

WYOMING DEPARTMENT OF EDUCATION  
SPECIAL PROGRAMS DIVISION  
DUE PROCESS HEARING

In Re the Matter of:

Case #: H-021-21

<sup>Student</sup>, (the Student), by and through  
her/his Parent(s) and/or Guardian(s),

Petitioner,

vs.

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SWEETWATER COUNTY SCHOOL DISTRICT NO. 1,

Respondent.

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**APPEARANCES**

For Petitioner:

Gabriela Sala, Esq.  
Donna Sheen, Esq.  
Wyoming Children's Law Center  
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Laramie, Wyoming 82070

For Respondent:

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Note about the Record: The Record consists of all filings received by the Hearing Officer, correspondence between the Parties and the Hearing Officer, correspondence between the Wyoming Department of Education (WDE) the Hearing Officer related to the case, transcripts of all proceedings, and Exhibits. Transcripts and Exhibits are placed at the back of the Record. Otherwise, the Record is assembled chronologically.

**Key to Acronyms:**

ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
BASC-3	Behavior Assessment System for Children, 3rd Edition
BDI-II	Beck Depression Inventory-2
CASL-2	Comprehensive Assessment of Spoken Language, 2nd Edition
CFR	Code of Federal Regulations
C-LIM	Culture-Language Interpretive Matrix
ED	Emotional Disability (Wyoming) / Emotional Disturbance (Federal)
ELI	Expressive Language Index
EDDT	Emotional Disturbance Decision Tree
FRI	Fluid Reasoning Index
FAPE	Free and Appropriate Public Education
GLAI	General Language Ability Index
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
LRE	Least Restrictive Environment
MACI-II	Millon Adolescent Clinical Inventory - II
MDT	Multidisciplinary Team
OHI	Other Health Impairment
PRS	Parent Rating Scale
PSI	Processing Speed Index
RADS	Reynolds Adolescent Depression Scale - 2
RCMAS-2	Revised Children's Manifest Anxiety Scale, 2nd Edition
RISB	Rotter Incomplete Sentences Blank
RLI	Receptive Language Index

RTI	Response to Intervention
SASSI-A2	Substance Abuse Subtle Screening Inventory - A2
SI	Syntactic Index
SLD	Specific Learning Disability
SPI	Supralinguistic Index
TRS	Teacher Rating Scale
USC	United States Code
WISC-V	Wechsler Intelligence Scale for Children, 5th Edition
VCI	Verbal Comprehension Index
VSI	Visual Spatial Index
WJII-IV	Woodcock-Johnson Test of Achievement
WMI	Working Memory Index
WBS	Wyoming Boys School
WDE	Wyoming Department of Education

#### **CASE SUMMARY**

Petitioner (the Student, by and through her/his Parent[s] and/or Guardian[s]) filed a Request for a Due Process Hearing with the WDE on October 20, 2021. The Petition requested an expedited hearing pursuant to 34 CFR § 300.532 as a result of an alleged improper change of placement.

On October 28, 2021, Respondent filed an Objection to Expedited Hearing, which was not, according to Respondent, intended as a sufficiency challenge under 34 CFR § 33.508(d). On November 1, 2021, Petitioner filed an Answer to Respondent's Objection to Expedited Hearing. The student is not currently identified by Respondent as a child with a disability eligible for special education and related services as described in 34 CFR § 300.8, but Petitioner alleges that the Student was eligible and had been denied FAPE, to wit, involuntary placement into a virtual education program for disciplinary reasons, and therefore, pursuant to 34 CFR § 300.534(a), entitled to assert the protections provided by 34 CFR Part 300 (see Answer to Respondent's Objection to Expedited Hearing).

A Scheduling Conference was conducted November 2, 2021. At the Conference the Parties were allowed to provide further argument on Respondent's referenced Objection to Expedited Hearing. Based on a finding that neither 34 CFR § 300.532(c)(1), nor other known authority grants a hearing officer discretion to strike a request for an expedited hearing, Respondent's Objection was denied and the case proceeded to an expedited hearing on the issues identified at the Scheduling Conference.

During the 2017 - 2018 school year, the Student was involved in a behavioral incident which violated Respondent's policies and code of conduct. Respondent did not find out about the incident until February 2020, at which time the Student was suspended and subsequently expelled for a period of one year - starting March 9, 2020. The incident also led to a confidential Juvenile Court action against the Student.

For context it is noted that Petitioner is not contesting the referenced expulsion in this proceeding, but is instead contesting the Student's placement which began in August 2021 (see Answer to Respondent's Objection to Expedited Hearing, p. 3).

#### **DECISION SUMMARY**

The Issues identified at the Scheduling Conference are set forth below with the decision on each issue and references to the supporting Findings of Fact and Conclusions of Law. The Findings and Conclusions can be found in the next section.

1. Is the Student a child with a disability pursuant to 34 CFR § 300.8(c)(4)(i) and therefore eligible for special education and related services from Respondent?

Decision: Petitioner, who had the burden of proof, did not show by a preponderance of the evidence that the Student is a child with a disability pursuant to 34 CFR § 300.8(c)(4)(i) and, therefore, the Student has not been shown to be eligible for special education and related services under any of the identified categories, including ED.

Through the testimony of Dr. William McKay, Petitioner did establish that the evaluation of the Student for special education eligibility overseen by Respondent, under at least some of the identified categories, was not optimal and left questions unanswered. Although the evaluation had all of the components and organization to be comprehensive, according to Dr. McKay, Petitioner's expert witness, the interpretation of the evaluation fell short of the complete and comprehensive standard required under IDEA. Proof of a flawed evaluation does not equate to proof of the Student's eligibility for special education and related services. Notably, while Dr. McKay believes it is more likely than not that the Student is eligible for special education, he was unable to answer yes to the question: Does the Student qualify as a student with a disability under IDEA? In contrast, Respondent's expert, Daniel Mayer, testified that while he might have conducted the evaluation differently, it conformed to all applicable standards. Petitioner Parent(s) - Guardian(s) have requested an Independent Educational Evaluation (IEE), but one has not been performed.

FINDINGS OF FACT: 1 through 46.

CONCLUSIONS OF LAW: A through I, M through U, and V.

2. Did Respondent violate 34 CFR §§ 300.111(c)(1) and/or 300.530(e), with knowledge as described in 34 CFR § 300.534, by improperly failing to evaluate the Student after the 12 month-long expulsion, in conjunction with the 2021-2022 school year to determine if the Student qualified for special education services and/or determining whether the Student's misconduct was caused by or had a direct and substantial relationship to the Student's qualifying disability?

Decision: No. See Decision in relation to Issue 1. In the context of Child Find, because the Student has not been determined to be eligible for special education pursuant to IDEA, failure to conduct an evaluation several months earlier has not been shown to have violated IDEA.

FINDINGS OF FACT: See Findings in relation to Decision on Issue 1 and 47.

CONCLUSIONS OF LAW: See Conclusions in relation to Decision on Issue 1 and J, K, and L.

3. Did Respondent impermissibly fail to provide Petitioner Parents with Notice of Procedural Safeguards under the IDEA:

a. In conjunction with its decision as to the Student's placement for the 2021-2022 school year, by which it insisted the Student be excluded from an in-class education with peers; and/or,

b. After learning of the Student's mental health diagnoses through participation in MDT meetings in May 2020?

Decision: No. See Decision in relation to Issue 1. "Procedural safeguards" have specific meaning under IDEA and pertain to the parent(s) - guardian(s) of children with disabilities or suspected disabilities. Respondent has not been shown to have violated IDEA in this context.

FINDINGS OF FACT: See Findings in relation to Decision on Issue 1 and 48.

CONCLUSIONS OF LAW: See Conclusions in relation to Decision on Issue 1 and J, X, and Y.

4. In or about October 2021, did Respondent erroneously determine that the Student did not have a disability under 34 CFR 300.8(c)(4)(i) which would have qualified the Student for special education services?

Decision: No. See Decision in relation to Issue 1.

FINDINGS OF FACT: See Findings in relation to Decision on Issue 1.

CONCLUSIONS OF LAW: See Conclusions in relation to Decision on Issue 1.

5. In evaluating the Student in or about October 2021, did Respondent violate 34 CFR § 300.307(a)(1) by concluding the determinative factor as to the Student's eligibility for special

education and related services was the existence of a significant discrepancy between the Student's predicted achievement and actual academic achievement?

Decision: No. See the Decision in relation to Issue 1. In addition, Petitioner did not show by a preponderance of the evidence that the lack of a significant discrepancy was the determining factor for the ineligibility determination.

FINDINGS OF FACT: See Findings in relation to Decision on Issue 1 and K.

CONCLUSIONS OF LAW: See Conclusions in relation to Decision on Issue 1.

6. Has Respondent denied the Student a Free Appropriate Public Education (FAPE) since the beginning of the 2021-2022 school year in violation of 34 CFR § 300.101, by:

- a. Excluding the Student from an in-class education with peers; and/or,
- b. Failing to have an IEP in place for the Student?

Decision: No. See Decision in relation to Issue 1. FAPE has a precise meaning related to students who are eligible for special education and related services under IDEA. The Student was not proven to be such a student.

FINDINGS OF FACT: See Findings in relation to Decision on Issue 1.

CONCLUSIONS OF LAW: See Conclusions in relation to Decision on Issue 1.

7. Has Respondent violated the Least Restrictive Environment (LRE) provisions of 34 CFR §§ 300.114 and 300.116 in relation to the 2021-2022 school year by:

- a. Failing to properly determine the Student is eligible for special education and related services;

- b. Failing to properly determine placement for the Student;
- c. Failing to convene an IEP team to determine LRE placement for the Student;
- d. Failing to consider Petitioners' concerns about not allowing in-class education with peers for the Student; and/or,
- e. Failing to consider the Student's mental health diagnosis and the adverse impact of online schooling on the Student?

Decision: No. See Decision remarks in relation to Issue 1. LRE has a precise meaning related to students who are eligible for special education and related services under IDEA. The Student was not proven to be eligible.

FINDINGS OF FACT: See Findings in relation to Decision on Issue 1 and 49.

CONCLUSIONS OF LAW: See Conclusions in relation to Decision on Issue 1 and W.

**WITNESSES**

[in order of initial appearance]

P/G Petitioner Parent and/or Guardian

S.D. , EdD, EdS, Respondent staff, School Psychologist

William L. McKay, PhD, LPC, expert for Petitioner, Clinical and School Psychologist,  
Licensed Professional Counselor

G.S. , Respondent's High School Principal

D.G. , MA, Respondent staff, Speech-Language Pathologist

K.A. , MA, Respondent staff, Director of Special Services

B.K. , MA, Respondent staff, Speech-Language Pathologist



Z.G. , Respondent staff, Network Specialist  
K.M. , EdS, Respondent staff, Superintendent of Schools  
Daniel Mayer, EdS, expert for Respondent, Administrator and School Psychologist

### 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 witnesses(s), e.g., "Tr." and pertinent transcript page number(s), and exhibits are indicated by "Ex." and identifying exhibit designation.

1. K.M. , EdS, is the Superintendent of Respondent School District. She has been a classroom teacher, a school principal which, in part, involved overseeing special program students, including students with emotional disturbances, who were on the autism spectrum, and/or had cognitive impairments. Dr. K.M. is familiar with the Student, and the Student's behavior and the related circumstances. She makes placement decisions about some of Respondent's students and made the decision about the Student's current placement. In that context, she considered the safety of the Student and the overall safety of all students within the High School. K.M. , Tr. Vol. 4, pp. 734 - 737, 741 - 754.

2. G.S. is Principal at Respondent's High School. Principal G.S. is familiar with the Student, and the Student's behavior and the related circumstances. Mr. G.S. attended MDT meetings related to the Student, including those held April 17 and May 1, 2020, and May 7 and June 18, 2021. G.S. , Tr. Vol. 3, pp. 502 - 508, 536 - 538, Tr. Vol. 4 pp. 700 - 718; Ex.'s R-17, R-18, R-20.

3. I found all witnesses to be credible and well-intentioned, and detected no intentional deceit. It was apparent, however, that Respondent staff finds themselves in a difficult situation and I believe had incentive to err in the direction of finding the Student ineligible for special education for fear of potential difficulty which could flow from allowing the Student to attend

school in person, which could have been a consequence of an eligibility finding. K.M. , Tr. Vol. 4, pp. 741 - 754; G.S. , Tr. Vol. 4 pp. 700 - 718.

4. The Student has attended Respondent's schools since kindergarten and is currently enrolled there in high school as an eleventh grader. Ex. R-1.

5. The Student was suspended and then expelled for twelve months, beginning in February 2020, as a result of misconduct at school which also resulted in the Student's arrest on February 12, 2020. No major disciplinary action had previously been taken against the Student at school or otherwise. P/G Tr. Vol. 1, pp. 20 - 22, 28, 51, 100 - 106; Ex.'s R-11 and R-13.

6. From the time of the Student's expulsion in February 2020 to the present, the Student has been a general education student. K.M. , Tr. Vol. 4, p. 755.

7. From July 2020 through June 2021 the Student attended the WBS. P/G Tr. Vol. 1, pp. 29 - 30, 111, 154.

8. Multidisciplinary Team (MDT) meetings for the Student were conducted as part of a confidential Juvenile Court proceeding, the first of which took place April 17, 2020. Petitioner Parents - Guardians attended the April 17th meeting, as did Respondent's G.S. and A.F. , then Assistant Principal and Principal, respectively, at Respondent's High School. At that meeting, the psychological placement evaluation reports prepared by Dr. Rick Hawks of Ogden, Utah, March 16, 2020 (Exhibit R-27), and Dr. Mark Gibson of Southwest Counseling in Rock Springs, April 9, 2020 (Exhibit R-26), were discussed and reported upon. A report of the MDT meeting was generated (Exhibit R-20). P/G Tr. Vol. 1, pp. 30 -32, 106 - 112; Ex.'s R-20, R-26, R-27.

9. The psychological placement evaluation reports concerning the Student prepared by Dr. Rick Hawks of Ogden, Utah, March 16, 2020 (Exhibit R-27), and Dr. Mark Gibson of

Southwest Counseling in Rock Springs, April 9, 2020 (Exhibit R-26), and which had been discussed at the April 17, 2020 MDT meeting, were also discussed at the MDT meeting at the WBS on May 1, 2021. Petitioner Parents - Guardians, and Respondent's G.S. and A.F. , Assistant Principal and Principal, respectively, at Respondent's High School, attended. In addition to the Hawks and Gibson Reports (Exhibits R-27 and R-26, respectively), a report of the evaluation of the Student by Dr. William French, a psychiatrist at the Seattle Children's Hospital, April 24, 2020 (Exhibit R-24), was discussed. A report of the MDT meeting was generated (Exhibit R-19). P/G Tr. Vol. 1, pp. 50, 116 - 117, 126; Ex.'s R-19, R-20, R-24, R-26, R-27.

10. The Juvenile Court ordered psychological placement evaluation of the Student by Dr. Rick Hawks, which was performed in March 2020, before the Student went to the WBS. Dr. Hawks is a psychologist and his evaluation resulted in a report dated March 16, 2020, Exhibit R-27. Purposes of the evaluation included determining the extent of certain behaviors/misconduct of the Student, making a risk assessment, and developing treatment recommendations, all intended to assist the Court in making a placement decision. Dr. Hawks found that the Student exhibited an expressive language disorder and mild speech impediment, exhibited symptoms of depression, and had a reported history of suicide ideation. P/G Tr. Vol. 1, p. 126; Ex. R-27.

11. The Juvenile Court ordered psychological evaluation of the Student by Dr. Mark Gibson, which was conducted April 8, 2020, before the Student went to the WBS. Dr. Gibson is a psychologist and his evaluation resulted in a report, Exhibit R-26. Dr. Gibson's Report notes his review of the evaluation report of Dr. Rick Hawks. Dr. Gibson notes that Dr. Hawks made a DSM-5 disorder diagnoses, including expressive language disorder and a depressive disorder with suicidal ideation. Dr. Gibson noted that the Student's evaluation scores/responses seemed honest and genuine, suggested no obviously concerning personality or clinical issues, but noted insecurity, self-restraint, inhibition, and low self-esteem issues and suggested they be addressed in therapy. Dr. Gibson's Report states that no significant issues with ADHD or school performance were noted. The Student was judged by Dr. Gibson to have a mild level of depression, however he noted that the Student indicated having thoughts of suicide, although without a plan or intent to act upon

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those thoughts. Dr. Gibson's assigned DSM-5 diagnoses including adjustment disorder with depressed mood and expressive language disorder. P/G Tr. Vol. 1, pp. 133 - 146; Ex.'s R-26.

12. The Juvenile Court ordered a psychiatric placement evaluation of the Student by Dr. William French, which was conducted April 24, 2020, before the Student went to the WBS. Dr. French is a psychiatrist at the Seattle Children's Hospital and his evaluation resulted in a report, Exhibit R-24. Dr. French's Report indicates that he reviewed both Dr. Hawks' and Dr. Gibson's Reports (Exhibits R-27 and R-26, respectively). It also reflects that at the time of his evaluation the Student reported not feeling depressed for a few days, but is sad sometimes. The Student, according to Dr. French, reported attempting suicide on one occasion, probably in October or November 2019, and was happy the attempt was unsuccessful. The Report reflects that the Student denied major problems with concentration, currently or in the remote past, and denied intrusive thought or depression that could interfere with concentration. The Report says that the Student reported not having a history of being oppositional, defiant, physically aggressive or negative to others, denied current significant impulse control problems, and was sleeping and eating without problem. Dr. French noted the Student's "mild speech impediment," that affect seemed fairly flat at times, that the Student rarely smiled, showed good concentration, was not overly fidgety or impulsive, that judgment seemed appropriate, and the Student seemed to have average knowledge and intelligence, and a good attitude. Dr. French's diagnoses included those previously assigned by Dr. Hawks and Dr. Gibson, and added ADHD. Dr. French's Report also states: "rule out unspecified anxiety disorder." Dr. French's recommendations also included suitable school placement with an IEP, but he notes that the Report should be used in conjunction with other sources of information to provide the best possible care of the Student. P/G Tr. Vol. 1, pp. 147 - 149; Ex.'s R-24, R-26, R-27.

13. While the Student was at the WBS, progress meetings were held every month to month and a half, and MDT meetings were held about every three months. The Student was depressed and suicidal a couple of times while at the WBS. P/G Tr. Vol. 1, pp. 30 - 31.

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14. An MDT meeting, which was also a six month review for the Student, took place on September 29, 2020. Petitioner Parents - Guardians attended, as did Respondent High School Principal A.F. . The report generated from the meeting describes the Student's grades at the WBS as A in English, B in social studies, C in math, A in PE, A in science, and an A in literature and reading. Petitioner Parent - Guardian noted that these grades were achieved while the Student had a teacher in person. P/G Tr. Vol. 1, pp. 150 - 152; Ex. R-16.

15. Another MDT meeting for the Student took place at the WBS on February 5, 2021. Petitioner Parent - Guardians attended, as did Respondent High School Principal A.F. . The report generated from the meeting describes the Student's grades at the WBS to include three As and four Bs. P/G Tr. Vol. 1, pp. 152 - 153; Ex R-21.

16. After the Student returned home after being discharged from the WBS, Respondent continued to forbid the Student from coming onto its property and the Student was instead assigned to attend school virtually, meaning via computer, rather than in person. P/G Tr. Vol. 1, pp. 33 - 45; Ex. P-14.

17. The Student had emotional difficulties in daycare and preschool, although without being identified as having special needs or receiving counseling. P/G, Tr. Vol. 1, pp. 94 - 95.

18. When attending elementary school with Respondent, the Student received special education for speech therapy for two or three years. The Student would sometimes become frustrated and shut down, not talking to anyone and as a consequence saw a school counselor, and the Student's behaviors were tracked. Eventually, the Student was taken off the IEP while still in elementary school, but continues to struggle when speaking and seems to become frustrated sometimes as a result. The Student, according to the Report of Dr. Mark Gibson, did have a single session at Southwest Counseling Service related to anger, being unfocused, and "shutting down a lot." Petitioner Parent - Guardian disputed that the Student's anger had been an issue, although an educational record from 2015 indicates the Student, at times, became "very upset," (see R-64 at p. SD000290). P/G, Tr. Vol. 1, pp. 23 - 28, 89, 95 - 100, 136, 174 - 177; Ex.'s R-26 and R-64.

19. The evaluation of the Student for special education eligibility which is under review in this matter was initiated by the request of Petitioner Parent - Guardian in August 2021. Respondent's assessments of the Student which followed that request were discussed at a meeting on October 13, 2021. Petitioner Parent - Guardian and the Student attended that meeting with Counsel. P/G, Tr. Vol. 1, pp. 58 - 61, 169 - 170; Ex. R-57.

20. School Psychologist S.D. oversaw Respondent's effort to evaluate the Student for special education eligibility. Dr. S.D. is a former special education teacher, has master's degree in special education, a doctor of education degree (EdD), with a focus on the emotional disturbance category, and a doctorate degree (EdS) in school psychology. She was notified of Petitioner Parent - Guardian's August 2021 request that the Student be evaluated by Respondent's Director of Special Services, K.A. . Dr. S.D. had no involvement with the Student prior to conducting her evaluation assessments of the Student. Dr. S.D. is a trained and knowledgeable person who properly administered evaluation assessments of the Student. S.D. , Tr. Vol. 1, pp. 180 - 182, Tr. Vol. 2, p. 469; McKay, Tr. Vol. 2, p. 312.

21. School Psychologist S.D. s process in overseeing the evaluation of the Student for special education eligibility began with speaking with Petitioner Parent - Guardian to understand areas of concern, and then convening a team, which included Petitioner Parent - Guardian, to determine the appropriate assessments. It was agreed that cognitive, academic, social-emotional skills, and communication skills assessments would be conducted. Occupational and physical therapy, and functional behavior assessments were not seen as necessary. Dr. S.D. administered assessments while observing the Student on September 7 and 9, 2021. The assessment tools which Dr. S.D. used were the commonly used tools in school psychological evaluations and her administration of those tools in evaluating the Student were not challenged. A component of several assessments involved obtaining the opinions of Petitioner Parent - Guardian and those of teachers familiar with the Student. A social development history of the Student, including anything that might have had negative educational impact for the Student, was also compiled by Dr. S.D. . The evaluations of the Student by Dr. Mark Gibson and Dr. Rick Hawks

(Exhibits 27 and 26, respectively), as well as overall medical visit information, i.e., sport physicals and well child exams, were reviewed and noted by Dr. S.D. in overseeing. Ultimately, Dr.

S.D. composed a report of the information she had generated and collected, which became Exhibit R-57. Dr. S.D. found no marked behavior or grade concerns. She had become generally aware, without detail, that a previous IEP for speech-language had been in place for the Student, but she had not seen the related prior evaluation report and eligibility determination related to speech-language services (Exhibit R-64), believing it to be inconsequential in assessing current concerns for the Student. A speech pathologist on Respondent's staff tested the Student and the results were included in Exhibit R-57. S.D., Tr. Vol. 1, pp. 182 - 215, Tr. Vol. 2, pp. 470 - 471; McKay, Tr. Vol. 2, p. 312; Ex.'s R-26, R-27, R-57 and R-64.

22. K.A. has been a classroom teacher. She has bachelor's degrees in elementary and special education, a master's degree in special education, and is currently Respondent's Director of Special Education. Ms. K.A. oversees all procedures for special education students in Respondent District, including procedures and processes used to identify students as eligible for special education. She was involved, along with a representative of the Wyoming Department of Education, with redeveloping Respondent's initial evaluation procedures. She is familiar with Federal, Wyoming, and Respondent's specific rules and regulations concerning special education. Describing Respondent's practices, Ms. K.A. testified that if concerns about a student came to Respondent's attention - for example, if there is a suspected disability, Respondent would possibly do an evaluation. It would be typical for Respondent to convene a meeting where participants would look at possible cognitive, academic, behavior, social-emotional concerns, and what assessments might be appropriate. When one of Respondent's students becomes involved in juvenile court proceedings, representatives of Respondent, a social worker, counselor, or principal, attend multidisciplinary team (MDT) meetings for such students. If the student is a special education student, Ms. K.A. or her assistant would also attend the meetings. Where there are issues identified, Respondent would then see if an evaluation is needed. Summaries from such MDT meetings are provided to Ms. K.A.'s office. Issues or concerns

thought typically to have been behavioral, social-emotional, and/or cognitive, involving students who “act out a little bit.” Information that such a student had been identified as suffering from depression would not necessarily trigger an evaluation. A key consideration for Respondent to determine that evaluation is warranted is whether or not there has been an educational impact. If there is no apparent educational need, Respondent would not look further into the circumstance. Relative to the Student, Ms. K.A. could not recall having seen the MDT meeting Report of May 1, 2020 (Exhibit R-19). That Report reflects that the Student had been diagnosed with a neurodevelopmental disorder and unspecified depressive disorder. Those diagnoses would not automatically trigger an evaluation by Respondent for special education eligibility because Respondent does not look at those types of diagnoses, but instead at whether they have educational impact. If they do not have impact, Respondent does not move forward. Educational impact is assessed by looking at the student’s prior history, i.e., grades, academics, and whether there have been identified behavior incidents or discipline referrals. In the Student’s circumstance, there were none. The Student was passing classes and there were no behavioral concerns so Respondent did not move forward. K.A. , Tr. Vol 3, pp. 564 - 573.

23. The Student’s grade transcripts for Junior High and High School do not show cause for suspecting adverse educational impact. Similarly, the Student’s attendance record is not concerning. The Student’s current grades - as of October 13, 2021 - were not concerning. K.A. , Tr. Vol 3, pp. 577 - 582; Ex.’s R-2, R-5, and R-57.

24. A team meeting to review the Student’s special education eligibility evaluation was held on October 13, 2021. A report of the meeting and the matters considered was generated and is Exhibit R-57. A written notice of Respondent’s conclusion that the Student was not eligible for special education was generated and dated October 22, 2021, and is Exhibit R-52. P/G, Tr. Vol. 1, pp. 59 - 62; Ex’s R- 52 and R-57.

25. In the meeting held October 13, 2021, the evaluation team - i.e., those individuals identified in Exhibit R-57 as being present at the meeting - guided by School Psychologist S.D. ,



considered the results of the assessments of the Student which Ms. S.D. had overseen, and they discussed the Student's needs. In both her assessments of the Student and her role in guiding the team, Dr. S.D. made a concerted effort to remain objective and focused on the pertinent data. S.D. Tr. Vol 1. pp. 239 - 240, Tr. Vol. 2, pp. 471 - 473; Ex. R-57.

26. In relation to the Emotional Disability eligibility criteria relative to the Student, School Psychologist S.D. noted for the evaluation team at the meeting on October 13, 2021, that the Student had never required a behavior plan or intervention, in other words, that there had been no significant Student behavior concerns which adversely affected the Student's educational performance. She testified that she did so even though the Student has been forbidden by Respondent from being on school grounds as a result of the Student's behavior. The team found that the Student was not socially maladjusted, contrary to the box which is checked on the Emotional Disability Eligibility Criteria Form (Exhibit R-57 at page R-57-038 - SD000213). Dr.

S.D. testified that judging by the Student's self-assessment (i.e., the Reynolds Adolescent Depression Scale), the Student experienced mild clinical depression, meaning that at times the Student experienced more anxiety, but, in her opinion, the operative standard requires a significant and persistent problem. As a consequence of that assessment, a further, deeper assessment, the RCMAS, was administered. As a result of it, Dr. S.D. concluded the Student's total anxiety was at the same level as that of peers. S.D. , Tr. Vol 1. pp. 243 - 246, Tr. Vol. 2, pp. 452 - 463, 478 - 481, 483 - 488; Ex.'s R-54, R-57.

27. In relation to the evaluation of the Student for special education under the Other Health Impairment category, the evaluation team determined, with School Psychologist S.D. 's concurrence and as reflected in Exhibit R-57 at page R-57-039 - SD000214, that it did not fit the Student's circumstance. Dr. S.D. noted that during the course of the Student's assessment, she had not observed ADHD or ADD, and neither had the Student's teacher according to Dr. S.D. . S.D. , Tr. Vol. 2, pp. 463 - 465; Ex. R-57.

28. In relation to the evaluation of the Student for special education under the Specific Learning Disability category, the evaluation team determined that although School Psychologist

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S.D. 's assessment that the Student displayed some underachievement, that was insufficient to qualify the Student for special education. S.D. , Tr. Vol. 2, pp. 465 - 466; Ex. R-57.

29. Dr. Mark Gibson had noted in April 2020 (Exhibit R-26) the possibility of that the Student had an expressive language disorder. In relation to the evaluation of the Student for special education under the Speech or Language category, the primary evaluation assessment of the Student was conducted by Speech-Language Pathologist B.K. , a member of Respondent's staff and her assessment was discussed by the evaluation team. In addition, Dr. S.D. , based on her cognitive and academic assessments, and observations of the Student, contributed that although the Student may sometimes have trouble communicating it did not interfere with the Student's oral communication. In conclusion, the team determined that the Student was not eligible for special education in this area. S.D. , Tr. Vol. 2, pp. 466 - 469, 489; B.K. , Tr. Vol. 3, p. 616; Ex.'s R-26, R-57.

30. Speech - Language Pathologist B.K. is employed by Respondent. She has a bachelor of science degree in communicative disorders, with an emphasis in speech - language pathology and audiology, a master's degree in speech - language pathology, and she is nationally certified by the American Speech - Language - Hearing Association and the State of Wyoming. B.K. , Tr. Vol. 3, pp. 614 - 616.

31. Speech - Language Pathologist B.K. evaluated the Student she knew from Petitioner Parent - Guardian that the Student had difficulty with self-expression at times at home, and difficulty being understood. As part of the assessment she performed, she observed the Student in two sessions for a total of approximately two hours. She found the Student to be totally focused and attentive such that there was no need for redirection. In addition to administering assessment test, Ms. B.K. interviewed the Student to assess social language skills, or pragmatics, and understand if the Student could understand basic questions and narrate something easily. As a result of her assessments of the Student, Ms. B.K. detected no cause for concern, including no adverse educational impacts. Details of her assessment are contained in the Report of the October 13, 2021 evaluation team meeting, Exhibit R-57. B.K. , Tr. Vol. 3, pp. 625

- 637; Ex. R-57.

32. In the context of assessing adverse educational impact when making a special education eligibility determination for the Student, School Psychologist S.D. is of the opinion that Respondent could elect to use either the severe discrepancy model or the response to intervention (RTI) analysis, and that normal practice within the Respondent District is to use the severe discrepancy model. In relation to the Student, based on the fact that the evaluation had been initiated by a parent - guardian referral, Respondent elected to use the Severe Discrepancy model, rather than the RTI analysis. In addition, Respondent contends it would have been difficult to use the RTI analysis with the Student because of the short time frame, i.e., within 60 days. School Psychologist William McKay, Petitioner's expert, agreed that based on raw data which he reviewed, with the "possible" exception of learning disability regarding expressive language, the Student's scores did not meet the discrepancy model such as to qualify the Student for special education. S.D. , Tr. Vol 1. pp. 220 - 224; S.D. , Tr. Vol. 2, pp. 465 - 466, 487 - 492; McKay, Tr. Vol. 2, p. 327; Ex. R-57.

33. Petitioner disagreed with the conclusion that the Student was not eligible for special education and requested an Individual Educational Evaluation (IEE). An IEE has not been arranged or performed. P/G, Tr. Vol. 1, pp. 62 - 66.

34. Petitioner Parent - Guardian wants the Student identified by Respondent to be eligible for special education in order for the Student to receive educational assistance, but would rely upon professionals to determine specific services, believing they would include services for speech and face to in-person contact with teachers. In addition, in the opinion of Petitioner Parent - Guardian the Student has been and is depressed. P/G, Tr. Vol. 1, pp. 87 - 94, 137, 148, 174.

35. School Psychologist William McKay testified as an expert on behalf of Petitioner. He was qualified to testify as an expert in the fields of clinical and school psychology. He is currently employed by the Albany County, Wyoming School District No. 1 as a school psychologist, a role in which he has worked since 1999. He is a licensed professional counselor and practices

privately as such. For the last three years, as a school psychologist, he has primarily done assessments - probably 40 or 50 a year - in addition to doing counseling intervention and behavioral planning. He has been a classroom teacher, has a masters degree in school counseling, a doctorate in clinical psychology, and is a certified school psychologist. McKay, Tr. Vol. 2, pp. 259 - 266, 288; Ex. P-10.

36. Preparing to testify in this proceeding, Dr. McKay reviewed records, assessments, and data related to the Student. (Unless otherwise noted, this information is hereinafter referred to as "the material reviewed by Dr. McKay.") He also reviewed anew the pertinent rules and regulations concerning special education eligibility. Based on the material reviewed by Dr. McKay, and relying on scientific or technical principles or methods widely used in his field, Dr. McKay reached a tentative opinion as to the Student's eligibility for special education. The opinions he expressed were tentative because, as Dr. McKay testified, he had not had direct access to the Student or Petitioner Parent - Guardian, and had done no independent assessments of the Student. Relative to the speech language evaluation of the Student, Dr. McKay noted that while he was able to consider language functioning as part of a student's cognitive and/or developmental situation, he is not a certified speech-language assessor. Although in Dr. McKay's opinion it is more likely than not that the Student is eligible for special education, he was unable to provide a firm yes to the question: Does the Student qualify as a student with a disability under IDEA? The material reviewed by Dr. McKay in formulating his opinions included the raw protocols/raw assessment data for the WISC-V, Woodcock and BASC, as well as the following Exhibits:

- P-15 Letter from C.B. , counselor
- R-24 Seattle Children's Hospital psychiatric evaluation
- R-25 Cloud Peak evaluation
- R-26 Southwest Counseling evaluation
- R- 27 Dr. Hawks' evaluation
- R-30 Arizona Articulation and Phonology Scale
- R-32 BASC-3 Multi-Rater Report

- R-33 Graph on T-score profile
- R-35 Comprehensive Assessment of Spoken Language (CASL-2)
- R-36 Conners-3 Comparative Report
- R-37 Conners-3 Parent Response and Report
- R-38 Conners-3 Teacher Response from Ms. Mackey
- R-39 Conners-3 Teacher Report
- R-40 EDDT Score Summary Booklet
- R-41 RADS-2 Depression Summary
- R-42 RCMAS-2 Auto Score
- R-43 BASC-3 Structured Developmental History
- R-44 WISC-V Protocol
- R-45 WISC-V Response Booklet
- R-46 Woodcock-Johnson Tests of Achievement Response Booklet
- R-47 Tests of Achievement
- R-54 Transcript of eligibility meeting of October 13, 2021
- R-57 Multidisciplinary Evaluation Team Report
- R-68 BASC-3 Parent Response
- R-69 BASC-3 Teacher Response

McKay, Tr. Vol. 2, pp. 266 - 272, 282, 343, 361, 363 - 364, 371, 376, 436; Exhibits as identified.

37. A full evaluation of the Student in relation to special education eligibility would take many hours, well beyond the time spent reviewing the material reviewed by Dr. McKay in connection with his testimony at this Due Process Hearing. McKay, Tr. Vol. 2, p. 374.

38. Based on the material reviewed by Dr. McKay, among other things, he formed an accurate general impression of the Student and the situation, including that: (a) the Student had no particular previous problems in the school system until the matter which brought the Student into juvenile court arose; (b) after being expelled from Respondent's school, the Student had gone to

the WBS for a treatment program that was successfully completed; (c) after the Student's term at the WBS and the end of the expulsion period, Respondent had decided not to allow the Student to come back to school in person, and the Student was attending school with Respondent online; (d) questions had arisen as to whether the Student was a child with one or more disabilities and, therefore, eligible for special education; and, (e) that the team established to decide on the Student's eligibility for special education had decided that the data did not support eligibility. McKay, Tr. Vol. 2, pp. 272 - 275.

39. Reviewing Exhibit R-57, the report of the evaluation team meeting on October 13, 2021 and the related transcript (Exhibit R-54), Dr. McKay found cause to investigate a number of incomplete descriptions of the Student and the Student's performance, matters deserving further investigation "if the Student is to be helped." McKay, Tr. Vol. 2 pp. 310 - 312, 448 - 451; Ex.'s R-54 and R-57.

40. Among the material reviewed by Dr. McKay were Reports of evaluations of the Student made by Dr. Rick Hawks, a psychologist (Exhibit R-27), Dr. Mark Gibson, a psychologist (Exhibit R-26), and Dr. William French, a psychiatrist (Exhibit R-24). As attested to by School Psychologist S.D. the Reports of Doctors Hawks and Gibson were considered by the Student's team in determining special education eligibility (see Exhibit R-57). Dr. French's Report was not received in time for it to be considered by the team, but when she did receive it, the Report did not alter Dr. S.D.'s opinions about the Student's non-eligibility. In contrast, aspects of the three Reports raised questions Dr. McKay believes deserve further investigation. For example, Dr. McKay believes it would have been important to know more about the Student's history and constitution for a better understanding of: (a) the Student's possible impulse control and/or compulsion problems; (b) the Student's personality factors which could be revealed more fully through a full spectrum clinical psychological evaluation; (c) the Student's possible executive function problems; (d) the Student's possible social functioning issues, including anxiety and/or the ability to establish meaningful relationships with peers around normal development; (e) potential communication struggles for the Student and related manifestations; (f) suggestions of the

Student's confusion and emotional dysregulation, emotional control, sense of self, and concerns about suicidal ideation; and, (g) whether the Student's expressive language versus receptive language abilities involve significant pragmatic difficulties. In addition, in the opinion of Dr. McKay evaluations of the Student more than a year old - e.g., those of Dr. Hawks, Dr. Gibson, and Dr. French - should be redone to provide an accurate picture of the Student. S.D. , Tr. Vol 1, pp. 201 - 205; McKay, Tr. Vol. 2, pp. 275 - 295, 445 -446; Ex.'s R-24, R-26, R-27, R-57.

41. In the context of the special education eligibility investigation concerning the Student, Dr. McKay's review of the Report of Dr. William French (Exhibit R-24) supports McKay's belief that more information would have been helpful, for example, concerning the interaction of the Student's bad social decisions and possible low executive functioning impulse control, and the recommendation that the possibility of the Student having an unspecified anxiety disorder be explored. (Exhibit R-24). McKay, Tr. Vol. 2, pp. 299 - 305, Ex. R-24.

42. Based on the material reviewed by Dr. McKay, among the indications he gleaned was that the Student has identity issues, anxiety, depression, suicidal ideation, multiple indicators of mental health problems beyond social maladjustment. McKay, Tr. Vol. 2 p. 310.

43. Based on the material reviewed by Dr. McKay, in his opinion, by usual standards, the assessments/evaluation of the Student conducted and overseen by Respondent for special education eligibility had all the components and organization to be comprehensive according to the letter of the law. It left, however, a lot of unanswered questions and the interpretation of the evaluation, as reported in Exhibits R-54 and R-57, fell short of the "complete and comprehensive" standard required under IDEA. McKay, Tr. Vol. 2, pp. 312, 415 - 423, 426 - 442, 445 - 451; Ex.'s R-54 and R-57.

44. While it is possible, according to Dr. McKay, for a person to have a disorder without it being considered a disability, and also possible for someone with an emotional disability not to need an IEP, School Psychologist S.D. is incorrect in having concluded that because the Student did not have a history of a behavior plan, an emotional disability had to be ruled out.

McKay, Tr. Vol. 2, pp. 440 - 442.

45. Administrator Daniel Mayer, testified as an expert for Respondent in the field of school psychology and special education services and IDEA evaluations. Dr. Mayer has an educational specialist degree in school psychology, a master's degree in school psychology, and a doctorate degree in principalship. He was part of the team which rewrote the WDE Chapter 7 Rules, Services for Children with Disabilities, and is familiar with both those Rules and the companion provisions under Federal law. In preparation for his testimony, Dr. Mayer listened to the October determination meeting recording, especially the speech-language therapist and school psychologist, and reviewed the Student's educational record, as provided to him, including the special education eligibility evaluations and the report generated from the October 13, 2021 team meeting, Exhibit R-57. In his opinion, the evaluation of the Student was sufficiently comprehensive. Mayer, Tr. Vol 4, pp. 779 - 781, 785 - 792, 797 - 799, 809 - 810; Ex. R-57.

46. In Dr. Mayer's opinion, the Student is not a student with a disability under IDEA, the Student's circumstances have not presented evidence of adverse educational impact, and, accordingly, the Student is not entitled to FAPE. In critiquing the evaluation of the Student overseen by Respondent, in Dr. Mayer's opinion the decision about the Student was based on a comprehensive assessment so that the educational decision was made with as much confidence as possible. He cautioned about over-assessment, because the more subtests given, the greater the number of errors that can be created. However, he also felt that if he were to have done the Student's evaluation, he might have done some things differently. Mayer, Tr. Vol 4, pp. 805 - 808, 863, 914.

47. Respondent's Child Find obligations regarding investigating the Student's need for special education should have been triggered, in Dr. McKay's professional judgment, by: (a) Dr. Gibson's Report in April 2020 (Exhibit R-26); (b) with School Psychologist S.D.'s review of the available clinical reports showing mixed evidence in her own assessments of the Student; and, (c) by the other mental health assessments of the Student done a year earlier. McKay, Tr. Vol. 2 pp. 290, 364 - 366; Ex. R-26.



48. In the context of the current dispute, the Student's Parent - Guardian was not given Procedural Safeguards by Respondent at the MDT meeting on May 1, 2021 or at the meeting between the Parties at Respondent's Central Admission Building on August 9, 2021 when Petitioner was told the Student would be required to attend school virtually, but did receive them in August 2021 after Petitioner asked that the Student be evaluated for the purpose of determining special education eligibility. P/G, Tr. Vol. 1, pp. 30 - 31, 46 - 49, 58.

49. Petitioner concedes that a determination of the Student's Least Restrictive Environment (LRE) within the context of IDEA would not properly be considered until there is a determination of the Student's eligibility for special education and related services and is not immediately relevant to these proceedings. P/G, Tr. Vol. 1, pp. 143 - 145.

#### CONCLUSIONS OF LAW

The following Conclusions of Law were relied upon in reaching this Decision and are adopted.

#### IDEA APPLICABILITY

A. IDEA leaves to states the 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. *Board of Ed. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 183 (U.S. 1982).

B. Wyoming, through its Department of Education, has adopted rules for services by public schools to students who are or may be eligible for special education and related services. Those Rules adopt and make applicable to such schools the provisions of IDEA (20 USC § 1400 et seq.) and its implementing regulations found at 34 CFR Parts 300 and 301. WDE, Chapter 7: Services for Children with Disabilities.

### BURDEN OF PROOF

C. Absent a statutory allocation - and there is no such allocation in the IDEA, 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].)

D. The Wyoming Supreme Court has said that the burden of proof is on the party asserting the affirmative of an issue. If a party alleges a fact that is denied by another party, the alleging party must establish the fact. (*Varela v. Goshen County Fairgrounds*, 472 P.3d 1047, 1058 - 1059 [Wyo. 2020] citing *Energy Transp. Systems, In . v. Mackey*, 650 P.2d 1152, 1158 [Wyo. 1982], citing prior authority). The test for determining which party has the affirmative of an issue, and therefore the burden of establishing a case, is found in the result of an inquiry as to which party would be successful if no evidence were given, the burden being on the adverse party. (*Varela*, supra at 1059, citing *Bogdanski v. Budzik*, 408 P.3d 1156, 1160 - 1161 [Wyo. 2018]).

### PREPONDERANCE OF THE EVIDENCE

E. The phrase, "preponderance of the evidence," has been given various definitions by different courts but, according to McCormick et al. on Evidence 2nd Ed. H.B., § 339, p. 794, the most acceptable meaning seems to be proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence. *Scherling v. Kilgore*, 599 P.2d 1352, 1359 (Wyo. 1979).

### FAPE

F. A free and appropriate public education (FAPE), to be provided as "special education," is the right of every eligible child with a disability between the ages of 3 and 21 years, including children with disabilities who have been suspended or expelled from school. 34 CFR §

300.101. Special education is specially designed instruction, provided at no cost to the parents of the child, intended to meet the child's unique needs. It includes instruction in the classroom, the home, and in other settings, as well as in institutions. 34 CFR § 300.39.

G. 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., emotional disability, other health impairment, specific learning disability, or speech or language impairment. 34 CFR 300.8 Furthermore, such disability must also be shown to 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 Chapter 7, §4(c) and (d).

H. FAPE includes both special education and related services 20 USC § 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 USC § 1401(26) and (29).

I. IDEA seeks to ensure that all children with disabilities have available to them a "free appropriate public education," FAPE. 20 USC § 1400 et seq.; WDE Rules for Special Education, Chapter 7, § 5(a)(i).

J. A procedural violation or inadequacy may only be found to have violated a child's right to receive FAPE if: (a) it impedes the child's right to FAPE; (b) significantly impedes the child's parent or guardian's opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or, (c) caused a deprivation of educational benefit. 34 CFR § 300.513.

### CHILD FIND

K. Consistent with 34 CFR 300.111, entitled “Child find,” Respondent, through the State, has the obligation to have policies and procedures to ensure that children residing in the District who are suspected of qualifying under 34 CFR 300.8, be identified and considered for special education, regardless of the severity of disability and regardless of the fact that such children are advancing from grade to grade.

L. Child find under 34 CFR 300.111 was triggered as early as April 2020 but, because the Student has been found to be ineligible for special education, lack of compliance has no consequence.

### EDUCATIONAL IMPACT

M. The WDE Rules for Services for Children with Disabilities (Chapter 7, p. 7-4) provide, consistent with 34 CFR 300.8, that to be eligible for special education and related services under IDEA, a child must meet the criteria for one or more of the identified disability categories, and the disability must adversely affect 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.

### ELIGIBILITY EVALUATION

N. Initiated by Petitioner Parent - Guardian’s request, 34 CFR § 300.301 required that Respondent conduct a full and individual evaluation of the Student in accordance with 34 CFR §§ 300.304 - 306 and determine that the Student is eligible prior to providing special education and related services.

O. Applicable special education eligibility evaluation procedures set forth in 34 CFR § 300.304 include: (i) the use of a variety of assessment tools and strategies to gather relevant

functional, developmental, and academic information about a student, including information provided by the child's parent[s] or guardian[s]; (ii) the use of technically sound instruments that may assess the relative contribution of the student's cognitive and behavioral factors, in addition to physical or developmental factors was required; (iii) administration of assessments by trained and knowledgeable personnel in accordance with relevant instructions provided by the assessment producers.

P. Assessments and other evaluations of the Student for special education eligibility were required by 34 CFR § 300.304 to be comprehensive and tailored to assess specific areas of educational need in all areas related to suspected disability.

Q. As part of the evaluation of the Student for special education eligibility, existing evaluation data was to have been considered pursuant to 34 CFR § 300.305, including: information and evaluations provided by Petitioner Parent(s) - Guardian(s); current classroom-based assessments and observations; and observations by teachers and related service providers, if any.

R. Respondent was also required by 34 CFR § 300.305, with input from Petitioner Parent(s) - Guardian(s), what additional data, if any, was needed to determine the Student's eligibility for special education.

S. As part of the Student's eligibility evaluation, the Student was to have been observed, according to 34 CFR § 300.310, in the Student's learning environment (including the regular classroom setting) to document the Student's academic performance and behavior in the areas of difficulty. The group of qualified professionals and Petitioner Parent(s) - Guardian(s) described in 34 CFR § 300.306(a)(1), in the context of determining whether the Student was eligible as having a specific learning disability, was to have decided to use either information from an observation in routine classroom instruction, monitoring the Student's performance before the Student was referred for an evaluation, or to have had at least one member of the group conduct an observation of the Student's academic performance in the regular classroom after the Student was referred for evaluation.

T. Upon completion of the administration of assessments and the collection of relevant data, 34 CFR §§ 300.306 and 308 required that a group of qualified professionals and Petitioner Parent(s) - Guardian(s) determined whether the Student is a child with a disability as defined in 34 CFR § 300.8. In doing so, they were to have carefully considered and interpreted all relevant evaluation data and other information about the Student. At least one of the group was to have been a school psychologist, speech-language pathologist, or remedial reading teacher.

#### ELIGIBLE DISABILITY CATEGORIES

U. Among the disability categories for which a student could be determined eligible for special education pursuant to 34 CFR § 300.8 are Emotional Disability (Federal nomenclature) or Disturbance (Wyoming nomenclature), Other Health Impairment, Specific Learning Disability, and Speech or Language Impairment.

#### INDEPENDENT EDUCATIONAL EVALUATIONS (IEE)

V. According to 34 CFR § 300.502, an Independent Educational Evaluation may be requested by a child's parent if the parent disagrees with the evaluation obtained by the child's school. The child's school must ensure that the requested IEE is provided at public expense and without unnecessary delay, or the school must file a due process complaint requesting a hearing to show that its evaluation is appropriate. Nothing, except expense, prevents parents from obtaining an IEE without school involvement.

#### LEAST RESTRICTIVE ENVIRONMENT (LRE)

W. The LRE requirements of IDEA, as set forth in 33 CFR § 300.114, apply to children with disabilities and require that, to the maximum extent appropriate, they be educated with children who do not have disabilities. The phrase "children with disabilities" is defined in 34 CFR § 300.8.

PROCEDURAL SAFEGUARDS NOTICE

X. The phrase “procedural safeguard notice” has specific meaning under IDEA. 34 CFR § 300.504 describes the contents of the notice and requires a school to make it available to the parents - guardian of a child with a disability or suspected disability, in specific circumstances, which are: (i) upon initial referral of the child for an evaluation; (ii) upon the parent - guardian requesting an evaluation; (iii) upon the school’s receipt of a State complaint; (iv) upon the school’s receipt of a due process request/complaint; (v) in accordance with the discipline procedures in 34 CFR § 300.530[h]; or, (vi) upon the parent - guardian’s request.

Y. A decision to remove a child with a disability pursuant to 34 CFR § 300.530 constitutes a change of placement and triggers the need for a school to provide the child’s parent(s) - guardian(s) with the Procedural Safeguards. 34 CFR § 300.504.

**ENTERED** this 15th day of December, 2021.

Robert “Bob” Mullen, Hearing Officer

DECISION

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