UTAH STATE BOARD OF EDUCATION

BEFORE THE DUE PROCESS HEARING OFFICER

[redacted] Petitioner, v. CANYONS SCHOOL DISTRICT, Respondent.	**DECISION AND ORDER** Case No. DP-2425-06 (Hearing Officer Douglas Larson)

A due-process hearing was held in the above referenced matter on December 13, 16, 19, and 20, 2024 ("Hearing"). Petitioners [redacted] ("Wilkes," "Parents," or "Petitioners") were present during the Hearing representing their minor child [redacted] ("Student"). Student was also present for a short time and offered testimony. The [redacted] were represented by counsel, Amy Martz. At different times, Jennifer Frei and Desiree Clark were present during the Hearing assisting Ms. Martz. Respondent Canyons School District ("Canyons" or "the District") was represented by counsel Jefferey Christensen and Paul Van Komen. Nathan Edvalson was also present on behalf of the District during the Hearing. Petitioners requested the Hearing be open to the public, and other individuals attended the Hearing at various times. This matter was assigned to the undersigned Hearing Officer, Douglas Larson ("Hearing Officer"). The Hearing was held in accordance with the procedural requirements of the Individuals with Disabilities Education Act ("IDEA") (20 USC §1415 et seq., and 34 CFR §§300.507-515, and the Utah State Board of the Education ("USBE") Special Education Rules ("State Rules") IV.I-P, August 2020.

I. INTRODUCTION

On October 16, 2024, Petitioners filed a Request for Due Process Hearing ("Complaint") with the USBE stating Canyons failed in its obligations under the IDEA to: (1) follow evaluation and reevaluation procedures pursuant to 34 CFR § 300.303 and .305; (2) develop, review, and

revise Student's IEP pursuant to 34 CFR § 300.324; (3) ensure adequate IEP team membership pursuant to 34 CFR § 300.324; (4) engage in child find pursuant to 34 CFR §300.109 and 300.111; and (5) allow adequate parent participation pursuant to 4 CFR § 300.322 thus denying Student a free appropriate public education ("FAPE"). The Complaint requested remedies of compensatory education in the form of IEP service minutes, travel expenses, a ruling for a one-to-one aide for Student in special education classes, reimbursement for legal fees, reimbursement for Student's current treatment facility, and additional training for Canyon's officials. Canyons filed a timely Response to Petitioner's Complaint on October 26, 2024, making factual assertions and denying it failed in any of its obligations under the IDEA as alleged.

The parties entered into the early resolution process, but no resolution was found. The forty-five-day window for a due process hearing opened on November 16, 2024. The parties agreed to Hearing dates of December 13, 16, 19, and 20, 2024. Based on the Hearing dates and the upcoming school winter holiday, the parties moved and agreed to extend the due process hearing window to January 17, 2025. Canyons filed a Confirmation of Prior Written Offer of Settlement on December 5, 2024, although there was no evidence presented to the Hearing Officer regarding the prior resolution discussions or the offer of settlement. With some difficulty, the parties produced prior disclosures of witnesses and documents. Respondents objected to the proposed Hearing schedule proposed by Petitioners. After significant discussion with the Parties, the Hearing Officer allowed Petitioner's witness subpoenas to be delivered and allowed the witness schedule with the caveat that Respondents could request extending the Hearing as needed. Parties filed pre-Hearing briefs on December 10, 2024.

The Hearing was held as scheduled on December 13, 16, 19, and 20, 2024. Petitioners called several witnesses over three days. Respondent also questioned the witnesses and reserved the right to recall witnesses in furtherance of its case. Witnesses called for Petitioner, in the order of appearance, were: Student [redacted] (Father); [redacted] (Mother); [redacted] (Canyons Patron); [redacted] W[redacted] (Speech Language Pathologist), [redacted] S[redacted] (5th Grade Teacher); [redacted] F[redacted] (Special Education Teacher, Speech Language Pathologist); Ashley C[redacted] (School Psychologist); [redacted] M[redacted] (6th Grade [redacted] Math Teacher); [redacted] G[redacted] (School Social Worker); [redacted] R[redacted] (6th Grade Social Studies Teacher); [redacted] C[redacted] (6th Grade Orchestra Teacher); [redacted] B[redacted] (School Psychologist Specialist); Leslie Hansen (Parent

Liaison, Utah Parent Center) (transcript mistakenly refers to as Leslie Martz); [redacted] (Instructional Aide); [redacted] (Secondary Program Administrator); [redacted] (Assistant Principal); [redacted] (Middle School Principal); [redacted] (Licensed Behavior Analyst, Owner Balance Family Solutions); [redacted] (Elementary Principal); [redacted] (School Psychologist); and [redacted] (Behavior Analyst, [redacted]rofessor) (Expert Witness). At the close of testimony from the foregoing individuals, Ms. Martz rested Petitioner's case. Witnesses called for Respondent in the order of appearance were: [redacted] (Elementary Principal); [redacted] (School Psychologist); [redacted] (Special Education Teacher, Speech Language Pathologist); Karen Harrop (Special Education Director Ogden School District) (Expert Witness); and Nathan Edvalson (Special Education Director Canyons School District). At the close of testimony Respondent rested its case.

In addition to witness testimony, the Parties produce extensive documentary evidence in support of their positions. The Hearing Officer admitted into the Hearing record Petitioners' Exhibits 1-8, 10-38, 41, 43, 48-48, 51-56, 58, 61-63, 65-69, 71, and 73-77. The Hearing Officer admitted into the Hearing record Respondent's Exhibits by Bates numbered pages R001-011, R017-032, R037-038, R043-053, R060-061, R067-078, R106-132, R140-142, R150-276, R283-292, and R299-327.

At the close of evidence, the parties discussed a timeline for post-Hearing briefing. Based on the holiday, it was predicted that record transcripts would not be available until January 10, 2025. Based on that fact, the parties requested and agreed to submit post-Hearing briefs on January 27, 2025, and requested the Hearing Officer to render a final decision on or before February 10, 2025. A significant delay in the production of a complete set of record transcripts by the court reporter prompted another request for additional time by Respondent. The Hearing Officer granted the request and post-Hearing briefs were postponed until February 3, 2025, and the final decision was set or February 18, 2025.

II. BURDEN OF PROOF

Petitioner, as the party requesting a due process determination, is the party carrying the burden of proof by a preponderance of the evidence in this matter. *Thompson R2-J School Dist. V. Luke P.,* 540 R.3d 1143, 1148 (10th Cir. 2008) ("The burden of proof…rests with the party claiming a deficiency in the school district's efforts"); *Schaffer v. Weast,* 546 US 49 (2005) ("The

burden of proof in an administrative hearing [in the IDEA context] is properly placed upon the party seeking relief."). The Hearing Officer informed Petitioners at the pre-Hearing conference that Petitioners would have the burden of proof and the duty to present evidence first at the Hearing.

III. FINDINGS FROM THE RECORD

The Hearing Officer makes the following findings from the record:

1. Student attended school at Altera Elementary ("Altera"). From all accounts, this was a positive learning environment for Student, and he had a good educational experience at Altera. Student testified that he liked his 5th-grade teacher, Ms. S[redacted], as her class was organized and well-managed. (2Trans. 21:11-22:18).[1]
2. Student has had a diagnosis of autism from an early age, and his disability classification on each individualized education program ("IEP") and his Section 504 Plan ("504") was "Autism." The Parties were in agreement as to Student's disability. (Ex. 4, 7, 11, 48, 53, and 58). Student was deemed eligible for special education in 2017, prior to attending Altera, and was reevaluated in 2020 during 2nd grade. His reevaluation resulted in the 2020 IEP. In that IEP, Student had goals in language and speech pragmatics and expressive language. (Ex. 48).
3. The parties agree that Student made significant progress in elementary school up through and including the fifth grade. (1Trans. 62:8-16, 234:5-9, 324:5-14, 354:1-355:17).
4. Student's 2022 IEP had only one objective and one goal for Language and Speech – Pragmatics. The objective stated: "[Student] will state what would be an appropriate response to a particular emotional state in 4/5 opportunities/situations." The goal stated: "[Student] will [sic] given a social situation or role-play scenario, will protest using appropriate language 4/5 trials. (Ex. 7).
5. By the fourth grade, the IEP team discussed whether Student had made progress sufficient to meet his IEP goals. Based on the Parents' desire to maintain special education supports, the team kept Student on his IEP but reduced minutes of service. (1Trans. 356:6-24).

[1] Transcripts are identified by day of the Hearing: 1Trans. refers to the first day, 2Trans. refers to day two, etc. Ex. refers to Petitioner's exhibits by number. Bates number R001 *et. seq.* refer to documents entered by Respondent.

Student's May 2023 Reevaluation and Exit from Special Education

6. Parents were issued a Prior Notice and Consent for Reevaluation for [Student] ("Consent for Reevaluation") sent on February 21, 2023. The Consent for Reevaluation was signed by [redacted] on March 8, 2023. The Consent for Reevaluation states, "Therapy data indicates [Student] no longer qualifies for speech and language services. Parent had expressed concerns for [Student's] social skills related to his autism and requested an evaluation to determine continued eligibility for social skills support." (R002-005).

7. Testing was completed in areas of concern as expressed by the IEP team, Parents, and teachers, according to Ms. C[redacted], School Psychologist. Since Student was not deficient in academics and this was not an area of concern, no additional testing was completed in academics. Further, the IEP team considered data from evaluations conducted in prior years. (2Trans. 101:17-102:21).

8. A notice of meeting was sent on May 3, 2023. (R108).

9. On May 12, 2023, the IEP team met, reviewed Student's evaluation data, and developed the Team Evaluation Report and Written Prior Notice of Eligibility Determination ("Determination"). The Determination states: "[Student] has met all speech and language goals, demonstrated appropriate social skills, and does not require individualized instruction." As such, the Determination provided notice of the IEP team's conclusion: "[Student] does not have a disability, as defined in the Individuals with Disabilities Education Act (IDEA), that adversely affects educational performance and does not require special education and related services." (Ex. 11).

10. The Determination was based on multiple data sources. Formal evaluations results administered during the spring of 2023 considered by the IEP team were documented in the Determination, which included: a functional behavior assessment (ABAS-III) (Ex. 11, R337-348), which is not specific to autism; a social/behavioral assessment specifically related to autism spectrum disorder (ASRS) (R328-336); and a social responsiveness assessment specifically designed for students on the autism spectrum (SRS-II) (R-349-352).

11. Contrary to Parents' concerns about social skills, Student was within the normative range in all areas related to social skills relative to his autism. (Ex. 11). The formal testing indicated that Student's 5th grade teacher, Ms. S[redacted], rated Student's performance in the school setting. In adaptive skills testing using the ABAS-III, Student fell within the normative range for functional behaviors, or on par with his non-disabled peers. With respect to his social and behavioral skills, despite being on the autism spectrum, the ASRS and SRS-II assessments indicated that Student was not elevated in any subscales, "which suggests minimal to no interference in everyday social interactions." (Ex. 11).

12. Rating scales were not available from Parents, although Parents had a good relationship with Student's classroom teacher and were in regular contact with school personnel. (1Trans. 21:21-22:2, 58:11-14, 105:7-10, 2Trans. 22-2-4, 81:14-16, 82:16-21). The record is not clear as to the reason the parent rating scales were not completed. (1Trans. 237:18-238:4, 244:22-2145:3; Ex. 11).

13. Respondent's expert witness testified that there was consistency in the outcome results of the formal assessments, which supported the validity of the results in all three. (2Trans. 141:21-142:4). Petitioner's expert did not refute these conclusions.

14. The Determination cited an informal communication assessment performed by the speech pathologist Ms. F[redacted]. (2Trans. 98:2-21). Respondent's expert testified that this informal assessment helped the IEP team understand Student's excellent speech, language, and social skills relative to his disability. (4Trans 144:2-145:20).

15. The speech pathologist also included a social interaction section that cited Student's ability to "use appropriate tone/pitch/volume when speaking, taking turns in conversation, and staying on topic…able to solve social problems and identify tone of voice including sarcasm." (Ex. 11).

16. Ms. S[redacted] testified Student's academic performance was progressing significantly, he was interacting well with peers, and Student had no significant behavior issues. Ms. S[redacted] testified she communicated that information to the IEP team. (2Trans. 13:19-14:24, 16:16-24, 33:1-36:2, 47:11:15, 51:7-19).

17. Petitioner identified fault with Ms. F[redacted]'s practices arguing the here assessment relied upon a single 10-minute exercise. Ms. F[redacted] testified in addition to the 10-minute language sample she also did a "social language informal assessment on storytelling…, double interview…[and] nonverbal communication, social interaction skills were observed. (4Trans. 6-21).

18. Ms. F[redacted] was criticized for doing no classroom observations of Student during the 5th grade. She testified that she observed Student at recess. (2Trans 170:3-171:1).

19. Petitioner accused Ms. F[redacted] of failing to provide 40 minutes of speech and language therapy to Student each week as required by the IEP. Ms. F[redacted] testified that she provided Student the time to which he was entitled under the IEP even though the records produced in time for the Hearing demonstrated that Student was not served with all service minutes. (4Trans. 79:21-80:10; Ex 55 and 56). The number of minutes actually provided is inconclusive.

20. The Determination also suggests the IEP team considered an intellectual assessment (WISC-V) from 2020. The IEP team also had Student's Acadience and RISE scores in reading and math, which showed that Student was at or above benchmark in most areas (2Trans. 31:23-36:7; Ex. 10-11; R020-025), although the RISE science scores were not available prior to the Determination (3Trans. 365:24-367:10, R017-019). Ms. S[redacted] also testified about Student's report cards showing that his growth during 5th grade had reached approaching mastery or mastery in virtually every skill in math, science, and language arts. Student made progress throughout elementary school while accessing the regular curriculum. (R311-313, R316-317, R324-327; 2Trans 41:22-45:10).

21. Evidence in the record demonstrated, that by the end of elementary school, Student reached or was close to benchmark proficiency in most areas on standardized tests, his attendance was good, his scores were trending upwards, and his grades demonstrated mastery or approaching mastery on his report card. (1Trans 13:1-14:24. 108:7-14; Ex. 10, 54a, 54b, 54c, R140-142).

22. The expert for Respondent agreed that the data suggested there was no adverse impact on Student's educational performance, and Student no longer required special education or

related services. (2Trans. 150:24-151:18). Again, Respondents' expert did not refute these conclusions.

23. Ms. W[redacted] worked with Student at Altera during his younger grades, and she continued to work with Student in a private capacity hired by parents when Student was in the 4th and 5th grades. Ms. W[redacted], knowing Student and his progress with respect to his disability better than any other professionals, stated, "I could see how the school team, like the fourth grade and fifth grade year, went back and forth on taking [Student] off of his IEP because he had made a lot of growth and progress." Ms. W[redacted] also told [redacted], "The school may determine that he may not need services at school anymore." (1Trans. 354:1-355:17).

24. Ms. S[redacted] was unable to attend the IEP meeting on May 12, 2023, because she was attending her granddaughter's college graduation in St Louis. Petitioner insisted that Ms. S[redacted] was an indispensable member of the IEP team, and extensive testimony was received on that point. (2Trans. 16:25-18:20, 29:16-21, 81:23-85:25).

25. Ms. S[redacted] testified, however, that she provided input to the IEP team regarding Student. Ms. S[redacted] also informed the IEP team she saw "no remaining speech issues that prevented [Student] from functioning in a classroom." (2Trans. 22:2-4, 25:5-19; 29:16-25).

26. Moreover, Parents acknowledged and agreed in writing that Ms. S[redacted] was excused from the meeting and that her attendance was not needed. (Ex. 14).

27. In the May 12, 2023, IEP meeting, the IEP team determined that the reevaluation demonstrated Student had met his IEP goal. As such, Student was deemed ineligible for continued special education services, which was a change in placement, and Student was exited from special education. Parents received all documentation including the Determination, the Meeting Minutes, the Meeting Excusal for Ms. S[redacted], the Special Education Exit Form, and Prior Notice and Consent for [] Change in Placement in Special Education ("Change in Placement"). Parents signed all applicable documents. (1Trans. 323:15-19; Ex. 11-15, 17, 34).

28. Testimony was received that the IEP team was not pressured to move Student to a 504; moving him to a 504 was warranted by progress, and a 504 could provide Student with extra support with broader accommodations. (2Trans. 48:23-49:5).

29. At the May 12, 2023, meeting, the IEP team completed the Eligibility Determination Worksheet for the 504. The 504 team (transitioned from the IEP team) determined the following: "Based on reevaluation data, the [S]tudent continues to be eligible under Section 504 because there is a physical or mental impairment that substantially limits a major life activity. The Section 504 Plan will be reviewed and appropriate updates will be made, if needed." The evaluation included "parent and teacher input" and "psychiatric diagnostic interview examination record." (Ex. 1 and 58).

30. The 504 was also developed during the May 12, 2023, meeting. The 504 listed three areas of accommodation. For behavioral/social, the accommodation was to allow a fidget tool. For environmental/accessibility, the accommodation was to allow breaks and visits to the school counselor. For other accommodations, the 504 lists extended time during passing periods, access to noise-canceling headphones, and advance notice of safety drills. (Ex. 1). Finally, the 504 included an instructional accommodation for preferential seating indicating that Student would self-advocate for preferred seating arrangements (Ex. 1 and 58).

31. [redacted] testified that parents had not provided input regarding the 504 before the meeting and before the 504 Eligibility Determination Worksheet had been prepared. (1Trans 145:3-6). However, both parents and Student attended the meeting and signed the Eligibility Determination Worksheet and the 504. (Ex. 1 and 17).

32. Testimony was received from Parents that these accommodations were not adequate for Student. [redacted] speculated that the 504 lacked "the things Ms. S[redacted] was doing automatically," meaning accommodations that Ms. S[redacted] was providing to Student in her 5th-grade class to differentiate instruction for Students' benefit. Parents testified that Ms. S[redacted]'s class was well managed, and middle school classes were not. He also testified that Student would struggle to advocate for himself when accommodations were needed. (1Trans. 152:9-157:4).

33. Parents testified they wanted the student to remain on an IEP. Petitioners argued that Canyons purposely moves students from IEPs to 504 Plans to deprive students, including Student, of a FAPE (Tr. 143:6-144:7; 286:17-25). This allegation was not substantiated. Parents and Student signed and agreed to the 504 eligibility plus the original and updated 504s. (Ex. 1, 17, 25, 46, and 58).

Student's 6th Grade Year and Child Find

34. The evidence is clear that Student's experience in middle school was not as positive as his experience in elementary school. Student's grades dropped in 6th grade, particularly the second semester. The principal reasons given for the drop in grades were not understanding assignments, difficulty navigating Canvas, and failing to turn assignments in. Student's attendance also declined precipitously after the first semester. (1Trans 41:25-43:5; 63:23-64:9; Ex. 19, 24, 38; R036-38).

35. [redacted] recalled that "things were going fairly well [in 6th grade] at the start." However, the parents were concerned that the 504 accommodations were not being followed by teachers. (1Trans 157:20-158:14).

36. Transitioning to middle school was a big change for Student. Student mentioned the following challenges: having "seven different classes"; walking around "hurt [his] feet a little bit"; and although he thought classes were similarly quiet, Student agreed with counsel that "kids [were] talking while the teacher [was] talking" or when it was time to do work. Student testified he did not experience any bullying from other kids. (1Trans 26:23-27:23).

37. With prompting from counsel, Student also testified that being off an IEP "made it more tough to get what [he wanted]." Student agreed with counsel that the following things were "hard": "concentrate during class"; "keep track of assignments"; and "stay calm," but Student was unsure whether those things impacted his learning. (1Trans 32:2-33:24). Counsel for Petitioners even alluded to puberty as being a contributing factor. (1Trans 40:5-12).

38. Student had access to school personnel when he needed assistance. Student was assigned to visit Ms. G[redacted], Social Worker whenever he needed. She talked to Student about emotions and allowed him to "take a break," but according to Student, she did not counsel him on calming or self-regulation. (1Trans 40:13-41:8).

39. Starting in October, Student was assigned to an instructional aide at the school, [redacted]. Student was placed on Mr. M[redacted]' caseload, and Mr. M[redacted] met with Student weekly and helped with managing and completing homework, keeping track of

assignments, setting and tracking goals, communicating with teachers, assisting with advocacy, and connecting with resources. Mr. M[redacted] maintained communication with parents throughout the year. Mr. M[redacted] experienced some success working with Student that was acknowledged by Parents. (Ex. 63 and 65).

40. Student was also given access to the Academic Support Center (ASC) at the school. Mr. M[redacted] and other paraprofessionals would provide Student with support on schoolwork completion. Student was also allowed to use the ASC room for taking tests in a quiet environment. (1Trans 41:9-19).

41. Parents requested a 504 team meeting at the school and communicated with a District official in an email dated October 15, 2023, about resolving "504 inadequacies." Parents met with the 504 team at Indian Hills on October 16, 2023, and the 504 team made changes to the 504. That email broached the subject that parents were "prepared to initiate reevaluation protocols and procedures for the transition to an IEP." (Ex. 18).

42. An accommodation was added to the new 504 to provide an assignment planner or checklist to be filled out by teachers. The 504 team also added an accommodation that staff would "assist and reinforce functioning skills by meeting with Student weekly, discussing current grades, and outstanding assignments, creating goals and problem-solving school work and assisting with self-advocacy and connecting students [sic] with available resources." (1Trans 158:15-159:17; Ex. 16, 17, 18).

43. The new 504 was signed by both parents. In addition to the 504 team, Student, a member of the District special education department, [redacted], and a parent advocate, Leslie Hansen, were also in attendance. (Ex. 17).

44. Parents had engaged Ms. Hanson, a Parent Advocate from the Utah Parent Center for assistance. Ms. Hansen testified that Parents did not specifically request an evaluation for special education from the school until meetings with Dr. S[redacted] in the spring. (2Trans. 248:5-249:3).

45. Parents complained that teachers failed to fill out the student planner, tracker, or checklist ("Tracker"). There was significant discussion with school personnel regarding why the Tracker was not working. Teachers blamed Student for not presenting it to them for

signature, and Parents indicated student was unable to remember or advocate for himself. A new plan was developed for teachers to post some kind of checklist on the board each period. (1Trans. 218:8-219:23).

46. Parents addressed another letter to Indian Hills, the District, and USBE dated December 7, 2023, regarding Student's "significant decline in the following areas: Anxiety, Mental Health, Desire to attend, Social Interaction, Self Advocacy, Assignment completion, and general well-being." The letter requested mediation related to the 504, which was granted by the District. (Ex. 20).

47. The Parties participated in a mediation regarding the 504 according to the District's policies. The mediation was conducted by a District official. Petitioners complained this mediation was not held by a third-party mediator and was not part of the District's resolution process. The Hearing Officer makes no finding on the sufficiency of the mediation. (1Trans. 180:21-182:6, 3Trans. 145:10-147:6, 176:7-177:9).

48. In the December 7, 2023, letter, Parents also cited meetings and discussions with school personnel and the failure of teachers to implement the 504. The letter cited communication with District personnel that provided no further resolution or progress. The letter stated: "If a 504 plan cannot provide the necessary accommodations to ensure Student's free appropriate public education, we are requesting that he is reevaluated for special education services and IEP eligibility." (*Id.*).

49. The school sent parents a prior written notice dated December 18, 2023. In that notice, the school refused special education testing. The refusal said, "At this time, parent clarified that a request for testing would be made if a 504 was unable to accommodate his needs." (Ex. 21). Petitioners argued that there had been other instances in which special education testing was requested verbally. (1Trans. 179:9-180:5). However, the refusal in the prior written notice is consistent with Petitioners' December 7, 2023, letter (Ex. 20).

50. Dr. S[redacted] testified that he specifically followed up with Student's Mother on this point of whether the family was requesting special education testing. In his notes from December 15, 2023, Dr. S[redacted] indicated he called Mrs. [redacted] about the December 7, 2023, letter and clarified "whether she was requesting testing." According to the notes, Mrs. [redacted]

responded, “Not at this time." Other options for accommodations were discussed via telephone and email, including a study skills class. Mr. S sent an email in addition to the prior written notice on December 18, 2023, promising to get together to revise the 504 after the break. (4Trans. 19:19-20:5; R116-R119).

51. The District records system maintained notes from school personnel called Student SEL Information, which documented instances that administration and support staff had contact with Student and his parents. During the first two terms of the 2023-2024 school year, there are 21 entries by Ms. G on 13 separate days, 3 by Ms. L, and 3 by Dr. S These contacts were, among other things, to discuss supports and 504 accommodations, address dysregulation and provide support to Student, discuss grades and executive functioning strategies, problem-solve with parents or Student, communicate with teachers, and provide counseling to Student. (R250-262).

52. Student indicated his grades were not up to the family standards, although he indicated the family was fairly happy with his grades initially. However, as the year progressed, his grades got worse. (1Trans. 31:7-32:1).

53. The semester ended on January 11, 2024. (Ex. 38). Student’s final grades for the first two terms were as follows:

Class	First Term Grade	Second Term Grade
Orchestra	A-	C
English Language Arts	B-	A
Math	D+	D+
Science	B	C
STEM Concepts	B+	C+
Social Studies	F	F
Art	A	A

(R036).

54. The 504 team modified the 504 again. The new 504, dated January 8, 2024, included an accommodation that offered a “minimize[ation of] distractions” and a “distraction-free environment independent work time if requested.” This included a new accommodation for

assessment/testing in an alternate distraction-free setting for both assignments and tests. (Ex. 25).

55. Student's schedule was changed so that he could attend the ASC during fifth period each day. He had access to a paraprofessional for schoolwork support for a full period each day. (2Trans 264:24-265:8; Ex. 65).

56. According to testimony and a Student Attendance Tab provided by Respondent, Student missed 3 full days and a couple of partial days in the first term, approximately 6 full days and some partial days in the second term. (R037-038).

57. Communication with parents throughout the 20223-2024 school year was frequent. Exhibits and testimony demonstrated that parents regularly exchanged emails and calls or texts with school and district personnel including Ms. A[redacted], Ms. G[redacted], Ms. L[redacted], Ms. L[redacted], Dr. S[redacted], Mr. M[redacted], Ms. S[redacted], and Ms. N[redacted]. Mrs. [redacted] was afforded opportunities to shadow Student during the school day, receive input from teachers on Student's progress, and bring advocates to meetings. (R043-055, 062, 067-068, 079-098, 116-128, 277; Ex. 9, 18-20, 22-23, 28-31, 35-36, 40, 57, 63, 65, and 68-74)

58. The record is less clear, however, regarding Parent's decisions and Student's struggles during the second half of the year. Student missed 21 full days of school and 19 partial days of school during the third term. Student was absent almost all days during the fourth term. (R037-038).

59. There are no final grades for Student for the third and fourth terms in the record.

60. Mr. [redacted] informed Dr. S[redacted] via email on January 29, 2024, that Parents had identified behavior that was causing Student's difficulties. He wrote, "The behavior we have identified is severe anxiety, manifested in emotional outbursts from him, negatively affecting his overall mental health." (R123).

61. Dr. S[redacted] initiated a plan to gather more data through a behavior analysis. He sent consent to evaluate forms to Parents on January 30, 2024. During the month of February, Dr. S[redacted] communicated with Parents about gathering data on Student. Dr. S[redacted] further informed Parents that he observed one of Student's "meltdowns" on February 1, 2024, but he was having difficulty observing Student in a dysregulated state otherwise. He informed

Parents that he needed to observe Student when he was dysregulated, so he could analyze the causes or antecedents of the dysregulation. (R123-125). Mr. [redacted] sought more input from teachers through emails and teacher surveys. He asked teachers to alert him if Student became dysregulated. (Ex. 22-23).

62. Parents returned questionnaires to Dr. S[redacted] on February 22, 2024. That same day, Dr. [redacted] wrote Parents to set up another conference. Parents had hired a private behavior analyst, and Dr. S[redacted] invited him to the meeting. The BCBA could not meet until March 6, 2024. (R126-136).

63. In February, Parents began asking in earnest for a one-to-one aide for Student. Ms. L[redacted] told Parents at that time that a one-to-one aid is considered a restrictive support, and the 504 team would need to analyze more data. (Ex. 9).

64. Ms. Martz sent a letter to the school dated March 1, 2024, that articulated the Parents' concerns and allegations of failures on the part of the school. (Ex. 32).

65. The school responded to Ms. Martz on March 11, 2024, indicating that the school was granting the request to evaluate for special education and was prepared to test Student in several areas as requested. (Ex. 30-31).

66. On March 13, 2024, Parents emailed Dr. S[redacted], Ms. S[redacted], Ms. A[redacted], and Ms. G[redacted] and announced their decision to stop sending Student to school, although they indicated they would make Student available for special education evaluation. This was a unilateral decision made by Parents. (R067-068).

67. By this time, Parents had stopped bringing Student to school altogether. (R037-038). Indeed, Student had effectively stopped attending school regularly in mid-January 2024. (R037-R38).

68. Ms. A[redacted] testified that the school did not initiate child find during the sixth grade because the school "did not see the level of emotional dysregulation that parents were reporting." (3Trans 87:23-88:6).

New Special Education Eligibility Determination

69. Despite the foregoing, the school reevaluated Student, requalified him for special education, and developed a new IEP. Data review and consent for testing documents were sent to parents on March 21, 2024. (Ex. 35, 39). An evaluation was completed and the IEP team (formerly the 504 team) met to review the results on May 21, 2024. A Team Evaluation Summary and Written Prior Notice of Eligibility Determination for Student ("Evaluation Summary") was prepared reporting evaluation results in the following domains: intellectual, academic, adaptive, observations, psychomotor, social/behavioral, and communication. All members of the IEP team signed the Evaluation Summary and initialed the Meeting Notes. (Ex. 33).

70. Prior written notice was sent to parents. The date on the document says December 18, 2023, and although they could not pinpoint the actual date, Parties agreed that date was incorrect. That prior written notice refused a full-time aide under the new IEP. Specifically, the document stated, among other things, that the evaluation demonstrated that Student had no academic impact in the areas of writing and math, and working with a special education teacher in a smaller group environment was the appropriate support. A request for lawyers' fees was also refused. (Ex. 41).

71. A new IEP was developed and signed by the IEP team, including Parents and Student, on May 31, 2024. The new IEP has goals in writing, math, communication, social emotional, and executive functioning. The IEP provides service minutes in math, written language, speech, and behavioral/mental health supports. (R232-243).

72. On August 14, 2024, a meeting was held at the start of the new school year with teachers to discuss Student's IEP. Counsel was not invited, and the meeting was cut short. Petitioners argued this suggested that the school was not serious about implementing the IEP. Mrs. [redacted] spoke her mind about her concerns over schools failure to provide services. She made several comments about Utah communities lacking acceptance for individuals who are different. She used profanity in some of her comments. (R280-292).

73. Nevertheless, Ms. L[redacted] received an email from Mrs. [redacted] on August 27, 2024, announcing that Student had a "much more positive outlook." Student rated his classes

fairly high, and parents announced it was a "great starting foundation to build on, and parents asked for further support. The letter ended with, "So Hooray and again Kudos. We can work with this yeah?!..Let's Go Team Student! We've got this!" (R148-149).

74. Student only attended school in the fall of 2024 for 4-5 days in August and 4 days in September 2024. (R147). Parents opted to pull Student out of school entirely to attend a day-treatment program called Balance Family Solutions. This program is for students with autism but provides no academic programming. (Ex. 77). Testimony was received that this decision was made based on Student's refusal to attend school and the Parents needed a "stop the trauma" solution for Student. (3Trans. 309:20-310:7).

75. Virtually no other salient facts were alleged or established related to Student's current IEP.

IV. DISCUSSION

Petitioners' claims fall into two broad categories of events. First, Petitioners claimed the District failed to conduct proper evaluation and reevaluation procedures pursuant to 34 CFR § 300.303, .304, and .305 making a determination to exit student from special education and qualifying Student for a 504. Petitioners argued that procedural errors in addition to the IEP team's determination to exit student from special education created a denial of FAPE. Second, Petitioners claim the 504 was ineffective and/or not followed, which contributed to worse outcomes for Student and an obligation to reevaluate Student for special education. Student was reevaluated and determined eligible for special education approximately one year after he was exited. Petitioners claim that Respondent failed to identify, locate, and evaluate Student during that time, which caused a denial of FAPE.[2]

Statute of Limitation

As an initial matter, Petitioners sought to find fault with evaluations and reevaluations of Student as far back as 2020. Respondents objected to the Hearing Officer considering remedies for the District's decisions and actions that occurred outside of the two-year statute of limitations period. State law considers it "in the best interest of students with disabilities [] to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parent(s), and public schools." Utah Code

[2] Petitioners have made no claims regarding the procedures or the substance that produced Student's current IEP.

Ann. §53E-7208(1). Federal regulations state that a "due process complaint must allege a violation that occurred not more than two years before the date the parent or student who is an adult or LEA knew or should have known about the alleged action that forms the basis of the due process complaint." 34 CFR § 300.507. Exceptions to this rule exist if a complainant was "prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint" or "if the LEA withheld information" from [complainant] that was required…to be provided." (*Id.*). *See also Alex W. v. Poudre Sch. Dist. R-1,* 94 F.4th 1176, 1186 (10th Cir. 2024) ("Parents did not present any evidence or give testimony that would relieve them of their obligation to file a complaint within two years").

Petitioner introduced and identified insufficient evidence to satisfy the exceptions to the two-year statute of limitations. Thus, the Hearing Officer will not consider decisions or actions outside the two-year window for the purposes of making a determination regarding the provision of a FAPE. However, Petitioner argued, and the Hearing Officer agreed, that evidence of the District's decisions or actions that occurred prior to the two-year statute of limitations period may provide relevant context to allegations of more recent allegations of IDEA violations. The initial portion of Petitioners' claim that falls within the two-year window was the Student's reevaluation and the determination and prior written notice that exited Student from special education.

Exit from IEP and Transition to 504

The reevaluation of Student was summarized in the Determination dated May 12, 2023, and culminated in the Change of Placement. Petitioner claims the reevaluation was inadequate and the decision to exit Student from special education denied Student a FAPE. The State Rules require a reevaluation be conducted "if the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reevaluation." State Rules II.G. (34 CFR § 300.303). Pursuant to 34 CFR § 300.305(a)(2)(i)(B), a reexamination must determine "whether the child continues to have…a disability. *Id.* Thus, if the IEP team suspects the student "no longer requires special education or related services, it must reevaluate the student in all areas of suspected disability…[and] may exit the child from special education if, after a comprehensive evaluation, it determines that the student does not need services to obtain meaningful educational benefit." *Technical High Sch. Sys.*, 112 LRP 49055 (2012). *See also, Victor. Elementary Sch. Dist.,* 50 IDELR 204 (2008).

The reevaluation, however, must be comprehensive before determining that a student is no longer a child with a disability. 34 CFR 300.305(e). Terminating a student's special education services is considered a change in placement under the IDEA and, as such, triggers procedural safeguards including prior written notice to parents under 34 CFR 300.503. For a comprehensive evaluation, State Rules require that an LEA must, among other things, "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student…"; "[n]ot use any single procedure as the sole criterion for determining whether a student is a student with a disability…"; and "[u]se technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 20 U.S.C.A. § 1414(b)(2); State Rules II.F. (34 CFR § 300.304).

The Determination summarized the assessment tools and other data considered by the IEP team that led to a determination of ineligibility. (SOF 6-19). The team considered the outcome of three separate norm-referenced evaluations ASRS, SRS-II, and ABAS-III relevant to Student's disability identified as autism. These evaluations incorporated the classroom teacher's assessment of Student's progress in functional skills and the impact of autism spectrum symptoms in the class setting. The scores from the three assessments were consistent suggesting greater reliability (SOF 8). Respondent's expert testified that the IEP team's consideration of informal communication assessments were important to understand the Student's practical speech, language, and social skills relative to his autism spectrum disorder. (SOF 14-15).

The Determination contains less information regarding cognitive and academic assessments. The Acadience testing showed Student was above benchmark in the majority but not all areas. The IEP team considered a 2020 WISC formal exam along with grades. (SOF 20). When questioned why there was not more cognitive or academic testing for Student before he was exited from special education, Ms. C[redacted] explained that the school evaluated in the areas of concern, and considered data from other areas. (SOF 7). Ms. S[redacted] also provided testimony that she communicated to the IEP team that Student had made significant progress measured by grades and standardized testing. (SOF 14-15). Testimony and documentary evidence demonstrated that Student's academic progress was strong such that he was performing on par, and in many cases, better than his peers, mastering or approaching mastery in most skills and subjects.

The Determination contained little information about parental input. Indeed, rating scales were not completed by parents prior to May 12, 2023, although there is ambiguity in the record as to the reason rating scales were not completed. (SOF 12). Nevertheless, it appears parents were provided the opportunity to give their input. They were provided notice of the meeting and prior written notice of the proposed actions. Parents were present at the May 12, 2023, meeting and they consented to Student's exit from special education and transition to a 504 as evidenced by their signatures on all the required paperwork. Ms. S[redacted]'s absence from the May 12, 2023, meeting is a red herring. Parents were aware she would be absent and consented to her absence. Ms. S[redacted] had provided the IEP team with significant feedback, and she provided the bulk of the information required for the formal evaluations. (SOF 25-28).

Student's 6th Grade Year and Child Find

Petitioners suggest that Student's difficulty during his 6th grade year demonstrated that Student should have been receiving special education services, and Student was not being properly served under his 504. Respondents strongly objected to the Hearing Officer considering or ruling on the sufficiency of the 504 or its implementation, arguing that the 504 lies outside the scope of the due process hearing. Respondent provided scant legal authority for this question, although the Supreme Court in *Perez v. Sturgis,* 59 U.S. 142 (2023) recently ruled that a claimant was not prevented from pursuing remedies under the Americans with Disabilities Act ("ADA") directly in federal court without exhausting remedies under the IDEA. While not directly on point to the current matter, that decision made clear that remedies pursued under the IDEA are separate and distinct from those pursued under the ADA. (*Id.* at 147). Similarly, remedies under Section 504 are separate from those prescribed under IDEA, and the Hearing Officer will not conflate the two. That said, whether Student should have been identified during 6th grade as a student who required special education, including individualized instruction, and Student's progression throughout that school year is relevant to whether Student needed, once again, to be identified and evaluated under child find.

Student and Mr. [redacted] both indicated that "things were going okay at the start." However, Student began to experience frustration and more frequent dysregulation. Many factors may have contributed to the frustration and dysregulation, a long list of which was solicited by counsel for Petitioner including the transition to seven class periods, students talking over their teachers, and

keeping track of assignments. Counsel even alluded to puberty as a contributing factor. (SOF 35-38). Reevaluating student was clearly the proper outcome, so the salient issue in this matter is the point at which Student should have been reevaluated for special education despite his 504. The state rules and federal regulations impose a child find obligation on schools to identify, locate, and evaluate "children who are suspected of being children with disabilities…and in need of special education." 34 CFR 300.111(c), (*emphasis added*). *See also* State Rules II.A. Further, a parent may initiate a request for an initial evaluation to determine if a student is a student with a disability in need of special education. "Upon receipt of a request for an evaluation, the LEA must respond within a reasonable timeframe. The response may not be delayed due to the LEA's Response to Intervention process." State Rules II.B. Referral, (34 CFR § 300.301).

Failure to identify and evaluate may entitle Student to compensatory education accruing from the time the district first should have suspected the disability. *T.B. v. Prince George's County Bd. of Educ*., 72 IDELR 171 (4th Cir. 2018); *Lakin v. Birmingham Pub. Schs.*, 39 IDELR 152 (6th Cir. 2003). For a district to be liable for a failure to evaluate and a denial of FAPE, the student must be a student with a disability in need of special education. *D.G. v. Flour Bluff Indep. Sch. Dist.*, 59 IDELR 2 (5th Cir. 2012). Nevertheless, districts must consider all factors when determining whether to evaluate or reevaluate a student for special education. *Ja. B. v. Wilson Cnty. Bd. of Ed,* 123 LRP 8526 (6th Cir. 2023) (the district noted that the student's disruptive behaviors were not entirely unusual for a 13-year-old boy); *Legris v. Capistrano Unified Sch. Dist.*, 79 IDELR 243 (9th Cir. 2021) (a student's ability to earn A's, B's, and C's in the general education curriculum with Section 504 accommodations showed the district had no reason to suspect a need for special education); *Leigh Ann H. v. Riesel Indep. Sch. Dist*., 80 IDELR 3 (5th Cir. 2021) (a district did not fail to identify and evaluate where a student's academic performance was a "mixed bag," and there was no need to assess behavior).

Student was eventually (re)identified and (re)evaluated and found eligible for special education services toward the end of the 2023-2024 school year. Thus, whether the District timely initiated an evaluation is based on the circumstances. In general, when a parent requests an evaluation, the district must promptly respond by initiating an evaluation or denying the request and sending prior written notice explaining her procedural safeguards. *See, e.g., Lee County (MS) Sch. Dist*., 122 LRP 21131 (OCR 03/02/22) (resolving concerns that a district failed to send PWN

after a 504 coordinator unilaterally declined to evaluate a student). In this case, parents stated they wanted Student to be reevaluated for special education starting in December 2023. However, parents qualified that request with the following statement; "*If a 504 plan cannot provide the necessary accommodations to ensure Student's free appropriate public education,* we are requesting that he is reevaluated for special education services and IEP eligibility." This condition was clarified by Dr. S[redacted] with Parents in telephone and email conversations. In response, the school, sent a prior written notice on January 18, 2023, clarifying yet again, "At this time, parent clarified that a request for testing would be made if a 504 was unable to accommodate his needs." Petitioners argued that there had been other instances in which special education testing was requested verbally. However, the refusal in the prior written notice is consistent with Petitioners' December 7, 2023, letter. (SOF 49-50).

During the first two terms of the school year, Students progress was a mixed bag. His grades were not up to his family standards (SOF 52), yet Student's grades in five out of seven classes were in the A to C range in the general curriculum and with one honors class. The grades in the other two classes were D+ and F. (SOF 52). Student's attendance during the first two terms did not indicate a refusal to attend school; Student missed 3 days and 6 days during the first and second terms respectively. (SOF 56). Student received extensive supports from several staff members at Indian Hills including support from the administration, a school social worker, a school psychologist, an interventionist paraprofessional, and the ASC. (SOF 39-41). At Parents' request, the 504 was updated on October 16, 2023, and again on January 8, 2024, to add further accommodations. (SOF 42). The District met and engaged in at least an informal mediation to discuss the sufficiency of the 504.

The second half of the year was not as positive. Student's grades and attendance dropped precipitously. The Parties argued whether this was the chicken or the egg—whether Student's struggles led to his absenteeism or whether his absenteeism led to his struggles. School personnel continued to offer support to Student when he came to school and kept in regular communication with parents. (SOF 53, 58). And yet, teachers were failing to implement portions of the 504. (SOF 46). Petitioners argued that Student was refusing to come to school because he often felt dysregulated and was not receiving the support he needed. In particular, according to Mr. [redacted], Student was dealing with "severe anxiety manifested in emotional outbursts." There was

significant communication during February regarding Parents' concerns, Parents were pressing for a one-to-one aid, and Student was missing school virtually every day. The school sent a prior written notice rejecting that request. While Dr. S[redacted] initiated steps to test Student for behavioral issues, by the end of January, the record demonstrates that a reevaluation was necessary. (SOF 59-64). The school did not initiate reevaluation until after it received a letter from counsel. It responded to counsel on March 11, 2024, agreeing to reevaluate. (SOF 64-65).

V. LEGAL CONCLUSIONS

Petitioners' claims are broad and varied. The following are legal conclusions of the Hearing Officer related to those claims.

1. The statute of limitations for claims is two years. District decisions and actions that occurred prior to the two-year statute of limitation is only relevant as far as it gives context to the claims that are within the two-year statute of limitations period. *Alex W. v. Poudre Sch. Dist. R-1,* 94 F.4th 1176, 1186 (10th Cir. 2024) ("Parents did not present any evidence or give testimony that would relieve them of their obligation to file a complaint within two years" of alleged violations of the IDEA). The Hearing Officer will not consider claims regarding the 2020 and 2021 evaluations or reevaluations.

2. Petitioners have not demonstrated a failure to conduct comprehensive evaluations and reevaluations. The IEP team considered data from nationally recognized norm-referenced assessments in the areas of concern, data from the speech pathologist demonstrating Student's IEP goal was met, Student's performance in his 5th grade class as reported by Ms. S[redacted], and Student's academic scores. Thus, the IEP team reevaluated Student using multiple, reliable assessment tools. 34 CFR 300.304(b).

3. Petitioners have not produced sufficient evidence to demonstrate that Student was removed from his IEP without proper evaluation, procedure, team membership, or parental involvement. With the information that was available to the IEP team, including Parents, during Student's 5th-grade year, exiting Student from the IEP was reasonable, and the school provided Student a 504. These decisions were reasonably calculated to enable Student to make continued progress. *See Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017), and proper prior written notices were issued to Parents.

4. Parents acknowledged the decisions of the IEP team as evidenced by their signatures on all relevant paperwork, including the Determination.

5. The Hearing Officer makes no conclusions about the sufficiency of the 504 or the school's fidelity to following the 504. Petitioners have alternate remedies under 504 outside the scope of this due process hearing.

6. A comprehensive evaluation was completed in May 2023, and Student was reasonably considered ineligible for special education because although he has a Disability, Student was not in need of special education at that time based on the data the IEP team had at that time. 34 CFR 300.111(c).

7. Petitioners have produced insufficient evidence to demonstrate that the 2021 and 2022 IEPs were deficient and claiming deficiency on those IEPs lies outside the two-year statute of limitations.

8. Petitioners failed to demonstrate a violation of IEP team membership requirements. Significant testimony demonstrated that Ms. S[redacted] provided most of the relevant data for assessments and provided input to the IEP team, although she was out of state on May 12, 2023. Parents were aware of her conflict and expressly excused Ms. S[redacted] from the meeting. Moreover, Speech Pathologist Ms. F[redacted] was present at the meeting as the special education representative and was the person most knowledgeable about Student's progress toward his one IEP goal.

9. The cause of action related to child find was Petitioner's strongest. However, based on the fact that Student achieved some level of success during the first two terms of his 6th-grade year despite the multitude of changes and challenges he was facing demonstrated that Student was not necessarily in need of special education at that time. However, what is clear is that Student was eventually identified and assessed, and the school could have done so sooner. *See* Legal Conclusion 16 below.

10. Petitioners produced no credible evidence that child find failures are the modus operandi of the District.

11. Production of records is an essential procedural safeguard. State Rules IV.A. (24 CFR §300.501). Petitioners complained during the Hearing that they were not provided with

every record requested. Petitioners may have been frustrated with incomplete records or inadvertent, minor omissions, but Petitioners have not demonstrated Respondent intentionally withheld documents on which it relies, nor have Petitioners identified any documents withheld that caused substantive harm. *See C.H. v. Cape Henlopen Sch. Dist.,* 606 F.3d 59, 62 (3rd Cir. 2010).

12. Petitioners' claim for predetermination is based on conjecture alone. Observations by Ms. W[redacted] and Ms. S[redacted] regarding Student's progress do not establish predetermination. Preparing forms for a meeting that are subject to modification does not, by itself, establish predetermination. Again, parents were present during all IEP and 504 team meetings and signed all relevant documentation representing acknowledgment and accord.

13. Petitioners claim about the District's grade configuration is immaterial. The IDEA ensures individualized education programing for students with disabilities and does not address grade configuration.

14. The record is replete with evidence that school officials were highly responsive to Parents' concerns despite Parents' claims to the contrary.

15. Based on the foregoing, the record does not support Petitioners' cause of action for a denial of a FAPE.

16. On the other hand, the record demonstrates that Respondent did not act as quickly as it should have to initiate a reevaluation. After the second term of the 2023-2024 school year was completed and by the end of January, Student's attendance was dropping and Parents were specifically requesting help for Students' severe anxiety. Respondent should have recognized that the condition offered by Parents to try the 504 was satisfied; they sincerely believed the 504 was not working. As such, the school should have recognized that its child find obligation to identify and evaluate Student had commenced. Waiting from February 1, 2024, to March 11, 2024, was an unreasonable delay.

17. The six-week delay in reevaluating Student, however, is offset by Parents' decision not to send Student to school. Despite his moderate success during term one and term two, Student stopped attending school regularly starting in January, and he ceased attending school almost completely thereafter but for a short stint at the beginning of the 2024-2025

school year. Parents have unilaterally pulled Student from school making it impossible for the school to implement the new IEP, which far outweighs any harm that stemmed from a short delay in the decision to reevaluate. The unilateral withdrawal of Student is squarely within the Parents' prerogative, but contrary to the Supreme Court's decision in *Forest Grove School Dist. v. T. A*., 557 U.S. 230 (2009), there is insufficient evidence to demonstrate that Student was denied a FAPE during the first semester, before he stopped coming to school.

VI. DECISION AND ORDER

Petitioners have failed to meet their burden of establishing any of the following causes of action pled in the Complaint: failure to conduct proper evaluation and reevaluation pursuant to 34 CFR § 300.303 and .305; failure to develop and revise the IEP appropriately pursuant to 34 CFR § 300.324; violation of IEP team membership pursuant to 34 CFR § 300.324; denial of parent participation rights pursuant to 4 CFR § 300.322, and denial of a free appropriate public education. Based upon the foregoing findings of fact and legal conclusions, the remedies requested by Petitioners for those causes of action are **HEREBY DENIED**.

Petitioners were able to demonstrate that Respondent unnecessarily delayed the reevaluation of Student for approximately 6 weeks from the end of January until March 11, 2024, thus delaying its child find obligation pursuant to 34 CFR §300.109 and 300.111. Student was making progress and receiving support and accommodations under his 504 during the first two terms. When Student stopped attending school, Parents made it impossible for the school to implement the new IEP, which far outweighed any harm that stemmed from a short delay in the decision to reevaluate. Based upon the foregoing findings of fact and legal conclusions, the remedies requested by Petitioners for failure to perform its child find obligation are **HEREBY DENIED**.

Based on the foregoing decisions of the Hearing Officer, Petitioner's request for remedies detailed in the Complaint is **HEREBY DENIED.**

The Hearing Officer **HEARBY ORDERS** this matter dismissed.

Dated this 18th day of February 2025.

*/s/ Douglas R. Larson*_____
Douglas R. Larson
Hearing Officer

CERTIFICATE OF SERVICE

On February 18, 2025, a copy of the foregoing **DECISION AND ORDER** was sent by electronic email to the following:

Attorney for Parents:
Amy Martz
1682 West Reunion Avenue, 4A&B
South Jordan, UT 84095
(801) 231-0286
amylmartz@protonmail.com

Parent/Guardian:
Regan & Brandon Wilkes
11027 S Lexington Circle
Sandy, UT 84092
(801) 699-7537
rmoulaison@gmail.com

LEA:
Jeffrey Christensen
Canyons School District
9361 South 300 East
Sandy, Utah 84070
www.canyonsdistrict.org

Paul D. Van Komen
Burbidge, Van Komen, Tanner & Scruggs
9067 South 1300 West, Suite 302
West Jordan, Utah 84088
pvankomen@bvktslaw.com

USBE:
Jessica Lamb
Special Education Dispute Resolution
Utah State Board of Education
250 East 500 South
Salt Lake City, UT 841144-4200
(385) 295-7873
Jessica.lamb@schools.utah.gov

Cindy Poulson
Special Education Dispute Resolution
Utah State Board of Education
250 East 500 South
Salt Lake City, UT 841144-4200
(801) 538-7820
Cindy.poulson@schools.utah.gov

By: /s/ Douglas R. Larson
Hearing Officer
douglarson70@gmail.com