seen Petitioners' Motion to Amend. Respondent's counsel, who had apparently only been able to review a portion of the Motion to Amend opposed it, adding that the material sent in conjunction with Petitioner's Motion appeared to contain improper references to settlement discussions. A brief recess was requested and permitted so that the Parties' counsel could confer privately.

Upon reconvening the Conference, Respondent's counsel renewed objection to the Motion to Amend, and pointed out that the language of 34 CFR § 300.508(d) describes only two possibilities by which a party may amend a due process complaint: (1) by agreement with the other party; and, (2) with

permission of the hearing officer, granted not later than five days before the beginning of the due process hearing.

Because Respondent had not agreed, the second method provided the single avenue for approval of Petitioners' Motion. In light of the alleged impermissible contents of Petitioners' motion-related material, their counsel offered to provide revisions later in the day, thereby allowing the Hearing Officer to become informed about what was requested, however necessitating reconvening the Final Pre-Heating Conference later the same day to fit within the five day provisions of the described CFR section. That offer was ruled impractical, but argument concerning the Motion was heard immediately.

Petitioners' Motion to Amend was denied, having been filed too late for reasonable consideration and response by Respondent, and the reasons suggested for further delay having been ruled insufficient under the circumstances.

On January 10, 2020 Respondent filed a Motion in Limine concerning Dr. Neiman-Kimel and the evaluation report she had prepared concerning the Student. Petitioners filed a Response on January 13, 2020. Those were reviewed and the matter was addressed at the inception of the Due Process Hearing on January 14th. Ruling on the Motion was made that, at that point in time, Dr. Neiman-Kimel's testimony and evaluation report could not be judged to be clearly irrelevant, so the Motion in Limine was denied.

Testimony by fifteen witnesses was offered over the course of the Due Process Hearing. Additional testimony was also admitted in the form of the deposition excerpts of Respondent's designees who testified pursuant to Petitioners' W.R.C.P. 30(b)(5) Notice. Following close of the evidentiary portion of the hearing, and with the assistance of transcripts of the Hearing, the Parties prepared and filed written closing arguments and proposed findings of fact and conclusions of law.

As detailed below, based on the evidence and applicable law I conclude that Respondent did not improperly change or fail to implement the Student's IEP, that Respondent has provided the Student FAPE, Respondent did not impermissibly predetermine a change in the Student's IEP and thereby violate Petitioners' right to meaningful participation, and Respondent did not improperly fail to provide measurable annual goals for the Student. Accordingly, Petitioners are not entitled to recover costs from Respondent and Respondent is the prevailing party.

### **ISSUES and DECISION**

1. Has Respondent improperly changed the Student's IEP or failed to implement it by withdrawing the Student from the special education program previously provided - more specifically, from specialized reading instruction - denying the Student FAPE?

Decision: No. Petitioners did not prove that Respondent denied the Student a FAPE by improperly changing the Student's IEP or that it failed to implement the IEP by withdrawing the Student from the special education program previously provided, specifically, specialized reading instruction.

FINDINGS OF FACT: 1 through 7, 9 through 13, 15 through 67

CONCLUSIONS OF LAW: 1 through 30

2. Has Respondent impermissibly failed to provide the Student - who has been determined to have a Specific Learning Disability, a disability enumerated under IDEA and related Wyoming law - special education and related services, denying the Student FAPE?

Decision: No. Petitioners did not prove that Respondent denied the Student a FAPE by impermissibly failing to provide the Student special education and related services.

FINDINGS OF FACT: 1 through 58, 61 through 67

CONCLUSIONS OF LAW: 1 through 30

3. Has Respondent impermissibly failed to abide by procedural requirements of IDEA by making unilateral, pre-determined decisions to remove services from the Student without meaningful input or consent of Petitioners, denying the Student FAPE?

Decision: No. Petitioners did not prove that Respondent denied the Student a FAPE as a result of failing to abide by procedural requirements of IDEA - that is, by impeding the Student's right to a FAPE, significantly impeding Petitioners' opportunity to participate in the decision-making process regarding the provision of FAPE, or by causing a deprivation of educational benefit - by making unilateral, pre-determined decisions to remove services from the Student without meaningful input or consent of Petitioners.

FINDINGS OF FACT: 1 through 7, 9 through 13, 16, 17, 18, 20, 21, 22, 23, 25, 26,  
28 through 49, 57, 58

CONCLUSIONS OF LAW: 1, 2, 3, 4, 13 through 20, 21 through 27

4. Has Respondent failed to provide measurable annual goals which meet the Student's needs that result from the Student's disability to enable the Student to make progress in the general education curriculum and meet the Student's other educational needs that result from the disability, denying the Student FAPE?

Decision: No. Petitioners did not prove that Respondent denied the Student FAPE by failing to provide measurable annual goals which meet the needs that result from the Student's disability such that the Student was unable to make progress in the general education curriculum or meet the Student's other educational needs that result from the disability.



FINDINGS OF FACT: 1 through 7, 9 through 13, sixteen through 18, 20 through 23,  
25, 26, 28 through 49, 57, 58

CONCLUSIONS OF LAW: 1 through 4, 13 through 20 through 30

5. Are Petitioners entitled to recover costs, past and future, from Respondent related to failure of Respondent to provide the Student FAPE?

Decision: No. See the decision on issues 1, 2, and 3 and the Findings of Fact and Conclusions of Law cited there.

6. Who is the prevailing party in the context of Petitioners' Request for Due Process Hearing?

Decision: Respondent. See the decision on issues 1, 2, and 3, and the Findings of Fact and Conclusions of Law listed there.

**WITNESSES**  
**[in order of initial appearance]**

Sandra Sanderson, M.A., Respondent staff, school psychologist

RD., Petitioner, Student's father

Frances Lunney, MA, educator and private reading specialist

Jayne Neiman-Kimel, Ph.D., ABPdN , private pediatric neuropsychologist and clinical psychologist

Alivia Bingham, Respondent staff, 7th grade ELA teacher

Ann Marie Babb, Respondent staff, reading interventionist

Tess Malone, Respondent staff, special education teacher

RD., Petitioner, Student's mother

A.J. Swentosky, M.A., Ph.D., Respondent staff, Director of Educational Services

Julie Nash, Respondent staff, Director of Special Education

Ryan Allen, Respondent staff, special education teacher and the Student's 6th grade case manager

Michelle Riesbeck, Respondent staff, 7th grade science teacher

Renaye Notzka, Respondent staff, 6th grade ELA teacher

Matt Hoelscher, Respondent staff, Middle School Principal

Annie Kuvinka, Respondent staff, school psychologist

The deposition testimony of A.J. Swentosky, Ryan Allen, Julie Nash, Sandra Sanderson, and Tess Malone, all of whom are described above, and which testimony was obtained pursuant to Petitioners' W.R.C.P. 30(b) (6) Request, appears in the Record as Joint Hearing Exhibits (J-#) 1, 2, 3, 4, and 5. By stipulation of the Parties, only the highlighted portions of that testimony was admitted.

## **FINDINGS OF FACT**

The following findings of fact were relied upon in reaching this Decision and are adopted. The basis for each Finding is stated with transcript references indicated by the name of the witness(s), e.g., "Tr.", and pertinent transcript page number(s), with exhibits indicated by "Ex." and the identifying exhibit designation.

1. The Student is thirteen years old. As an infant, the Student was active, observant, curious, and inquisitive, qualities which continue, and as a preschooler developed a rich vocabulary. The Student enjoys a variety of outside activities, e.g., biking, camping, fly fishing, rock climbing, spending time with family members, and listening to and collecting music. Petitioners have consistently read with the Student. G.P., Tr. Vol. 1, pp. 102-104.

2. The Student is described as both a wonderful person and student, a hard worker, kind, open, one who asks questions and aims to please, bright, stoic, with a good sense of humor and interesting stories, one who may go to lengths not to let anyone know she or he is struggling, and able to engage in instruction with good listening and comprehension. Lunney, Tr. Vol. 1, pp. 211-213; Babb, Tr. Vol. 3, p. 179; Bingham, Tr. Vol. 2, pp. 174-175; Notzka, Tr. Vol. 7, p. 120; Nieman-Kimel, Tr. Vol. 6, p. 121.

3. Petitioner father has a Bachelor's degree in geography and Petitioner mother has a Bachelor's degree in biology, with a minor in chemistry. Petitioner mother has primarily monitored the Student's education. Petitioners have been engaged with and know their child, the Student, very well. They are a close family. G.P., Tr. Vol. 1, pp. 101, 133; A.P., Tr. Vol. 4, pp. 135-137, 150; Bapp, Tr. Vol. 7, p. 186.

4. Fran Lunney has been one of the Student's tutors. Mr. Lunney is a public school teacher in Massachusetts, currently on leave. He holds a master's degree in teaching english, performed post-master's degree work becoming a certified reading specialist, has completed an Orton-Gillingham internship, and has worked with dyslexic students for thirty years. He taught sixth grade English for five years. Mr. Lunney provided reading tutoring to the Student in the summers of 2015 through 2018, for 25 to 35 hours each summer, and during the period from August of 2019 to the time of his testimony provided reading tutoring to the Student four days a week, 50 minutes per session. Lunney, Tr. Vol 1, pp. 136-140, 150, 192, 208, Tr. Vol 2, pp. 8-9; G.P., Tr. Vol. 1, p. 115.

5. Respondent is a Wyoming school district. The Student attends one of its schools, the Jackson Hole Middle School. Sanderson, Tr. Vol. 1, p. 41.

6. Sandra Sanderson is a school psychologist on Respondent's staff at the Middle School. This is her third year in that position. She has a degree as an educational specialist in school psychology and a degree in clinical psychology. Sanderson, Tr. Vol. 1, p. 41.

7. Ann Marie Babb has worked in education for twenty years. She has a bachelor's degree in elementary education, a master's degree in education, specifically in teaching reading, and is national board certified in literacy. In 2007 she joined Respondent as an instructional coach. For two years she was Respondent's Curriculum Coordinator, working with teachers across the District, which at the time included five elementary schools, a middle school, and a high school, building and aligning curriculum for english language arts classes. In that role she made sure, for example, that kindergarten instruction led to first grade expectations, and so on, following standards that the State of Wyoming had adopted. Then, four years ago, she moved to Respondent's Middle School to be a reading interventionist. Babb, Tr. Vol. 2, pp. 218-220, Tr. Vol. 3, p. 137.

8. Alivia Bingham is a 7th grade english language arts (ELA) teacher for Respondent and has been with Respondent since 2001. She has two Master's degrees, one in English as a second language, and one in instructional tech and design. She is nationally board certified, K-12, English as a New Language. Bingham, Tr. Vol. 2, p.173

9. Julie Nash is Respondent's Director of Special Education. She has a Bachelor's degree in elementary education and special education, and a Master's degree in educational leadership. She has worked for Respondent for eleven years. Nash, Tr. Vol. 5, pp. 114-115.

10. Matt Hoelscher is Respondent's principal at the Middle School. He has worked for Respondent since 2011, having previously been an assistant principal at the Middle School and a 7th and 12th grade english teacher. He is also a soccer coach. He has twenty-two years of experience in education, Bachelor's degrees in english and education, and a Master's degree in educational leadership. Hoelscher, Tr. Vol. 7, pp. 204-206.

11. A.J. Swentosky is Respondent's director of educational services. He has a Bachelor's degree in psychology, a Master's degree in applied developmental psychology, and a doctorate degree in school psychology. Before becoming director of educational services, he worked for Respondent as the multi-tiered systems of supports coordinator and as a school psychologist. Swentosky, Tr. Vol. 8, pp. 150-151.

12. Ryan Allen has been a special education teacher for Respondent at the Middle School for six years. He has a Bachelor's degree in biology, a Master's degree in teaching science grades 6 through 12, a Master's degree in special education for grades K through 12, and has received training to work with students who have learning disabilities in the area of reading. He was the Student's 6th grade case manager. Allen, Tr. Vol. 7, pp. 13, 66; Ex.'s J-2(29).

13. Renaye Notzka teaches 6th grade english language arts for Respondent at the Middle School. She has nineteen years of experience in education, has a liberal arts degree, a Master's degree in elementary education, and is nationally board certified in early and middle childhood literacy. She has been acquainted with the Student since the Student was a toddler and the Student was in her 6th grade general education english arts class in the 2018-2019 school year. Notzka, Tr. Vol. 7, pp. 117-118.

14. Tess Malone is a special education teacher at Respondent's Middle School. She has a Bachelor's degree in human biology and a Master's degree in special education. She has worked for Respondent since 2013. At the Middle School she has taught 6th, 7th, and 8th grades. In the current school

year, she co-teaches the general education language arts inclusion class which the Student attends with Alivia Bingham. She also teaches a language arts workshop and co-teaches an english language development class which focuses on executive functioning and academic support. She has been a member of the Student's IEP Team since September, 2019. Malone, Tr. Vol. 3, pp. 218, 221-223,

15. Jayme Neiman-Kimel is a board-certified pediatric neuropsychologist and licensed clinical psychologist. She has a master's and Ph.D degrees in behavioral medicine and clinical psychology, and has been licensed in California to do assessments since 1992. Pediatric neuropsychology encompasses all of child development and understanding the brain, how it learns and functions, in order to formulate plans best suited to a particular brain. Her expertise encompasses dyslexia. She estimates having performed almost 10,000 neuropsychological evaluations, 60 to 70 percent of which having been for adolescents. She has conducted neurophysiological evaluations of many students with reading and writing deficiencies she believes were similar to those of the Student. Neiman-Kimel, Tr. Vol. 2, pp. 63-68, Tr. Vol. 6, p. 111.

16. The Student first showed signs of difficulty reading in the first and second grades. In the Fall of 2014, when the Student was in second grade, Petitioners obtained a private evaluation of the Student. That evaluation caused them to understand the Student showed signs of deficiencies aligned with dyslexia, i.e., phonics problems, decoding problems, fluency problems, difficulty reading with speed, clarity, and accuracy. G.P., Tr. Vol. 1, pp. 104-107.

17. In mid-2015 a psychoeducational evaluation of the Student was performed for Respondent by school psychologist Brad Dickey, Ed.S., NCSP, BCBA. Mr. Dickey composed a written report dated June 4, 2015. In 2015, the Student was determined to have a specific learning disability (SLD) in the area of reading and determined eligible for special education. The Student is currently eligible and receiving special education and related services from Respondent under the SLD category. Ex. P-1; G.P., Tr. Vol. 1, p. 112; Allen, Ex. J-2 at p. 9; Sanderson, Ex. J-4 at p. 19; Counsel for Respondent, Tr. Vol. 2, p. 50.

18. The term “dyslexia” indicates difficulty in a person’s ability to read, a specific learning disability in the area of reading. It is of neurological origin, has no cure, and impacts all learning, but typically causes difficulty in the ability to read fluently and accurately, with spelling, and written expression. Assessments are needed to determine where in the reading process the difficulty lies. Dyslexic people can be quite bright, with cognitive abilities not commensurate with their ability to learn to read. They often require more exposures to learn the same concepts, meaning more practice and repetition and focus on foundational reading skills. Among the programs for assisting dyslexic people are the Orton-Gillingham program, the Wilson Reading System (sometimes referred to as Program), and Project Read Phonics. Nash, Tr. Vol. 8, p. 121; Lunney, Tr. Vol 1, pp. 140-147; Neiman-Kimel, Tr. Vol. 2, pp. 65, 69, 71.

19. Petitioner father has the impression that Respondent’s staff did not recognize “dyslexia.” When asked why the term “dyslexia” was not used in the Student’s IEP, Ms. Sanderson testified that it is not a word used in her occupation, but is under the umbrella of specific learning disability (SLD), that Respondent targets skill deficits independent of labels and diagnoses. G.P., Tr. Vol. 1, p. 114; Sanderson, Ex. J-2 at p. 23.

20. The Student attended Journeys School, a private school in Teton County, Wyoming, for RD, RD, and RD grades. Petitioners were attracted to enroll the Student there by their impression that the staff was trained in the Orton-Gillingham method of working with dyslexic students, and where there was, in Petitioner father’s words, a “dyslexic-friendly curriculum.” While at the Journeys School, the Student received one-to-one reading instruction two to three times per week. The Student was also privately tutored during that time frame. G.P., Tr. Vol. 1, pp. 117-118; A.P., Tr. Vol. 4, pp. 142-143, 146.

21. In March 2018, Ms. Sanderson conducted a three-year psychoeducational reevaluation of the Student which resulted in a four page written report with supporting documentation. The reevaluation was comprehensive in relation to education, but was not intended to determine how the Student’s brain functioned. It was not an initial evaluation, the purposes of which would have been to determine, in relation

to IDEA eligibility criteria and if the Student was initially qualified for special education, but was instead intended to determine if the Student continued to qualify for special education with a reading disability. In preparation to do the reevaluation Ms. Sanderson reviewed an assortment of information. She saw among the conclusions of the initial evaluation of June 2015 that the Student had scored below average on letter and word recognition, nonsense word decoding, spelling, and phoneme isolation. She also reviewed the results of a February 2018 WADE assessment of the Student at Journeys School, and visited with the Student's case manager/teacher at Journeys School to identify areas the case manager believed should be assessed. The case manager suggested assessing for reading comprehension and fluency. Another item of information from Journeys School was the Student's Individualized Learning Plan and the goals expressed in it, i.e., spelling, reading fluency, and reading multisyllabic words. Ms. Sanderson also spoke with the Petitioner mother who expressed concern about the Student's memory. The questions Ms. Sanderson's reevaluation was intended to address were identified in her written report to be: (1) What are the Student's current academic skills in the area of reading; (2) How does the Student's memory abilities impact academic achievement; and, (3) What changes, if any, are needed in the transition to Respondent's school for the Student to achieve the academic goals identified for the Student? The first question was generated from Journeys School input, and the second question was a result of the conversation with Petitioner mother. Sanderson, Tr. Vol.1, pp. 41, 45-46, 51-52, Tr. Vol. 8, pp. 41-49, 52-54; G.P., Tr. Vol. 1, pp. 119-120; A.P., Tr. Vol. 4, p. 147; Ex.'s P-1, P-13, P-82, R-5.

22. As part of her March 2018 reevaluation of the Student, Ms. Sanderson used several standardized assessments, including the WIAT-III to obtain a standard score of the Student's reading comprehension and fluency and that was a purpose of the WIAT-III assessment. Sanderson, Tr. Vol.1, pp. 56, 58, 78-79, 82.

23. Respondent accurately recognizes that in considering whether a student with a disability should have an IEP, it is appropriate to start by determining the impact of the disability on the student's education, a process which looks at multiple data points and measures. Once the need for an IEP and



specialized instruction is established, whoever is supervising the specialized instruction determines the methodology. Specialized instruction is not a program, but rather unique in design for each student. "Methodology" means how a teacher provides specialized instruction. An IEP looks to, plans for, the calendar year following its adoption. Nash, Tr. Vol. 8, pp. 109-110, 119, 124.

24. Ms. Sanderson's written report of the March 2018 reevaluation did not include all of the grade level scoring information generated through the WIAT-III and the WISC, but it was supplemented by Ms. Sanderson's explanation of the scores when she spoke with the Student's IEP team. The omission of information about the Student's grade and age "equivalencies" was inadvertent. Ms. Sanderson testified that she attempts to make her reports understandable, parent and teacher friendly, and that she believes graphs are more easily understood than numbers. In her opinion, however, the scores could also have been misleading to someone without expertise to interpret that information, and they vary from assessment to assessment, e.g., the WIAT vs. the GORT, both of which assess oral reading fluency. Mr. Lunney, no doubt, an experienced and dedicated teacher, expressed the opinion that the omission of the Student's percentile rank, and grade and age equivalencies in Ms. Sanderson's March 2018 reevaluation report meant that Petitioners were deprived of a thorough picture of the Student's difficulties. Mr. Lunney was at a loss, however, to respond to criticism about reliance on grade and age equivalency scores made by at least some test designers, e.g., those expressed in the GORT-V examiner's manual. I am unpersuaded by Mr. Lunney's opinion about the omissions depriving Petitioners of opportunity to meaningfully participate in discussion of the Student's disabilities or how to address them. Sanderson, Tr. Vol.1, pp. 58-65, 77, 80-83, 89-96, 99, Tr. Vol. 8, pp. 51-56, 59; Lunney, Tr. Vol. 1, pp. 32-33, 206-207; J-4 at p. 16; Ex.'s P-13, P-59.

25. For the Student's RD grade which began in the Fall of 2018, the Student transferred from Journeys School to Respondent's school. Based upon her reevaluation of the Student of March 2018 and the information gathered in that context, Ms. Sanderson prepared thorough and detailed recommendations supported by appropriate explanations to the Student's IEP Team. Included among the analysis she gave to the IEP Team were the following observations and suggestions: (1) the Student had strong reading

comprehension abilities and had made consistent progress in reading fluency, demonstrating mastery for reading real and sight words, although not proficient in spelling and reading nonsense words, and continued instruction and practice with reading fluency was needed; (2) in relation to a writing sample, the Student showed difficulty putting ideas into words, had a poor grasp of spelling, writing production was low, and, by teacher accounts, slow; (3) the Student's memory abilities were comparable to those of other students, and although the Student experienced difficulty when an activity required managing competing information in working memory and had difficulty performing two different tasks at the same time in working memory, the Student was able to recall information after delay, demonstrating active attention and strategic planning, and had the ability to listen and attend long presentations of verbal material; (4) the Student's reading fluency was almost at grade level based on the February 2018 assessment conducted by Journeys School, although, Ms. Sanderson suggested, the Student could benefit from receiving the accommodation of additional time to complete reading especially when taking tests and with long reading assignments; and, (5) the Student's spelling deficits did not appear to impact education to the point of requiring specialized instruction, although benefit could come with writing instruction adapted to the Student's needs, the use of technological tools, and continued support from teachers and parents. Sanderson, Tr. Vol. 8, pp. 53-54; Ex. P-13.

26. In September 2018, the Student's IEP Team met pursuant to Notice. It reviewed Ms. Sanderson's information about the Student and develop an IEP. The IEP which was formulated continued the Student's goals from Journeys School and essentially continued what had been done with and for the Student there in relation to spelling and reading goals. Significant for the Team was that the Student had been making progress with reading fluency at the Journeys School. The IEP called for the Student to receive specialized reading intervention instruction 65 minutes 14 times every 4 weeks for 35 weeks from 10/05/2018 to 6/14/2019. The IEP also called for specialized instruction in an english language arts (ELA) inclusion classroom 65 minutes 14 times every 4 weeks for 35 weeks from 10/05/2018 to 9/27/2019. Recognizing a spelling and reading fluency need, the target was for the Student to access all grade level content standards within the general education setting. The plan was a reasonably calculated response to

the Student's needs as they were known at that time. Notably, the IEP does not reference the Wilson Reading Program. Sanderson, Tr. Vol. 8, pp. 54, 92-97; Nash, Tr. Vol. 5, p. 173; Ex.'s P-77, P-82, R-17, R-18, J-2(19).

27. Respondent is unaware of any State of Wyoming requirement that teachers be specifically trained to teach students with dyslexia. However, as a result of a year long program of instruction with Wilson, Ms. Babb received a certification from the company which references working with dyslexic children. Nash, Tr. Vol. 8, p. 112; Babb, Tr. Vol. 3, pp. 180-181.

28. The Wilson Reading Program became available for the students attending Respondent schools in 2016. The Program is intended for students grade two to adult. The Program is an intensive reading intervention that is typically used only when a student has not responded to less intensive intervention. In September, 2016 Ms. Babb attended training on the Program with a Wilson endorsed trainer and she began using the Program with a student later that year. In the 2018-2019 school year she taught the Program to 13 students, two groups of 4, one group of 3, and one group of 2. She currently teaches the Program to 2 seventh grade students in steps 7 through 12, but there are other teachers teaching the Wilson Program in Respondent's Middle School. In Ms. Babb's opinion, teaching a group larger than 4 students is ineffective, a ratio of one teacher to one student would allow a faster pace, but she is uncertain about the effectiveness of the Program, in general. It is a 12 step program that has five skills or subsets within each step. The steps do not correspond to grade levels. Each step is taught according to prescribed lesson plans, and each involves practice in decoding and encoding, in reading and writing. The Program is designed to give students as much time as necessary to master every skill, and subsets are repeated as necessary for mastery before a student moves to the next step. Among other things, the Program involves a reading part, where a student practices sounds, a part where the student practices reading words out of context, and a part reading words in context. It also includes a spelling section in which the student also practices sounds, a section where the student spells words and writes sentences, and, a comprehension section. Each step of the Program has a book with a number which correlates to that

step, and those texts contain word lists, sentences, and passages. Based on what a student has done the prior class period and the progress the student has made within a step, with the Wilson materials Ms. Babb designs the next class day lesson. For the Student, there were two to four classes per week, one hour each, involving the Program. The evidence shows that Ms. Babb is and was knowledgeable, experienced, and familiar with teaching the Wilson Reading Program, an expert reading teacher, and intimately familiar with the Student's progress throughout the relevant period. As a result, she was uniquely suited to judge the Program's effectiveness for the Student in the context of other aspects of the Student's performance during the Student's RD grade year and, therefore, perhaps best suited to make informed recommendations to the Student's IEP Team in June 2019 as to the appropriateness of continued use of the Program in order for the Student to make progress in light of the Student's circumstances. Babb, Tr. Vol. 2, pp. 228-230, 235, 240-246, 248-250, Tr. Vol. 3, pp. 30-33, 35, 40-43, 66, 67-98, 144-161, 165-171, 214, Tr. Vol. 7, pp. 178, 192-193, 196; Swentosky, Tr. Vol. 8, pp. 180-181, Ex. J-1 at p. 47; Ex.'s P-23, P-25, P-27, P-28, P-29, P-31, P-32, P-33, P-34, P-35, P-36, P-39, P-40, P-41, P-42.

29. The Student began the pull-out Wilson Reading Program with Ms. Babb as his teacher in the Fall of 2018. Babb, Tr. Vol. 7, p. 193.

30. In Respondent's sixth grade general english arts classes, students are expected to know how to read and be able to use reading to learn. To assess accuracy, a student must read out loud, but that is not the case when assessing comprehension. A student understanding what is read makes for success as a reader, rather than precision. There is a range of acceptable reading accuracy for one to be considered a fluent reader, however there are varying opinions about the acceptable range. The Wilson Reading Program advises that 80 to 90 percent makes a text readable so, in other words, a student can be accurate to 80 percent and still understand the text. Babb, Tr. Vol. 2, pp. 223-225, 227, Tr. Vol. 3. pp. 185-186.

31. In Ms. Notzka's 6th grade general education english arts class, there were 23 other students. All of the students worked with grade-level content. Instruction was guided by the Wyoming State Standards, which included reading, writing, speaking, and listening. Reading had a lot to do with analyzing text, text structure, citing evidence, examining the author's point of view, vocabulary, content and tier-two vocabulary, and grammar with sentence structure, pronouns, comparing and contrasting different pieces of writing. Students did a lot of annotation to show comprehension and used strategies such as prediction, connection, and inference. They also worked on contradictions. Writing included making claims, argument, finding evidence and reasoning. The State Standard for 6th grade spelling allows the use of technology to spell correctly. The Student was able to do this as effectively as other students in the class. Grammar Standards practice includes becoming familiar matching antecedents with pronouns, gender specific pronouns, restrictive and non-restrictive clauses, and sentence types, simple sentences which have to do with parts of speech - verb, object - compound sentences, and complex sentences. Vocabulary work for the students included working with what have been determined to be important content-specific words which are impeded throughout their work. They have to know what the words mean, practice writing them in sentences, and using them when speaking. It also involves breaking words down, e.g., root, suffix, prefix and definition. Ms. Notzka described the Student as a hard worker, a good persona and a good student, with average - in contact to basic - comprehension skills. Reading supports in the class included student options, for example when a reading a whole class book, listening to it while reading along. Speaking about an individual or book club book, students read books at their own level and are also in small groups. She conducted formative assessments to see where problems exist, and then intervenes as necessary. The Student's results on the spring-summative WY-TOPP results for english language arts showed that the Student was proficient and nearly advanced, which was consistent to what Ms. Notzka had observed in class, and there was nothing about the assessment which concerned her. Based on her observations of the Student's work during the 2018-2019 school year, Ms. Notzka had no concerns about the Student's ability to access the general education curriculum. Notzka, Tr. Vol. 7, pp. 119-120, 122-125, 127-128, 141-143; Ex. R-25.

32. Mr. Allen was an inclusion teacher for the Student, as well as the Student's RD grade case manager. He assessed and noted the Student's progress toward IEP goals. Allen, Tr. Vol. 7, pp. 18-21; Tr. J-2 at pp. 14-24; Ex.'s P-76, R-17, R-29.

33. In February 2019, Ms. Babb met with the Petitioners at a parent-teacher conference to discuss the Student's progress. Among other things she pointed out that the Student could recall and apply rules in reading, recall and follow spelling routines, often caught errors during proofreading, was able to spell nonsense words with 87 percent accuracy, read 680 out of 700 words given with automaticity, spelled 225 of 250 high frequency words accurately, showing the ability to self-monitor and self-correct for comprehension and accuracy indicating attention while reading, and was demonstrating understanding of grade-level text and the use of comprehension strategies for understanding. She had selected texts for the Student to read aloud in order to gauge, among other things, comprehension relative to complexity as well as word length and words per sentence. The Student had read an excerpt from Hans Christian Anderson, and done so with 96 percent accuracy, answered all of the comprehension questions correctly, self-corrected throughout, and, she had noted, had read the passage with expression, further indicating understanding. Self-correction indicated to Ms. Babb that the Student was monitoring for meaning, phonics, vocabulary, and fluency. The Student tested out of Wilson step 5 around the time of the conference. Babb, Tr. Vol. 3, pp. 62-64, 67, 138-143; Ex. P-23, P-25.

34. The Student was on the Principal's honor-roll the entire 2018-2019 school year, with a 4.0 GPA. Approximately 48 of 233 6th graders at the Middle School held that honor. Hoelscher, Tr. Vol. 7, pp. 220-221, Tr. Vol. 8, p. 5; Ex.'s R-13, R-14.

35. WY-TOPP is the Wyoming standardized assessment test intended to assess proficiency and annual progress, grade-level content and standards. It's difficult. It is a state-wide assessment taken at the beginning, middle, and end of each school year, i.e., fall, winter, and spring. The fall test assesses what will be learned and the spring test assesses what has been learned. The winter, interim, test is not required

by the State, but Respondent uses it to measure students' progress towards end-of-year standards. By the time of the spring, or summative test the hope is that students will have progressed to proficiency according to the State standards, sometimes referred to as "grade-level content." WY-TOPP is a reading test. Students read lengthy fiction and non-fiction articles and have to make connections between multiple pieces of text and answer questions. The questions are multiple choice and short answer. There are vocabulary questions, higher level thinking questions, low-level comprehension questions, and grammar questions. The Student's winter-interim WY-TOPP results, January 2019, showed improvement. When the Student took the WY-TOPP test at the end of the sixth grade year, the Student scored proficient, meaning able to listen and comprehend the teacher's instructions or the instructional delivery, able to access grade-level text, to talk about it with peers or write about it, connecting what was learned across disciplines, engaging in education. The Student did receive accommodations when taking the WY-TOPP in 6th grade, overseen by the Student's case manager, Mr. Allen. However, Mr. Allen did not read any of the assessment passages to the Student for any of the WY-Topp exams. Babb, Tr. Vol. 3, pp. 174-175, 212, 214-215; Hoelscher, Tr. Vol. 7, pp. 208-209, Swentosky, Tr. Vol. 8, pp. 156-158, 164; Allen, Tr. Vol. 7, p 13, Ex. J-2 at pp. 86-88; Notzka, Tr. Vol. 7, pp. 139-141; Ex. R-25.

36. During the 2018-2019 school year when the Student was receiving Wilson Reading Program instruction from Ms. Babb, WY-TOPP test results showed that the Student progressed from below basic to proficient. However, there is not a correlation between the Wilson Reading Program and WY-TOPP. The skills that are practiced in the Program - if one just stuck with fidelity to the scope and sequence of the Wilson protocols - would never give a student opportunity to work at higher levels and therefore demonstrate proficiency in the WY-TOPP assessment. Babb, Tr. Vol. 7, pp. 193-194, 198-200.

37. Although the Wilson Reading Program has 12 steps, whether it is warranted for a student in the Program, including one with dyslexia, to complete all 12 steps depends on how they are doing in reading in general, rather just how they are doing in the Program. The Program teacher makes recommendations about continuation based on the student's success and ability to access text beyond the

Program. In working with the Student during the 2018-2019 school year, Ms. Babb did not focus exclusively on the Wilson Reading Program steps. She also tried to incorporate middle school-appropriate instruction intertwined with the Wilson lessons which allowed her to assess the Student's comprehension Babb, Tr. Vol. 3, pp. 39, 177.

38. Petitioner mother requested a meeting with Respondent's staff on or about June 4, 2019. A date was selected and Mr. Allen sent Notice of the IEP Team meeting to be held June 6, 2019 at 8:15 a.m. was provided to Petitioner mother. She indicated her intention to attend in writing, and she did attend. A day before the meeting, Mr. Allen sent Petitioner mother progress-monitoring data concerning the Student. A.P., Tr. Vol. 1, p. 73; Allen, Tr. Vol. 7, pp. 31-33; Ex. J-2 at pp. 65-67; Ex.'s R-27, R-29.

39. An IEP Team meeting was scheduled for June 6, 2019, which Petitioner mother attended and there was discussion of ending the Student's participation in the Wilson Reading Program, Respondent members of the IEP Team believing discontinuation was warranted. A decision was made, contrary to the mother's stated wishes, that the Program would be discontinued for the Student. In reaction, the Petitioners asked that the Program be continued and the matter was revised in the Fall of 2019. Petitioner mother's opposition was not expected. The Student's case manager, Ryan Allen, expected it to be a positive meeting because of how well the Student had done during the school year. The Student's general education english arts teacher, Ms. Notzka, thought, in light of the Student's progress during the year and WY-TOPP results, it might be determined that the Student no longer need an IEP. G.P., Tr. Vol. 1, p. 124; Sanderson, Tr. Vol. 8, pp. 57-58; Allen, Ex. J-2 at pp. 71-27; Notzka, Tr. Vol. 7, pp. 144-145; Ex. R-34.

40. When the Student's IEP Team met June 6, 2019, Respondent's information about the Student's needs was informed by nearly a full school year of experience with the Student, including the Student's ability to work independently. At the meeting, they recommended that the Student no longer go to Wilson pull-out support classes any longer. Even though Respondent members of the IEP Team believed the Student's disability regarding basic reading skills persisted as of that time, based on their observations



it also appeared to those members that the Student was able to work very well in a classroom without support and that the Student's reading fluency was not affecting reading comprehension or class performance. One might have described the Student as having an above average vocabulary, above average reading comprehension ability, and below average reading fluency skills, that is to say the ability to read out loud, and has difficulty putting words on a page. Ex. R-27; Sanderson, Tr. Vol. 8, pp. 101-104; Babb, Tr. Vol. 3, pp. 104-105.

41. Among other reasons, the Student's progress and WY-TOPP scores, the Student's RD grade inclusion teacher and case manager, Mr. Allen, supported discontinuing pull-out reading instruction, which was the Wilson Reading Program, because the Student was able, in Mr. Allen's opinion, to access the general education curriculum without it. Allen, Tr. Vol. 7, pp. 40-41; Tr. J-2 at 14-15; Ex. P-76.

42. The Student's participations in the Wilson Reading Program was discontinued, effective in the Fall of 2019, and this decision was the subject of a meeting of the Student's IEP Team on June 6, 2019. This was a change in education placement, over the objection of Petitioner mother. In its place, the Student was to begin receiving intervention services in the form of General Ed ELA inclusion support. A.P., Tr. Vol. 5, pp. 76-77; Ex.'s R-27, R-32, P-87, P-89, P-104, J-2(21); Tr. of Stay-Put Hearing, pp. 26-28, 40.

43. In determining discontinuation of the Wilson Reading Program for the Student was warranted, Respondent members of the IEP Team considered more than the results of the Student's WADE assessment. The Student's Wilson Reading Program teacher, Ms. Babb, pointed to the Student's grade level performance in support of discontinuation. In forming her opinion about whether a student with a reading goal in general could access or participate in the general education curriculum, she looks at their listening comprehension, their level of vocabulary or understanding of vocabulary in text, their comprehension. Elaborating and being more specific, she said that while the Student may, in June 2019, have had difficulties with phonics, the Student was, for example, compensating and reading words using meaning, using sounds the Student knew, building language knowledge through exposure to text, and was

successful in the classroom reading what was supplied, listening to instruction, talking about text, writing about what the Student read, and completing assignments. Ms. Babb had also pointed out in June that it was not her intention to hold a student to a restrictive environment (like Wilson) when the Student could flourish in a regular classroom. She explained her meaning and a limitation of the Wilson Program by saying, "We're going to only give you one sound this week ... and maybe next week you'll get another sound but not unless you read all these nonsense words correctly ... and then three weeks later we're still on the same sound" in contrast to the Student in a regular classroom being exposed to that content reading a wide range of text and learning those sounds through exposure. If, in her opinion, a student is reading at grade level and proficient in text in the classroom, that student should not be in Wilson. Babb, Tr. Vol. 3, pp. 171-176; Ex. P-102.

44. When the Wilson Reading Program was discontinued for the Student, the Student had not reached the reading fluency goals recited in the Student's IEP. Oral reading proficiency is measured by the rate and accuracy of a student reading aloud. The Student is currently unable to read orally with proficiency, but is a good silent reader. The Student's reading comprehension scores are evidence that the Student is making meaning from what is read. Evidence indicates that the Student's processing speed is slower than that of peers, but the Student's accuracy is 90 percent or higher. Reading fast is not a grade-level standard, but comprehending grade-level text material is. Although valuable - perhaps the most valuable program for students who are dyslexic - completion of the 12 steps of the Wilson Reading Program is not a guarantee of reading proficiency, nor does stopping the Wilson Program before completion of step 12 necessarily equate to a lack of proficiency. The level of intensity required by the Wilson Program comes at a cost to a student in terms of time commitment and the displacement of other opportunities. Sanderson, Tr. Vol.1, p. 87; Nash, Tr. Vol. 8, pp. 140, 144-146; Swentosky, Tr. Vol. 8, pp. 178-179, 181, 186-189, 205.

45. It was unnecessary to reassess the Student using the WIAT-III instrument, the test which had been used to evaluate the Student's reading fluency as part of Ms. Sanderson's March 2018 reevaluation, before the IEP Team decided to discontinue use of the Wilson Reading Program for the

Student in June 2019 because the IEP Team had other adequate information upon which to assess the Student's oral reading fluency. Sanderson, Tr. Vol.1, pp. 76, 84.

46. Appropriately, as a general proposition, when IEP team members who are part of Respondent's staff have determined that a change for a student receiving special education and related services may be warranted, the practice has been to convene an IEP team meeting to discuss the situation with the student's parents and then make a decision as a team. Sanderson, Tr. Vol. 8, p. 57.

47. Petitioners did not prove predetermination in relation to the June 6, 2019 IEP Team meeting or that a final decision had been made among Respondent members that the Student would no longer receive Wilson Reading Program instruction, and convincing evidence was produced to the contrary. Sanderson, Tr. Vol. 8, p. 57; Nash, Tr. Vol. 8, p. 112; Allen, Tr. Vol. 7, p. 40; Notzka, Tr. Vol. 7, pp. 143-144.

48. After the June 6, 2019, Petitioner mother asked Respondent to assess the Student on the WADE. The WADE is a curriculum based measure tied to the Wilson Reading Program, used to assess progress. Ms. Babb planned to give the Student the WIST, but instead administered the WADE at Petitioner's request. Ms. Babb made an inadvertent error in calculating the Student's spelling score, but testified the correct result would not have convinced her to change the recommendation against the Student continuing with the Wilson Program because it was not spelling holding the Student back and if spelling had been the concern Wilson would not have been her remedial choice. The WADE assessment results, without the protocols, were provided to Petitioner mother on June 17, 2019 by Ms. Sanderson. Mr. Lunney prepared a written critique of the WADE assessment given by Ms. Babb, and Petitioner mother supplied that to Respondent. Ms. Babb disagreed with Mr. Lunney's reasoning because her recommendation was based on more than the Student's WADE scores. On June 28, 2019 Ms. Nash provided Petitioner mother with the WADE protocols from the WADE Ms. Babb administered. A.P., Tr. Vol. 4, pp. 180, 182-183, 187; Lunney, Tr. Vol. 1, p. 166; Babb, Tr. Vol. 3, pp. 124-125 167-172; Sanderson, Tr. Vol. 8, pp. 57-58; Ex.'s R-32, R-34, R-37, P-89, P-90, P-102.

49. Petitioners were next in touch with Respondents on August 22, 2019, replying to Ms. Nash's June 28, 2019 email. A.P., Tr. Vol. 4, pp. 86-87; Nash, Tr. Vol 5, p. 180; Ex. P-123.

50. In addition to the WADE, Mr. Lunney administered several other assessments to the Student in August 2019, and he prepared a report summarizing his findings. The report did not include consideration of the Student's grades or WY-TOPP performance, and Mr. Lunney did not observe the Student in a classroom during the 2018-2019 school year. Lunney, Tr. Vol. 1, pp. 163-191, Tr. Vol. 2, pp. 24-25; Ex.'s R-38, R-39.

51. The Student's IEP Team met pursuant to notice on September 4, 2019 and again on September 30, 2019. At the meetings, the Team discussed the findings and recommendations of Mr. Lunney. He expressed the opinion that specialized instruction, continuing and perhaps intensifying, an Orton-Gillingham type program or the Wilson Reading Program, a pull-out, ideally one-on-one instruction. He did not express an opinion about whether such instruction was necessary to fulfill Respondent's obligations under IDEA, and I conclude that instead he was talking about an ideal approach. Accordingly, I find this portion of his testimony not to be relevant to the matters under consideration. The Student's goals were not changed by the Team until the September 30, 2019 meeting. G.P., Tr. Vol. 1, pp. 124, 148; Lunney, Tr. Vol. 2, pp. 5-7; Allen, Tr. Vol. 7, p. 223; Nash, Tr. Vol. 8, p. 113, Tr. Vol. 5, p.161; Malone, Tr. Vol. 3, p. 224, J-5 at pp. 24-25; Ex.'s R-44, P-70.

52. The September 4, 2019 IEP Team meeting was held pursuant to Notice. In light of Petitioners expressed concerns and Mr. Lunney's August evaluations report, Respondent offered to do some further testing of the Student and requested Petitioners' consent. Petitioners declined to grant consent. A.P., Tr. Vol. 5, pp. 87-89; Ex. P-70.

53. The Student's current IEP was developed at the September 30, 2019 IEP Team meeting, held pursuant to Notice. At the meeting, among other things the Team discussed the Student's classroom

performance, the Student's RD grade year, the Student's WY-TOPP scores. Ms. Malone testified about her understanding, an understanding which I find to be in keeping with applicable law, that special education teachers are supposed to write IEP goals that are in alignment with grade-level standards, to find a standard that is as closely related to the area of deficiency as possible, and then write a goal which encourages the subject student to aspire for that standard. The goal for the Student which she suggested was described as a reading comprehension goal, but to involve more than that, for example, the Student's use of foundational reading skills, to cite text evidence which supports the explicit meaning of the text, and to use that to make inferences about deeper meaning. She also testified that reading fluency and phonics would feed into that specific goal because it deals with explicit understanding of text and making inferences, a grade-level standard. I find that the IEP of September 30, 2019 is reasonable, contains the ingredients required by applicable law, including a measurable annual goal, and is reasonably calculated, after carefully deliberation by the IEP Team, to deliver, in the least restrictive environment, as much or more in the way of special education and related services as is required by IDEA, its regulations, and the State counterparts. Malone, Tr. Vol. 3, p. 223, Tr. Vol. 4, pp. 21,-23, 40-48; J-5 at p. 38; Ex.'s R-51, R-52, R-53.

54. On November 7, 2019, Petitioner mother wrote to her sister expressing concern that the Student's WY-TOPP examination results would fall within the "average" range. She testified at the Due Process Hearing that the word "average" had been a typographical error, and that what she intended to write was "proficient." She testified that she was concerned the Student would fall within the proficient range and that would misrepresent "where the Student was." The statement indicates a mistaken view of the goals of special education and for the Student's IEP. A.P., Tr. Vol. 5, pp. 89-91; Ex. R-59.

55. Additional avenues for the Student's reading related issues to be addressed were discussed, but rejected by Petitioners, including Reading Workshop. Bingham, Tr. Vol. 2, pp. 188-189; Malone, Tr. Vol. 4, pp. 47-48; Hoelscher, Tr. Vol. 8, pp. 8-10.

56. Currently, and consistent with the September 30, 2019 IEP, the Student is in an ELA inclusion classroom, which is considered a general education classroom taught by a general education teacher and a special education teacher, Ms. Bingham and Ms. Malone. All students in the class work with grade-level content and reading material. I find this to be the least restrictive environment for this particular Student. Bingham, Tr. Vol. 2, p. 170, 177; Malone, Tr. Vol. 3, pp. 222-223.

57. After Petitioners' Request for Due Process Hearing was filed, a dispute arose concerning the Student's status during the pendency of the case, in other words, what the "stay-put" placement was to be pursuant to applicable law. Petitioners filed a Motion for Stay-put on November 18, 2019, a Scheduling Order was issued November 19, 2019, the matter was briefed by the Parties along with which they submitted pertinent supporting documentation, a hearing was held December 10, 2019, and Findings and Conclusions Concerning Stay-Put were issued on December 12, 2019. Record, tabs 19 - 26.

58. Several points from the Findings and Conclusions Concerning Stay-Put of December 12, 2019 (Record, tab 26) are noteworthy: (a) the meeting on June 6, 2019 was determined to be an IEP Team meeting [¶ 6]; (b) a change in the Student's educational placement could be made at that IEP Team meeting without Petitioners' consent [¶ 7]; (c) for lack of reasonable advance notice, a change in the Student's educational placement did not occur at the June 6, 2019 IEP Team meeting [¶ 8]; and, (d) no known IEP Amendment was known to have been issued, with the Hearing Officer understanding that Respondent conceded that one was not issued until at least September 30, 2019 [¶ 9]. In the interests of clarity, it is noted that at the Due Process Hearing on January 20, 2019 Exhibit P-71 was admitted without objection. The exhibit is an IEP Amendment dated June 6, 2019, which indicates a copy of it was given to Petitioners and that Team members were informed of it on June 10, 2019. It also recites that the IEP Team decided to end the Student's reading intervention service beginning with the Student's 7th grade year and that Ed ELA inclusion support would start at that time, 9/03/19. The Findings and Conclusions did not establish when the change to the Student's educational placement occurred, other than that it happened prior to October 21, 2019 [¶¶ 14-19].

59. There can be overlap between a psychoeducational evaluation and a neuropsychological evaluation. However, a psychoeducational evaluation, which is what Ms. Sanderson performed of the Student in March 2018, generally looks at a student's academic functioning - for example, in relation to literacy, reading, writing, and spelling, and related skills. It helps identify skill deficits that interfere with grade-level mastery and the severity of deficits. A neuropsychological evaluation is less concerned with academic achievement and more with cognitive processing strengths and weaknesses, making inferences about brain integrity, and explaining where difficulties reside. They usually do not address the disability categories under IDEA, but could still help inform the IEP process. For example, a neuropsychological evaluation could help an IEP team understand the cognitive processes that are causing a student to struggle or excel, and inform instruction accordingly. There is variability among people evaluated, their cognitive strengths and weaknesses, and a neuropsychological evaluation helps identify them. But the aim in education is not to help students develop strong skills in working memory and set shifting, i.e., the ability to move from one task to another. The goal is to help students know grade-level content and meet grade-level standards, and the goal of an IEP is to help a student access core instruction. Swentosky, Tr. Vol. 8, pp. 163-169, 171-172, 191; Neiman-Kimel, Tr. Vol. 6. pp. 122-123

60. Dr. Neiman-Kimel performed a neuropsychological evaluation of the Student December 16, 17, and 18, 2019. In the course of her evaluation, in addition to the Student she interviewed Petitioner mother and Reading Specialist Fran Lunney. Although if asked she would have observed the Student in the classroom, that did not occur and was not necessary, in her opinion, to conduct the evaluation because it would not change test results. Dr. Neiman-Kimel's evaluation resulted in a report which was admitted into evidence over Respondent's objection. Neiman-Kimel, Tr. Vol. 2, pp. 72-74; Ex. P-98; Tr. Vol. 2, pp. 48-59, Tr. Vol. 6, pp. 118-119.

61. Dr. Neiman-Kimel believes that her evaluation was a comprehensive look at how "the cogs and wheels are turning or not turning" in the Student's brain. She evaluated the Student as having intelligence in the high average ranges, cognitive proficiency difficulties in working memory and processing

speed, significant disabilities in reading and writing, and difficulties with penmanship. She believes that the Student's compensatory skills, meaning whatever has worked, have and do allow the Student to get by and do fairly well at this point in school, but before long and into high school, as the level of work and abstract and higher-order thinking increases, those strategies will cease being functional and there is a danger of the Student spiraling into non-functional behaviors at that point. Neiman-Kimel, Tr. Vol. 2, pp. 79-80.

62. Dr. Neiman-Kimel offered expert opinion about what is needed for someone with dyslexia to overcome reading, encoding, and decoding deficits. Many of the reading programs focus on deficits experienced by dyslexic students, but such students are also saddled with having to figure out compensatory mechanisms and strategies, and workaround mechanisms to be able to participate in school and the educational process. The older the student gets, the more difficult the opportunities for successful intervention becomes. Neiman-Kimel, Tr. Vol. 2, pp. 69-83.

63. Dr. Neiman-Kimel recommends that the Student receive appropriate intervention with respect to reading and writing disabilities throughout the entire school day, and does not feel that is likely to be provided in a general language arts classroom. However, she testified, it would be informative to observe how intervention would be received in a special education classroom geared toward students who are struggling with reading, writing, and arithmetic. She believes appropriate intervention would include an appropriate reading program and intervention within every classroom in which language is used to teach. The educational intervention therapy she proposes would be part of the curriculum, individualized and geared specifically to the Student's reading and writing, and be consistent without a summer break. Based on the Student's results in the evaluation by Ms. Sanderson in 2018, Dr. Neiman-Kimel believes there is currently a gap between the Student's reading and writing abilities and those of the Student's peers, and that gap will widen if appropriate interventions for the Student are not employed. In her opinion, a general language arts classroom with an inclusion teacher who is a special education teacher but without training in working with dyslexic students would be inadequate to help the Student reach the goal of being able to read at grade-level. Neiman-Kimel, Tr. Vol. 2, pp. 103-104, 108-109, Tr. Vol. 6, pp. 111-113, 118.



64. Asked about the testimony of Respondent's staff regarding the cost to the Student of being pulled out of the general classroom setting - the least restrictive environment (LRE) - Dr. Neiman-Kimel testified that a shift for the Student might be necessary, whereby the Student is able to participate in the regular student population, but gets individualized attention in certain classes that make a difference. An individualized approach is necessary and an important question is where can the Student remain as much a part of the student body as possible? However, in her opinion the Student's IEP goals should include reading, spelling (decoding), and writing, in addition to reading comprehension. Neiman-Kimel, Tr. Vol. 9, pp. 92-94.

65. Dr. Neiman-Kimel's evaluation of the Student and the opinions she expressed about appropriate interventions for the Student did not involve consideration of the Student's performance on the WY-TOPP, with which she is not familiar. Neiman-Kimel, Tr. Vol. 2, p.144, Tr. Vol. 6, p. 117.

66. Dr. Neiman-Kimel testified that no standardized test is appropriate for use in determining learning disabilities or needs in an IEP. Instead, she said, they are used to determine where a student functions in relation to other students. Notably, she did not testify about whether results of a state achievement test would have importance in determining whether a student's disability adversely impacts the student's educational performance in the general curriculum. She also did not testify about whether the Student's 2018-2019 or 2019-2020 IEPs did or will allow the Student to make progress or receive educational benefit according to the IDEA standard or whether the Student's disability affects the Student's involvement and progress in the general education curriculum. Neiman-Kimel, Tr. Vol. 9, pp. 78-79.

67. As a consequence of the foregoing findings, Dr. Neiman-Kimel's testimony and evaluation report were not relevant to resolution of the issues considered in the Due Process Hearing.

## **CONCLUSIONS OF LAW**

The following conclusions of law were relied upon in reaching this Decision and are adopted:

### BURDEN OF PROOF

1. Absent a statutory allocation - and there is no such allocation in the IDEA, in its implementing regulations, or in the Wyoming companion provisions - the default rule is that the burden is assigned to the party seeking to change the present state of affairs. (*Schaffer v. Weast*, 546 U.S. 49, 56 and 61, 126 S.Ct. 528, 163 L.Ed 387 [U.S. 2005].) Accordingly, Petitioners had the burden of proof in this case.

### DYSLEXIA

2. 34 CFR § 300.8(10) and the Wyoming counterpart - WDE Rules for Special Education § 7-4(d)(X) - define a "Specific Learning Disability" (SLD) as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, and may include conditions such as dyslexia.

3. A child who has been determined to have a SLD must also be determined to be eligible if she or he is to receive special education and related services. Among the applicable criteria is the required determination that the child does not meet Wyoming grade-level standards in, for example, oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, or reading comprehension. 34 CFR § 300.309 and WDE Rules for Special Education § 7-4(d)(X).

4. W.S. § 21-3-401 describes efforts to be taken by or with the assistance of the WDE to identify young students (kindergarten through third grade) exhibiting signs of dyslexia, and the development

of interventions for such students, however Wyoming does not require that teachers be specifically trained to teach students with dyslexia.

## FAPE

5. IDEA has been described as a model of “cooperative federalism.” *Schaffer*, supra, 546 U.S. at \_\_\_\_, citing *Little Rock School Dist. v. Mauney*, 183 F.3d 816, 830 (C.A.8 1999). It leaves to States primary responsibility for developing and executing educational programs for children with disabilities, but in exchange for funding assistance it imposes significant requirements to be followed in the discharge of that responsibility. *Schaffer*, supra, 546 U.S. at \_\_\_\_; *Rowley*, supra, 458 U.S. at 183. For example, IDEA mandates cooperation and reporting between State and Federal educational authorities, with State educational agencies required to ensure that local schools and teachers are meeting State educational standards (20 U.S.C.A. § 1412[a][11]). A local school board can only receive IDEA funds if it certifies to the State that it is acting in accordance with pertinent State policies and procedures. 20 U.S.C. § 141(a)(1); *Schaffer*, supra, 546 U.S. at 52-53. That includes, in effect, a representation that the local school will provide qualifying students with adequate special education and related services in conformity with such students’ IEPs. 20 U.S.C. § 1401(9)(D); *Andrew F.*, 137 S.Ct. at 994.

6. To be eligible for special education and related services under IDEA the disability of the Student must meet the criteria of at least one recognized disability category, e.g., a specific learning disability (SLD), and the disability must also adversely impact the Student’s educational performance such that the Student needs special education as defined in 34 CFR § 300.39 and related services as defined in 34 CFR § 300.34. WDE Rules for Special Education § 7-4(c).

7. A FAPE includes both special education and related services. 20 U.S.C. §1401(9). “Special education” is defined as specifically designed instruction to meet the unique needs of an eligible student,

and “related services” are the support services required to assist the student to benefit from that instruction. 20 U.S.C. §1401(26) and (29).

8. IDEA seeks to ensure that all children with disabilities have available to them a “free appropriate public education,” FAPE (20 U.S.C. § 1400 et seq.; WDE Rules for Special Education § 7-5[a] [i]). The IDEA was first approved by Congress to address the fact that the majority of children with disabilities in America were “either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’” H. R. Rep. No. 94-332, p. 2 (1975); *Schaffer, supra*, 546 U.S. 49, 51-52; *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988, 993 and 999, 197 L.Ed.2d. 335, 580 U.S. \_\_\_ [2017].

9. The United States Supreme Court first examined the question of the FAPE standard in the context of IDEA in *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982); *Endrew F.*, 137 S.Ct. at 994. Although a majority of the *Rowley* Court held that the IDEA establishes a substantive right to a FAPE for certain children with disabilities, it specifically did not establish a requirement that schools provide eligible students with equal educational opportunity in comparison to students without disabilities (*Endrew F.*, 137 S.Ct. at 995 and 1001), and it did not endorse any one standard for determining when such students are receiving sufficient educational benefits. That “more difficult problem” was addressed by the Court in 2017 in the case of *Endrew F.*, *supra*.

10. *Endrew F.*’s parents argued that under IDEA FAPE should mean an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities. The Supreme Court rejected that standard, but elaborating somewhat on the holding in *Rowley*. *Endrew F.*, 137 S.Ct. at 1000; *Rowley*, 458 U.S. at 185-186, 198, 211.

11. Although the *Endrew F.* decision did not articulate an overarching standard to evaluate the adequacy of an IEP, it said it must aim to enable a student to make progress, and the progress must be more than “de minimus.” Furthermore, “to meet its substantive obligations under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The “fact-intensive exercise” required in formulating an IEP is to be informed not only by the expertise of school officials but also by input of the student’s parents. School authorities, the Court instructed, have the responsibility for decisions of critical importance to the life of a student with a disability, and the nature of the IEP process is expected to ensure that parents and school representatives will fully express their respective opinions about the degree of progress a child’s IEP should pursue. Any review of the adequacy of that effort “must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” A hearing officer is not to substitute his or her own notions of sound educational policy for those of the school authorities, and that expected deference is based on the expectation that they will offer cogent and responsive explanations for their decisions demonstrating that an IEP is reasonably calculated to enable the student to make progress appropriate to the student’s circumstances. *Endrew F.*, 137 S.Ct. at 999-1002.

#### INDEPENDENT EDUCATIONAL EVALUATIONS

12. 34 CFR § 300.502(c)(2), as well as the WDE IDEA Procedural Safeguards (January 2015) at page 7, instruct that if parents share an independent educational evaluation obtained at private expense, the results of the evaluation may be presented by any party as evidence at a hearing on a due process complaint regarding the child.

#### INDIVIDUALIZED EDUCATION PROGRAM (IEP)

13. Special education is specially designed instruction to meet the unique needs of a child with a disability. Related services are the supports required to assist the child to benefit from that instruction.

Such special education and related services must be provided to the child in conformity with the child's IEP. 20 U.S.C. §§ 1401(9)(D),(26) and (29); *Endrew F.*, 137 S.Ct. at 994.

14. An IEP is the centerpiece of the IDEA's educational delivery system. *Endrew F.*, 137 S.Ct. at 994, citing *Honig v. Doe*, 484 U.S. 305, 311 108 S.Ct 592, 98 L.Ed2d 686 (1988).

15. An IEP is to be a comprehensive, written statement developed, reviewed, and revised in accordance with applicable law by a student's IEP team. It is to be a statement of the special education, related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student. 20 U.S.C §1414(d)(1)(A); 34 CFR § 300.320(a); 34 CFR § 300.309 and WDE Rules for Special Education § 7-5(d).

16. The IEP team is to be constituted of the student's parents, not less than one regular education teacher of the student, not less than one special education teacher of the student, an individual who can interpret the instructional implications of evaluation results, and a representative of the local educational agency who: (a) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) is knowledgeable about the general education curriculum; and, (c) is knowledgeable about the availability of resources of the local educational agency. At the discretion of the parents or the local educational agency, the team may also include other individuals who have knowledge or special expertise regarding the student, including related services personnel. 34 CFR § 300.321; 20 U.S.C. 1414(d)(1)(B); *Endrew F.*, 137 S.Ct. at 994.

17. "The core" of IDEA is a cooperative process (*Rowley*, supra, 458 U.S. at 205-206) and the central vehicle for their collaboration is the IEP process. *Schaffer*, 546 U.S. at 53. To help ensure that the IEP is tailored to the unique needs of a particular student, the prescribed procedures for developing an IEP emphasize collaboration among IEP team members and careful consideration of the student's individual circumstances. 34 CFR § 300.324; 20 U.S.C. §1414; *Endrew F.*, 137 S.Ct. at 994.

18. Neither IDEA, the federal regulations, nor Wyoming law require an IEP to identify the educational methodology a school must use to promote IEP goals or deliver FAPE. The U.S. Department of Education has observed that: "There is nothing in the Act that requires an IEP to include specific instructional methodologies. Therefore, consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require that all elements of a program provided to a child be included in an IEP. The Department's longstanding position on including instructional methodologies in a child's IEP is that it is an IEP Team's decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP." 71 Fed. Reg. 46,665 (2006). The Department's language is consistent with the following statement from *Bd. of Education of Hendrick Hudson Central School District, Westchester County v. Rowley*, 102 S.Ct. 3034, 458 U.S. 176, 73 L.ed.2d 690 (1982) - which case, although superseded in other respects, continues in force to be instructive - "The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents ... of a child." 458 U.S. at 207

19. Each IEP is to aim at enabling the student to make progress by setting out a plan for pursuing academic and functional advancement (20 U.S.C. § 1414[d][1][A]). To that end, the IEP is to include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general education curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description of how the child's progress toward meeting" those goals will be gauged. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(III). The IEP must also describe the "special education and related services . . . that will be provided" so that the child may "advance appropriately toward attaining the annual goals" and, when possible, "be involved in and make progress in the general education curriculum." 34 CFR § 300.320; 20 U.S.C. §1414(d)(1)(A)(i)(IV); *Endrew F.*, 137 S.Ct. at 994, 999-1000.

20. The “reasonably calculated” qualification to which attention was given in *Andrew F.*, supra, described above, reflects recognition that crafting an appropriate education requires a prospective judgment by school officials and that the fact-intensive exercise contemplated will be informed not only by the expertise of those officials, but also by the input of the student’s parents. Accordingly, any review of the adequacy of an IEP must appreciate that the question is whether the IEP is reasonable, not whether it is ideal. *Andrew F.*, 137 S.Ct. at 999.

#### PARENTAL PARTICIPATION

21. A procedural violation of the rights of Petitioners may result in a denial of FAPE only if the procedural inadequacies either impeded the Student’s right to a FAPE, significantly impeded Petitioners’ opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 CFR § 300.513(a)(2).

22. Petitioners’ ability to meaningfully participate in the determination of the Student’s eligibility for special education and educational need is related to having pertinent information. Upon completion of evaluations, the educational needs of the Student were to be determined by the Student’s IEP Team, the Team was to include qualified professionals along with Petitioners, and a copy of evaluation reports and documentation of determination of eligibility were to be given to the parents. 20 U.S.C. § 1414(b)(4) and (c); 34 CFR § 300.324(a)(1)(iii); WDE Rules for Special Education §§ 7-5(d), 7-5(b)(iv)(A), 7-6(a).

23. Respondent, in fulfilling its obligations under IDEA, is required to ensure that the Student’s IEP is reviewed not less frequently than annually, and to revisit the IEP, as appropriate, in response to several factors, including new information about the Student’s performance, behavior, disabilities, and needs. 20 U.S.C. § 1414(d)(4)(A); 34 CFR § 324(b); WDE Rules for Special Education § 7-5(d).



24. The Hearing Officer may fairly expect that Respondent will be able to offer a cogent and responsive explanation for decisions that show the Student's IEP is reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances. *Andrew F.*, 137 S.Ct. at 1002.

#### EDUCATIONAL PLACEMENT

25. 34 CFR § 300.327 requires a school to ensure that the parents of a child with a disability be members of any group that makes decisions on the educational placement of the child. In a similar vein educational placement is referred to in 34 CFR § 300.501(c), and in the context of what is referred to as the "stay-put" injunction of 34 CFR § 300.518. The IDEA, however, does not define educational placement. *Smith v. Cheyenne Mountain School District 12*, 652 Fed.Appx 697, 700 (10th Cir. 2016), citing *Erickson v. Albuquerque Pub. Sch.*, 199 F.3d 1116, 1121 (10th Cir. 1999). In the 10th Circuit, in the context of stay-put, educational placement has been recognized that the dispositive factor is the student's IEP. In other cases, a fact-driven approach is appropriate whereby educational placement is defined as something more than the actual school attended and something less than the child's ultimate educational goals. *Smith*, id. at 700.

26. "Educational placement" has been held to mean educational program, e.g., *Enterprise City Board of Education v. S.S. and J.S.*, Memorandum Opinion and Order No. 1:19-CV-748-ALB (Middle Federal District Alabama, 2019) 75 IDELR 214, 119 LRP 47267.

27. Placement decisions are to be made by the Student's IEP Team in conformity with the least restrictive environment (LRE) requirements of 34 CFR §§ 300.114 through 300.118. WDE Special Education Rules § 7-5(b).

LEAST RESTRICTIVE ENVIRONMENT (LRE)

28. The *Endrew F.* decision also endorsed the *Rowley* Court's recognition of the preference under IDEA that children with disabilities receive education in a regular classroom whenever possible, and the statement in *Rowley* that when that preference is met, the system self-monitors educational progress with regular examinations, grades, and yearly advancement to higher grade levels being permitted for students who attain "an adequate knowledge of course material." Progress through that system, it was held, is what our society generally means by an "education," and "access to an education" is what the IDEA promises. *Endrew F.*, 137 S.Ct. at 999, citing *Rowley* at 458 U.S. at 202-203.

29. The LRE requirement is that students be educated, to the maximum extent appropriate for the particular student, in regular classroom settings with students who do not have disabilities. 20 U.S.C § 1412[a]; 34 CFR 300.114[a]; WDE Rules for Special Education § 7-5(b).

30. An IEP must explain the extent (if any) to which a student will not participate with students who do not have disabilities in a regular class and in other school activities. The LRE for a particular student with a disability must be determined on an individual basis based on the student's IEP. (U.S. Department of Education, A Guide to the Individualized Education Program, p.4.)

**ORDER**

The relief sought by Petitioners is denied and Respondent is the prevailing party.

**ENTERED** this 13th day of February, 2020.

---

Robert "Bob" Mullen, Hearing Officer

Copies of this Decision and Order were provided to the Parties this 13th day of February, 2020, via U.S.P.S. and email, addressed to their representatives as follows:

Petitioners: Allison H. Colgin, Esq.  
Levy Coleman Brodie, LLP  
1110 Maple Way  
P.O. Box 7372  
Jackson, Wyoming 83002  
<acolgin@jhattorneys.com>

John H. Robinson, Esq.  
Robinson Stelling Welch Bramlet, LLC  
172 Center Street, Suite 202  
P.O. Box 3189  
Jackson, Wyoming 83001  
<john@rsw-law.com>

Respondent: Tammy M. Somogye, Esq.  
Lathrop GPM LLP  
10851 Mastin Boulevard, Building 82, Suite 1000  
Overland Park, Kansas 66210-1669  
<tsomogye@lathropgage.com>

Alison J. Foster, Esq.  
Lathrop GMP LLP  
1515 Wynkoop Street, Suite 600  
Denver, Colorado 80202  
<afoster@lathropgage.com>

Sara E. Van Genderen, Esq.  
Geittmann Larson Swift LLP  
155 E. Pearl, Suite 200  
P.O. Box 1226  
Jackson, Wyoming 83001  
<sv@glslp.com>