

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER
DPH NO. 2324-08**

**DUE PROCESS HEARING OFFICER'S
MEMORANDUM DECISION AND ORDER**

THIS MATTER arises on Petitioners' Request for Due Process Hearing with the Local Educational Agency ("LEA"). Respondent is Santa Fe Public Schools ("LEA" or "District" or "SFPS"). Petitioners are the parents ("Parents" or "Petitioners") of B.R. ("B.R." or "Student"). Petitioners filed their Request for Due Process with the State of New Mexico Public Education Department on **October 5, 2023**. Petitioners' Due Process Request is granted in part and denied in part.

I. Procedural Background

Pursuant to a Pre-Hearing Order, the parties timely filed their Joint Statement of Issues for the Due Process Hearing. The Parties also timely filed their respective Witness and Exhibit Lists.

Pursuant to various stipulations by the Parties, the Due Process Hearing commenced on December 8, 2023, and concluded on December 12, 2023, with a break over the intervening weekend. The hearing took a total of three days. Both Parties timely filed Proposed Findings of Fact and Conclusions of Law, and Closing Arguments.

Pursuant to a stipulated extension of time, this final decision is due on or before February 15, 2024.

II. Relevant Legal Overview

The Parties have presented a Joint Statement of Issues, containing only two issues for review. See Joint Statement of Issues and Joint Statement of Facts (filed 12/05/23). In addition, however, Petitioners have presented several sub-issues for review in their Requested Findings of Fact and Conclusions of Law. See Petitioners' Post-Hearing Requested Findings of Fact and Conclusions of Law (filed 12/31/23). While the Parties have thus presented me a multitude of issues and sub-issues to address, the essential questions before me are threefold:

1. Whether, during the statutory period, the District has violated the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400 *et seq.*, and if so, whether the violation has resulted in the denial of a Free and Appropriate Public Education ("FAPE")(substantive violation);
2. Whether any procedural violation may be redressed by an appropriate

procedural remedy (procedural violation); and

3. Does B.R.'s attendance at Mandela International Magnet School ("Mandela"), a school of choice, allow for the District's modification to the special education provided to B.R.?

As the party asserting challenges to the District's actions, Petitioners have the burden of proof in this case. See *Schafer v. Weast*, 546 U.S. 49 (2005); *Johnson v. Indep. Sch. Dist. No. 4*, 921 F.2d 1022 (10th Cir. 1990). The District has the burden of proof with respect to its affirmative defenses.¹

"The IDEA contains both extensive procedural requirements designed to ensure that an IEP is properly developed for each child and that parents or guardians have significant involvement in the educational decisions involving their children, as well as substantive requirements designed to ensure that each child received the 'free appropriate public education' mandated by the Act." *Murray v. Montrose County Sch. Dist. RE-1J*, 51 F.3d 921, 925 (10th Cir. 1995). "[A] child is entitled to 'meaningful' access to education based on [his] individual needs." *Fry v. Napoleon Cnty. Sch.*, 580 U.S. _____, 137 S. Ct. 743, 753-754 (2017).

"To meet its substantive obligation under the IDEA, a school, must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. _____, 137 S. Ct. 988, 999 (2017). The educational program offered by the IEP must be "appropriately ambitious in light of [the child's] circumstances." *Endrew*, 137 S. Ct. at 1000.

We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Dept. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206

¹ The District asserts the affirmative defense that Mandela has "limited special education support available" because the school is based on the "rigorous baccalaureate program requirement." SFPS Answer to Request for DPH 2324-08, 2nd affirmative defense (filed 10/16/23). The District argues that it can choose not to provide the special education services B.R. needs at Mandela. See TR 1 at 9-10 (SFPS opening statement: "It's the District's position that we are not required to provide all services to all individuals at all locations."); TR 3 at 829 (District's director of special education believes there are "limitations as to the delivery of [special education] services" at Mandela because it is a "school of choice.").

(1982).

At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decisions of critical importance to the life of a disabled child. The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue. See 20 U.S.C. §§ 1414, 1415; *id.*, at 208–209, 102 S.Ct. 3034. By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.

Endrew F., 137 S. Ct. at 1001–02.

A hearing officer's determination must generally be based on substantive grounds as to whether a child received a free appropriate public education. See 34 C.F.R. § 300.531(a). If a procedural violation occurs, then it results in a denial of a free appropriate public education only if the procedural inadequacies: (1) impeded a child's right to a free appropriate public education, (2) significantly impeded the parent's opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. *Id.* at (a)(2)(emphasis added).

Notably, in this regard, parents have their own enforceable rights pursuant to the IDEA, separate and apart from the child's entitlement to FAPE: "[T]he Court disagrees that the sole purpose driving IDEA's involvement of parents is to facilitate vindication of a child's rights." *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 517, 127 S. Ct. 1994, 1996, 167 L. Ed. 2d 904 (2007). A hearing officer may also order a LEA to comply in the first instance with procedural requirements, even if there has been no denial of FAPE. See 34 C.F.R. § 300.513(a)(4).

III. Findings of Fact

Should there be a difference in testimony between competing testimony and the factual findings, then it is found that credibility and weight are given to the testimony supporting the factual findings.

In drafting this Memorandum Decision and Order, I have adopted those proposed findings that accord with my recollection of the evidence and testimony. I have reviewed the proposed findings by each party to determine where I concur with what is stated, in terms of my recollection of the evidence presented overall. I have

also reviewed the transcript and exhibits when necessary to refresh my memory or to find items that were not cited by either party. However, I have not always cite checked either party's citation to portions of the record to support particular proposed findings, if the proposed finding otherwise corresponds with my recollection of the testimony.

The decision not to include a particular proposed finding does not indicate rejection of the finding, except as otherwise indicated in this Memorandum Decision and Order. For example, some proposed findings were duplicative or were worded awkwardly.

A. Background Findings of Fact

1. B.R. (Student) is 15 years old and a 9th grade student attending Mandela International Magnet School ("Mandela"), a school in the Santa Fe Public Schools ("SFPS"). See Joint Statement of Issues and Joint Statement of Facts (filed 12/05/23).
2. Santa Fe Public Schools is B.R.'s Local Educational Agency ("LEA"). *Id.*
3. B.R. has been identified as qualified for receipt of special education in the categories of Specific Learning Disability with characteristics of Dyslexia, and Speech Language Impairment. *Id.*; see also P-6; P-7; P-18 at 1; testimony of diagnostician J. Medeiros (TR 1 at 24, 50, 52.). According to the District's educational diagnostician, B.R. needs specialized education, including direct instruction in reading. TR 1 at pages 88-89.
4. "'Direct instruction' is working, one on one or small group, with a student targeting a specific goal, and in an area of need in which the student has a weakness, to support their learning." TR 1 at 29.
5. All SFPS students in grades 7-12 are eligible to attend Mandela; admission to the school is by lottery or based on having a sibling already being a student at Mandela. Exh. P-23 at 4. B.R. was admitted because her older brother was already an enrolled student at Mandela. TR 3 at 656-657. B.R.'s twin sister also attends Mandela.
6. Mandela does not have any admission criteria other than being a SFPS student who is in grade 7-12.
7. B.R. entered Mandela as a 7th grade student at the beginning of the 2021-22 school year and has completed 7th and 8th grade at Mandela.
8. B.R. is an extremely hard working student. TR 1 at 11 (SFPS opening statement: "[T]his is a very hard-working young woman; there's no doubt.")
9. B.R. has at times been successful at Mandela, including during the fall of 2023

(9th grade). P-45, P-46 (7th and 8th grade report cards); P-52 (fall 2023 report card issued after close of hearing); TR 2 at 581 (special education teacher Mr. Knoessel: “[B.R.]’s dedicated and a hard working student that is eager to receive help from special ed team and her general education teacher. . . .I know that she has shown she has been successful through her hard work and her willingness to receive help and support.”).

10. The District asserts that Mandela only has “limited special education support available” because the school is based on the “vigorous baccalaureate program requirement.” SFPS Answer to Request for DPH 2324-08, 2nd affirmative defense (filed 10/16/23). The District contends that it can choose not to provide the special education services B.R. needs at Mandela. See TR 1 at 9-10 (SFPS opening statement: “It’s the District’s position that we are not required to provide all services to all individuals at all locations. The school district is able to select where it provides services.”); TR 3 at 829 (LEA’s director of special education believes there are “limitations as to the delivery of [special education] services” at Mandela because it is a “school of choice.”).
11. The District has written four IEPs for B.R. since she has been at Mandela and none of those IEPs state that SFPS cannot meet B.R.’s unique needs at Mandela. The District has not provided Prior Written Notice (“PWN”) that the District refuses to provide B.R. with FAPE at Mandela. Exhs. P-15, P-16, P-17, P-18, P-19 (Exhibit 19 is PWN for the last IEP meeting in March/April 2023).
12. The most recent IEP (March/April 2023) gives Prior Written Notice that the District will provide “full Study Skills period in high school” in order to provide special education services. Exh. P-19 at 1. The current Mandela Inclusion Policy refers to an “academic support class.” Exh. P-23 at 10. According to Anna Taylor, B.R.’s special education teacher, the purpose of the study skills class is to provide assistance to B.R. to complete general education assignments, to allow B.R. to participate in the LEXIA computer based self-study program, and to support B.R. in getting her high school diploma. TR 2 at 390.
13. Until the District filed its Response to DPH 2324-08, SFPS had not recorded in writing for the public or Mandela parents that students with disabilities eligible for special education under IDEA would not be provided all federally and State mandated special education at Mandela. TR 3 at 830 (LEA’s director of special education is unaware of anything in writing explaining that Mandela limits provision of special education; the New Mexico Public Education Department has apparently not provided any approval of such policy/practice).
14. The District provided no evidence that it provided Prior Written Notice – or any notice – to Petitioners that it did not intend to provide special education instruction to B.R. at Mandela. As the Due Process Hearing Officer, I explicitly reject the District’s view of the evidence that Petitioners *made a choice* to attend a school “that does not really afford the opportunity for there to be specialized

instruction.” See TR 1 at 10 (emphasis added).

15. Mandela uses the International Baccalaureate (IB) curriculum and is accredited by the International Baccalaureate Organization. It operates as a public school within the SFPS. Exhibit P-22 at 2, 6, 23-24; Exh. P-24 at 3-5, 13-14; TR 2 at 614.
16. The IB curriculum, developed by the IB organization in Geneva Switzerland, is used worldwide in many countries other than the United States in public and private schools.
17. Mandela is the only school in the District which offers the IB curriculum. TR 3 at 822.
18. Throughout the Due Process hearing, SFPS and Mandela staff referred repeatedly to the school’s IB curriculum as “rigorous.” “Rigorous” was not defined, but staff examples of “rigor” applied to all students, not just those with disabilities: the need for non-disabled students to have tutors, for all students to complete hours of homework nightly, and the opportunity for all students to graduate with more credits than are required for high school graduation and with the IB Diploma or “certificates” in certain areas. See TR 1 at 219; TR 2 at 602 (Mandela student could graduate with 28.5 credits and only 24 or 24.5 credits are required for New Mexico high school graduation diploma), 638 (Principal Grillo explains how students at Mandela can graduate with a New Mexico high school diploma and fewer credits than “required” by Mandela). Students who do not complete the requirements for the IB diploma may still receive a New Mexico graduation diploma, and a small number of Mandela students follow this pathway. *Id.*
19. B.R. enjoys the teachers and students at Mandela and has no desire to go anywhere else for her education. She is currently in her third year of education there, with three more years to follow --- 10th, 11th, 12th ---- until high school graduation. TR 3 at 668-669 (dad) ; TR 3 at 724-726 (mom). B.R.’s siblings attend Mandela.
20. The Mandela Inclusive Education Policy (Exh. P-23) references use of “an inclusion model” for delivery of special education and explains that special education team “collaborate[s]” with classroom teachers, [to] develop and distribute IEPs, “exit students from special education who have met goals. . . .” and provide parents “written quarterly reports on progress toward IEP goals.” Exh. P-23 at 10, 11.

B. B.R.’s Unique Needs Flowing from Her Disabilities Were Known
when She Started at Mandela as a 7th Grader in the Fall of 2021

21. When B.R. re-entered Santa Fe Public Schools in fall 2021 as a 7th grade

student at Mandela, after a few years of homeschooling during COVID, REED² paperwork was completed on September 1, 2021. Exh. P-4. SFPS staff at Mandela were aware that Student needed direct reading instruction. Exh. P-4 at 3. The REED paperwork documents the results of a “Phonics Screener” which showed that B.R. struggles “decoding new and unknown, multisyllabic words containing 3 or more syllables . . . [as well as] multi-syllabic words containing long vowel/silent e patterns. . . syllables containing digraphs and diphthongs . . . [and struggled] decoding. . . nonsense words. . . or syllables.” Exh. P-4 at 3. Significantly the REED recorded that B.R.’s decoding skill deficits would impact her ability to read “advanced texts with fluency,” which would harm reading comprehension. Exh. P-4 at 3.

22. The August 2021 REED also shows staff knowledge of B.R.’s complex and multi-faceted speech language therapy needs based on a June 2021 private speech language therapist report. Exh. P-4 at 6. The private speech language therapy report described a Phonological Disorder and Mixed receptive-expressive language disorder along with reduced speech intelligibility. Exh. P-4 at 2, 6. Specific skill deficits were “difficulty following directions, understanding context clues, verbal reasoning and figurative language, as well as sentence structure including grammar/syntax structure. . . . reduced speech intelligibility, with rapid rate of speech, frequent revisions/repetitions, and occasional syllable reductions.” Exh. P-4 at 2.

C. The Private Neuropsychological Evaluation in 2019,
and the District’s 2022 Re-Evaluation

23. Petitioners obtained a private neuropsychological evaluation for B.R. in 2019. The private neuropsychological evaluation (1/30/2019) makes numerous concrete recommendations to assist B.R., including: “intensive specialized instruction in reading, writing, and math”, speech therapy, occupational therapy, assistive technology evaluation, and systematic evidence based reading instruction such as Orton-Gillingham based programs including Wilson Reading, audiobooks. Exh. P-3 at 8-12.
24. The District conducted B.R.’s re-evaluation testing in June 2022 (the summer after her 7th grade year at Mandela), resulting in a re-evaluation report of August 2022 at the beginning of B.R.’s 8th grade year at Mandela. Exh. P-6; TR 1 at 18 *et seq.* (testimony of SFPS diagnostician).
25. The August 2022 re-evaluation confirmed the existence of a specific learning disability and did not show an intellectual disability. TR 1 at 47. B.R. had a pattern of strengths and weaknesses consistent with specific learning disability

² A “REED” evaluation is required by the IDEA and refers to a “review of existing evaluation data.”

and lacked a functional system to decode. TR 1 at 46-48. Student “absolutely” had the characteristics of dyslexia. TR 1 at 50, 52; Exh. P-6, Exh. P-7.

26. The August 2022 District re-evaluation report does not explain why the District is not re-evaluating B.R.’s speech language impairment, although the last known speech language evaluation was from 2017. Exh. P-6, Exh. R-3. The SFPS diagnostician conducting the 2022 re-evaluation did not seek any re-evaluation of B.R.’s Speech Language Impairment or speech language needs. TR 1 at 24, 91. She was unaware of some past evaluations, including private evaluations. Exh. R-3 (2017); Exh. P-12, Exh. P-13; Exh. P-3 (neuropsychological). TR 1 at 35-37.
27. Reporting from the Speech Language Pathologist who worked with B.R. at Mandela during 7th grade confirmed the continued need for speech language therapy including a need for “direction instruction” from the SLP. Exh. 4 at 3; Exh. P-6 at 4. That SLP did not conduct a formal evaluation. Exh. P-6 and TR 1 at 275. In 2017, when SFPS had last conducted a formal evaluation, B.R.’s listening comprehension was average, but her oral language was at the first percentile. TR 1 at 279.
28. Petitioners contend that the August 2022 re-evaluation is incomplete because (1) it failed to include any formal evaluation of B.R.’s current speech and language impairment/needs and (2) it failed to include any research based recommendations for specialized instruction in reading, writing and math, all areas of need and all linked to need for transition planning despite what is described as B.R.’s need for “intensive instruction” and her stated post-secondary desire to pursue nursing. TR 1 at 52-61; 72-74; Exh. P-6.
29. I agree that the recommendations made in the re-evaluation embrace a scattershot approach rather than delivery of a research based, comprehensive reading/writing/spelling intensive direct instruction to remediate dyslexia. See, e.g., Exh. P-6 at 20-21 (“phonemic awareness activities”, etc.) and compare Exh. P-30 (NMPED Dyslexia Handbook) at 6, 7, 8 (NMPED Dyslexia Handbook on the need for reading teachers knowledgeable about structured literacy for student with dyslexia; “[E]ffective instructional practices. . . when delivered systematically and explicitly, can nearly guarantee every child can learn to read.” P. 7).
30. Petitioners have not shown by a preponderance of the evidence that B.R. has regressed in speech and language. Vol. 1, p. 319, lines 5-11. Petitioners have not shown by a preponderance of the evidence that reliance on observation and coaching with regard to B.R.’s speech and language disability is not a reasonable application of professional expertise and judgment by school personnel.
31. The failure to make concrete, research-based recommendations for necessary

specialized instruction in reading and writing, as well as accommodations, in the re-evaluation report was followed by an IEP (9/16/2022) which failed to provide for goals focused on B.R.'s specific unique needs or to record necessary instruction and accommodations that the diagnostician testified B.R. needs. See Exh. P-17 at 1, 11, 16 (accommodations & modifications), 18, 20, 21, 25, 27, 32-33 (of 5.25 hours of special education service per week, only 30 minutes were in a special education setting). Compare TR 1 at 85, 88-89, 93, 95.

D. B.R.'s IEPs are Not Individualized, Lack Measurable Appropriate Goals and Fail to Provide for Any Specialized Instruction

32. Mandela predetermines that all students with IEPs based on disability will receive education in an "inclusion model," regardless of individualized needs. Exh. P-23 at 10 and testimony at Due Process hearing.
33. All IEPs created and implemented in the statutory period (September 2021, May 2022, September 2022, March 2023) at Mandela fail to reflect an understanding of B.R.'s unique needs. These IEPs are not individualized but instead are based on Mandela's philosophy that it can respond to a student's disabilities by offering IB curriculum with accommodations and modifications to all students eligible for special education under the IDEA. Exhibits P-15, P-16, P-17, P-18, P-19 and testimony at the Due Process hearing. B.R.'s IEPs record minimal special education service hours and those hours are linked to a predetermination that "inclusion" will suffice for all students. *Id.*
34. While the original 2021 IEP (Exh. P-15 at 16) and the following May 2022 IEP (Exh. P-16 at 25) included an arguably appropriate decoding goal, I find that there is no evidence that the "explicit phonics instruction" which was specified was ever delivered during 7th grade. TR 1 at 162. Notably, the May 2022 IEP indicated that "explicit instruction in phonics and comprehension" was an accommodation or modification and that this would be "computer based." Exh. P-16 at 4-5, 20. B.R. was expected to work on the computer-based system, LEXIA, during the summer of 2022. *Id.* When the 8th grade IEP was written in September 2022, the phonics goal was simply eliminated and replaced with an "International Baccalaureate goal" without explanation or any reporting on progress. Exh. P-17 at 37. The District's educational diagnostician was unable to find any reference to decoding skills in the September 2022 IEP. TR 1 at 67-68.
35. All IEPs for 8th grade (September 2021, May 2022, September 2022, March 2023) lack appropriate goals which are measurable. Exhibits P-17, P-18, P-19. Beginning with the September 2022 IEP, the goals are disconnected to specialized instruction to meet B.R.'s identified needs and are exclusively about meeting IB standards with IB "grading" criteria.
36. All IEPs in or extending into the statutory period (September 2021, May 2022,

September 2022, March 2023) fail to provide for specialized instruction to meet B.R.'s unique needs arising from disability. Exhibits P-15, P-16, P-17, P-18, P-19. While the September 2021 and May 2022 IEP include "explicit phonics instruction" there is no evidence showing that goal was implemented during 2021-22 school year. TR 1 at 162.

37. Mitchell Rocha, the District's reading specialist, testified that B.R. was given a placement test as part of the District's "direct instruction reading program," the only specialized reading program provided by the District. TR 1 at 118-125; see *especially* page 18. Based on this single placement test, Ms. Rocha made a unilateral decision that B.R. did not need direct instruction in reading, including phonics or decoding instruction, because she "tested out" of the specific commercial program, and was reading at the seventh-grade level, also according to the single test *Id.*
38. The "placement test" given by Ms. Rocha was apparently part of the "SRA Corrective Reading Program" ("SRA"). After three days of convoluted explanations of this program, I found the testimony of SFPS personnel confusing at best regarding the SRA Corrective Reading program, at least until Jeff Pinkerton, the Director of Exceptional Student Services and the District's representative at the Due Process hearing, explained this program in additional detail. Mr. Pinkerton testified that while the "delivery method" for SRA is called "direct instruction," the only national study done of the program was inconclusive as to whether SRA "would have a positive impact on students with dyslexia." TR 3, pages 801-02; see *especially* page 802. While the District allegedly had its own "data" to show that SRA resulted in increased proficiency, the data did not separate out students with dyslexia from students with other reading disabilities, and the District did not have a "platform" to demonstrate even that inconclusive level of success. *Id.*, page 807; 865. I find by the preponderance of the evidence that SRA, as described by District personnel, does not qualify as a program that provides evidence based specialized reading instruction for students with dyslexia.
39. Ms. Rocha's testimony was vague on details, overly restrictive to the point of dogma, overly dependent on a single placement test tied to the only specialized reading program provided by the District, and self-contradictory. *Id.* Ms. Rocha spoke in generalizations, rather than describing a professional and student-focused review of B.R.'s individual needs as a student diagnosed with dyslexia. TR 1 at 111-125.
40. At the same time, Ms. Rocha testified in general about the crucial importance of systematic, direct multisensory instruction for students with dyslexia. TR 1 at 126.

Q: And what is your understanding of why a dyslexic student would need direct, multisensory research-based reading instruction to progress?

A. Because the reading progress occurs at several areas in the brain. And there is a percentage of the population who can do those connections, or navigate that information in their brains with automaticity. While people with dyslexia requires to create those neuropaths and they need explicit instruction in [and] practice to get to the automatic.

TR 1 at 126; see *also* Exh. P-30 (NMPED Dyslexia Handbook) at 6-10 (need for evidence based specialized reading instruction for students with dyslexia). Nonetheless, Ms. Rocha also testified that there were no goals addressing B.R.'s reading, writing and spelling deficits because B.R.'s Least Restrictive Environment was to receive the general curriculum with accommodations. TR 1 at 173. She asserted that "when it [reading deficit] is less than two years," any student will just need accommodations. TR 1 at 174, 185 (provision of accommodations "is the least restrictive environment once they are less than two years behind"); 188 ("It is the least restrictive environment, because the opposite decision will mean to pull daily for over an hour to do their reading program; and, therefore, they were missing their regular content.") . As the Due Process Hearing Officer, I explicitly find that Ms. Rocha's opinion was circular in concluding that accommodations limited to the regular education classroom were the least restrictive environment because otherwise B.R. would miss her regular education content. Ms. Rocha did not rely on any evidence-based authority to analyze B.R.'s need – or lack of need – for direct instruction, and did not apply expertise or judgment as required by *Endrew*, but instead appeared to gear her opinion regarding B.R.'s needs to the availability of services at Mandela.

41. Even though Ms. Rocha recommended that B.R. receive special education in the "study skills" class, it still "took a whole year of conversation" for Mandela ultimately to schedule the study skills class currently offered as the location for B.R.'s special education. TR 1 at 177-178. These conversations concerning whether the study skills class would even be available did not include B.R.'s parents and did not consider her individual needs.
42. The current IEP, completed with additional PWN on April 17, 2023, was unclear about whether the "full Study Skills period in high school" for provision of special education would actually be available. According to the PWN, "Mandela has not yet finalized on the 2023-2024 school year schedule." Exh. P-19 at 2.
43. The current study skills class, which forms the bulk of B.R.'s special education service time during the 2023-24 school year, is basically a study hall class where students, including B.R., can complete and get help on work for other classes. TR 2 at 379, 383-384; 434 (last year's study hall class also about helping with assignments); TR 2 at 550-551, 555-556; Exh. P-25.

E. The District Failed to Adequately Document and Report Progress Toward Goals and Present Levels of Performance

44. The District has failed to report on B.R.'s progress toward IEP goals at regular intervals during the 2021-22, 2022-23, 2023-24 school years. Parents have not received progress toward goals reports from Mandela staff. TR 3 at 710-711.
45. During the course of the hearing, the District produced some IEP pages purporting to measure or code "progress." However, the pages produced intersperse various school years (having different IEP goals) without clarifying what school year's goal is addressed, making the document difficult to interpret, or even to know what time it was created. See, e.g., Exh. P-48 at 2-3 (the annual goal in "reading" is from March 2023 IEP but the progress notes date back to December 2021, and to March and May 2022 and dates during the 2022-23 school year, before the March 2023 goal had been adopted.) To the extent the progress toward goal reporting for 2021-22 and 2022-23 is credible, it is inconsistent on what is being measured, finding "sufficient progress" based on grades and "insufficient progress" when relying on other measures. The apparent view by the District, as reflected in IEPs and in the progress toward goal reports made available, is that grades and a teacher's "sense" about a student's progress are a better measure of B.R.'s progress than other evidence. This view cannot be sustained based on the records and testimony provided by the District's employees. After listening to three days of testimony and reviewing the exhibits admitted, I find that B.R.'s reading skills are, in fact, regressing.
46. B.R.'s IEPs at Mandela either rely on historic information which is out of date and does not reflect her progress in her high school education, or provide only generalized statements by teachers which do not provide current information on present levels of performance in B.R.'s areas of identified need resulting from her reading disability. See four IEPs.

F. The District Failed to Provide Education which Meets Required Federal and State Standards in Reading Instruction

47. "To meet its substantive obligation under the IDEA, a school, must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. _____, 137 S. Ct. 988, 999 (2017). The educational program offered by the IEP must be "appropriately ambitious in light of [the child's] circumstances." *Endrew*, 137 S. Ct. at 1000.
48. At Mandela, B.R. has never been provided evidence-based specialized instruction in reading/writing/spelling designed for students with dyslexia. Mandela and the District have instead concluded that "accommodations" and various staff assisting her, in the moment, decode or spell words she encounters

while trying to work on class assignments either in the general education classroom or study hall (available for all 8th grade students last year) or study skills class (provided for students with IEPs based on disability during 2023-24 school year) is all the instruction B.R. needs to receive. TR 2 at 383-384 (special education teacher “floats” around the co-teaching class trying to look for who might need help); 400-401, 406, 416, 427-428 (access to LEXIA is only “phonics instruction” provided by Ms. Taylor in 8th and 9th grade, her reading level is high enough she does not need anything).

49. There has been no effort at Mandela to ensure delivery of structured literacy through a research supported reading program taught by a well-trained teacher of reading. See testimony of Mitchell Rocha and testimony of Anna Taylor. When the SFPS reading specialist planned to work directly with B.R. during 2022-23 school year, Mandela administration would not allow that. TR 3 at 697-698.
50. The District has proposed a finding that “LEXIA [is used] in the District as a supplemental reading program for students who have tested out of Direct Instruction Instruction.” See District’s Proposed Finding of Fact Number 25. I agree with this Proposed Finding. Ms. Taylor testified that the LEXIA program was intended to assist B.R. with her “foundational skills in reading,” and that “other than access to LEXIA,” Ms. Taylor did not provide B.R. “explicit phonics instruction,” as specifically requested by B.R.’s parents. TR 2 at 398-406.
51. LEXIA is an entirely computer based program that is identified as “supplemental,” and has been largely, if not entirely followed through self-study by B.R., or aided by her mother. TR 1 at 247; TR 3 at 696-702, 704-706. Apparently, LEXIA alerts school personnel in some form or fashion when a student is repeatedly unsuccessful in completing an online lesson. After three days of testimony, however, I heard no witness who was able to describe exactly how LEXIA works, or who was able to testify that anyone at the school, in fact, provided these lessons to B.R. Instead, again apparently, B.R. or her mother were expected to review the lesson plans themselves.
52. LEXIA is not a substitute for explicit instruction; indeed, whether it has conferred educational benefit at all for B.R. is a complete unknown. The percentages reported as part of the LEXIA program are not “scores” showing proficiency; instead they reflect the amount of lessons completed, regardless of accuracy. TR 1 at 245-246; Exh. P-27; Exh. P-30.
53. While there was some testimony that Ms. Taylor was providing direct reading instruction during 2023-24 school year to Student during Study Skills and that she had received training from the District’s reading specialist in SRA Corrective Reading last school year, Ms. Taylor denied using the program at all for B.R. TR 1 at 114 *and compare*, TR 2 at 428 (Ms. Taylor testifies no one is using SRA Corrective Reading program with B.R.).

54. Following two school years (2021-22, 2022-23) during which B.R. has not received any planned and consistent direct reading instruction by a trained teacher, SFPS personnel acknowledge that she has fallen farther behind. Her reading proficiency, as compared to expected grade level proficiency, is worse now than it was in September 2022 when it was measured by Ms. Rocha. Student has regressed. TR 1 at 201 (“So now what was a *one-year* reading gap is now a *three years’* reading gap. She got older and didn’t make progress.”)(emphasis added); see also TR 1 at 127-28. B.R. was tested at the beginning of the 2023-24 school year, and her reading fluency had not improved. Tr. 1 at 145. “But she’s older now, so it will [be] consider[ed] regression, *I guess. The gap is bigger now.*” *Id.* (emphasis added).
55. Ms. Rocha also agrees that in B.R.’s study skills class, defined as an “accommodation” and “additional support,” rather than direct instruction, the teachers are “teaching . . . content, *not how to read.*” TR 1 at 141. (emphasis added). “Additional support” does not “mean explicit instruction in decoding.” *Id.* “It means something else.” *Id.* (explaining students receive extra time and “co-teaching” by a regular education teacher and a special educational teacher).

G. The District Has Failed to Provide Appropriate Transition Planning,
Post-Secondary Goals and Transition Services

56. Both Mandela employees and most other SFPS personnel who provided testimony were unfamiliar with IDEA’s and New Mexico’s requirements for transition planning and services, frequently assuming that “transition” referred to students moving between schools based on grade level (middle school to high school, etc.). See, e.g., TR 1 at 192; TR 2 at 422-423 (special education teacher unaware of whether SFPS has transition services); 448-450 (special education teacher on how the career goal was devised and is “overseen”) at 451-452 (understanding of transition activities); TR 2 at 627-628 (Mr. Grillo unfamiliar with IDEA transition requirements and does not know if has information from the LEA on transition planning or services).
57. There has been no transition planning to determine what skill development and learning need to occur as part of special education in order to ensure that Student is prepared for post-secondary education. Instead, the outlook of Mandela is that if B.R. graduates through the IB Diploma Programme available at Mandela, that will “align” with her post-secondary goal of nursing. Exh.P-16 at 42 (“B.R. attends an IB school and will follow the IB course outline framework in order to graduate with the IB diploma, which will prepare her for college entry.”); P-17 at 12.
58. The September 2022 IEP took place just days before B.R.’s 14th birthday and notes B.R.’s desire to attend college and study nursing (Exh. P-17 at 2, 12). The IEP reflects no understanding of transition planning necessary. The

“measurable post-secondary goals” are not goals to be worked on during the school year. Exh. P-17 at 11. The “transition planning” page lists “activities” to be completed by May 2027, not in the current school year. Exh. P-17 at 29. The “career readiness” goal is incomprehensible and refers to measurement by “IB criteria.” Exh. P-17 at 27 (“will demonstrate the ability to access valid health information and health-promoting products and services at a level high enough to demonstrate growth in all four IB criteria. . . .”); TR 2 at 448-450 (what the goal means and how it was devised). Despite knowledge of B.R.’s dyslexia and current independent reading/writing/spelling proficiency, the IEP states B.R. will not need post-secondary education services. Exh. P-17 at 30; TR 2 at 452 (special education teacher unaware about post-secondary education and availability of accommodations).

59. The March 2023 IEP, which governs the current school year, repeats the same transition labeled pages as the September 2022 IEP. See Exh. P-18 at 8, 23, 25, 26.
60. Both the September 2022 IEP and the March 2023 IEP include Indicator 13 forms which inaccurately report compliance with the listed IDEA requirements, as applied to students age 14 and older in New Mexico. See Exh. P-17 at 39-40, Exh. P-18 at 35-36.
61. The District has not provided any transition staff to work with B.R. and the Mandela IEP teams to provide technical assistance on IEP transition goals, planning and services. See Exhibits P-15, P-16, P-17, P-18.
62. Moving forward, B.R. needs transition services and planning given her skill deficits linked to disability and her post-secondary goal to attend college and to study nursing.

The District Has Failed to Assess Whether B.R. Has Access to the General Curriculum through Necessary Accommodations Such as Audio Texts

63. Mandela uses a math textbook and B.R. has not been provided an audio version in any school year. TR 2 at 559-560 (IB math text and no audio version). The special education teacher believes that part of B.R.’s difficulty with math performance is because of word problems and her learning disability. TR 2 at 552-554, 561 (special education teacher “totally open” to reading B.R. the math book problem.)
64. The District has never provided B.R. audio access to texts used at Mandela through either Bookshare or Learning Ally. The District instead makes available an internal audio library through a Chomebook application. TR 1 at 207(audio texts not available in SFPS); TR 1 at 148-151 (SORA or EPIC apps will read text on the screen.). B.R.’s teachers sometimes read material to her, or listen to her reading and prompt her, or otherwise explain generally what is occurring in

written materials.

65. B.R. has never received any assistive technology assessment, evaluation or services, despite obvious concerns about her access to the general curriculum. However, how or whether B.R. is currently able to access the general curriculum with the resources provided is unclear from the evidence adduced at the Due Process hearing; therefore Petitioners have not shown by a preponderance of the evidence that the denial of assistive technology has denied FAPE. I will therefore address the failure to assess B.R.'s necessary accommodations as a procedural violation of the IDEA.

H. Necessary Related Services

66. Petitioners contend that because there has been no formal assessment by the District since 2017 and no speech language goals created which are measurable or were measured at Mandela, there is no comprehensive or objective knowledge of B.R.'s current skills and needs in this area. TR 1 at 275, 277 (first Mandela SLP never evaluated B.R. formally).
67. The two speech language pathologists who have served B.R. at Mandela testified to their observed impressions, which are largely based on seeing her in class, providing support in class, and by helping her with whatever lesson was ongoing in "pull aside" therapy or in the study skills period. TR 1 at 283-289, 293; 301, 339, 341; Exh. P-9; Exh. P-10.
68. Records reflect that B.R. often speaks too quickly. The strategy in place to correct this is for adults in the classroom to remind B.R. to slow down, which her SLP has observed to be working. TR 1 at 298, 306-308. Petitioners did not present evidence to support that the SLP, when present, repeatedly cuing B.R. to slow down, has been ineffective in teaching B.R. to internalize the need to monitor the pace of her speech to ensure the listener understands what she is saying.
69. The SLP responsible for B.R.'s speech therapy during the 2023-24 school year has written the same log note for each session of therapy and the text of that log note was copied word for word from information written by the previous SLP (who worked with Student in 2022-23 and 2021-22). TR 2 at 348-352; Exh. P-11 (logs); Exh. P-18 at 20 (previous SLP language which has repeatedly been copied by current SLP as a description for each therapy session). The current SLP described her delivery of therapy during study skills class as "I just sit by her. And I'm looking at her, and I'm asking if she needs help." TR 2 at 355. Petitioners did not present evidence to support that the SLP's habit of copying log notes deprived B.R. of FAPE. Petitioners did not present evidence to support that the SLP's method of delivery of therapy has been ineffective in assisting B.R. with her individualized needs.

I. The District Has Failed to Include Persons
Who Can Interpret Instructional Implications of Evaluations at IEPs

70. At the first Mandela IEP in September 2021, no one signed in as the individual responsible for interpreting instructional implications of evaluations. Exh. P-15 at 38. The second Mandela IEP in May 2022 lists “diagnostician” but there is nothing to indicate that person’s presence or input; the name does not refer to anyone known to have evaluated or worked with B.R. Exh. P-16 at 13. The September 16, 2022 IEP has multiple signature pages, some of which show the signature of Jennifer Mederios, but she testified she only attended the MDT, not the IEP. See Exh. P-17 at 46, 47, 48 and compare, TR 1 at 63-65. The March 2023 IEP again lists a diagnostician, “Marcia Gibson, Ali Gibson” with a signature but there is nothing in the record to indicate she ever evaluated B.R. or was familiar with her evaluations and needs. Exh. P-18 at 39.

J. The District Has Failed to Provide a “Free” Education

71. The District has failed to provide B.R. with specialized reading instruction to meet her needs for research based instruction in reading/writing/spelling as a student with dyslexia and instead has directed her parents to rely on LEXIA at home and over school breaks.
72. As I have previously described, *supra* LEXIA is a computer based on line instruction program which is supposed to have a teacher providing “lessons” or “practice” in identified areas of need. TR 1 at 132-135.
73. Mandela staff directed Parents, without any training, to monitor B.R. using the LEXIA program on her own during summer 2022 and at other times in the statutory period. Exh. P-16 at 4 (teachers recommend that B.R. “continue LEXIA through the summer” of 2022) ; P-19 at 2 (“LEXIA access will be available through the summer of 2023.”)
74. To the extent B.R.’s self-study on LEXIA outside of school was dependent on Parents’ monitoring or directing that she use the program, such service was not “free” to Parents.

K. The Disruptive Effect of B.R.’s Transfer to a Different School

75. I listened to three days of testimony – all about B.R. – and saw the intimate setting of Mandela itself firsthand, as the site of the Due Process hearing. I find that the involuntary transfer of B.R. to an unnamed school in the District would be disruptive to her course of study, inevitably anxiety-producing, and would more likely than not interfere substantially with the remedies I am ordering herein. A transfer would more likely than not disrupt rather than support B.R.’s

course of study. B.R. clearly needs to focus on her learning, not on navigating a new school, with all that entails, including inevitable delay in the start of the services I am ordering as DPHO.

76. The District's contrary prediction, that B.R. cannot succeed at Mandela, is speculative at best.

IV. Conclusions of Law and Legal Analysis

The IDEA requires the application of complex legal principles to an oftentimes factually intensive record. Accordingly, "Conclusions of Law" must necessarily reference and synthesize factual findings. To the extent I refer to a factual basis for the Conclusions of Law, it is generally synthesized from findings set forth in the findings section of this Memorandum Decision and Order, *supra*.

A. The District Has Denied B.R. a Free and Appropriate Public Education

1. The Supreme Court has emphasized that the Hearing Officer's review of a particular special education program should not be guided by any "bright-line" rules. *Endrew F.*, 137 S. Ct. at 1001–02. "This absence of a bright-line rule, however, should not be mistaken for 'an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.'" *Id.*, quoting *Dept. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982).
2. Thus where Petitioners – or their counsel – level criticism at school authorities on the basis of disagreement with the services provided, the Supreme Court instructs the Hearing Officer to defer to school authorities unless the preponderance of evidence supports rejection of the school's view of the matter.
3. At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decisions of critical importance to the life of a disabled child. The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue. See 20 U.S.C. §§ 1414, 1415; *Id.*, at 208–209, 102 S.Ct. 3034. By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. *A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.*

Endrew F., 137 S. Ct. at 1001–02 (emphasis added). The educational program

offered by the IEP must be "*appropriately ambitious in light of [the child's] circumstances.*" *Endrew*, 137 S. Ct. at 1000 (emphasis added)

Denial of Legally Compliant IEPs

4. The District's Individualized Education Programs, as provided to B.R., failed to comply with the IDEA.
5. The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes--

(I) a statement of the child's present levels of academic achievement and functional performance, including--

(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

(II) a statement of measurable annual goals, including academic and functional goals, designed to--

(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(bb) meet each of the child's other educational needs that result from the child's disability;

(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child--

(aa) to advance appropriately toward attaining the annual goals;

(bb) to be involved in and make progress in the general education curriculum

in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter--

(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this chapter, if any, that will transfer to the child on reaching the age of majority under section 1415(m) of this title.

20 U.S.C. § 1414 (d)(1)(A).

6. As DPHO, I have found that B.R.'s IEPs are not individualized, and lack measurable appropriate goals. *See, e.g., Endrew F.*, 137 S.Ct. at 999 ("An IEP is not a form document."); at 1000 (every IEP begins with an accurate description of student's present achievement). Particularly troubling, the IEPs clearly reflect Mandela's predetermination that B.R.'s need for specialized and individual instruction was a "square peg" that must somehow be forced into the "round hole" of the school's vested interest in preserving Mandela's International Baccalaureate program requirements. Thus the type of reading program provided depended not on B.R.'s individual needs, but on Mandelas's predetermination as to whether a particular approach would interfere in B.R.'s participation in the Mandela IB curriculum. Measurable goals for B.R. were replaced, without explanation, with predetermined IB goals.

7. There is no question that the planning that occurred outside the IEP meeting denied Parents their right to participate in the IEP process.
8. There is no question that SFPS did not “offer an IEP reasonably calculated to enable [B.R.] to make progress appropriate in light of [her] circumstances.” *Endrew F.*, 580 U.S. _____, 137 S. Ct. 988, 999 (2017).
9. I also conclude that the District failed to write reading/writing/spelling goals which were designed to meet B.R.’s needs and allow her to progress in the general curriculum. 20 U.S.C. §1414(d)(1)(A)(i)(II),(IV)(aa)-(cc).
10. Petitioners also contend that the Mandela IEP meetings did not include persons who could explain the instructional significance of B.R.’s evaluations. 20 U.S.C.A. § 1414(d)(1)(B). There is no absolute mandate regarding who must be available to explain B.R. evaluations. For example, in some circumstances, the attendance of a student’s reading instructor would arguably be sufficient to comply with Section 1414(d)(1)(B). See *Bd. of Educ. of Albuquerque Pub. Sch. v. Maez*, No. 16-CV-1082 WJ/WPL, 2017 WL 3278945, at *9 (D.N.M. Aug. 1, 2017)(“autism-specific teacher . . . certainly . . . had the ability to provide the necessary information”).
11. Here, however, I conclude by a preponderance of the evidence that the persons who attended B.R. evaluations were not consistently qualified to interpret the instructional implications of evaluation results. As detailed in the Findings of Fact, B.R.’s teachers and evaluators often lacked knowledge about B.R.’s history, her dyslexia and the programs that might assist B.R. Even at the Due Process hearing, they appeared to be reporting that they knew B.R. was making sufficient progress in her reading skills because they had a “sense” of B.R.’s abilities. No one was able to explain with any clarity or depth B.R.’s need for individualized services or the services available at Mandela or at SFPS generally. In essence, SFPS personnel lacked the capacity, apparently due to lack of training, to explain the list of items in Section 1414(d)(1)(B). To add to the confusion, as also found in the Findings of Fact, B.R.’s IEPs failed to document with any fidelity who attended her IEPs.
12. Separating the effect of the District’s failure to prepare sufficient and legally compliant IEPs from the effect of the District’s failure to comply with its own IEPs, over the statutory period, would be a nearly impossible and likely unproductive task. For example, while B.R.’s original IEP and her May 2022 IEP provided for “explicit phonics instruction,” none of the witnesses were able to provide cogent testimony of how such instruction was actually provided. So when the phonics goal “disappeared” in the September 2022 IEP, did it matter to B.R.’s receipt of a free and appropriate public education? Whether a particular service was never on the menu or SFPS personnel failed to deliver the service,

the result was the same – after three days of testimony, I heard no testimony that B.R. received individualized specialized instruction to address her disability.

13. A hearing officer's determination must generally be based on substantive grounds as to whether a child received a free appropriate public education. See 34 C.F.R. § 300.531(a). If a procedural violation occurs, then it results in a denial of a free appropriate public education only if the procedural inadequacies: (1) impeded a child's right to a free appropriate public education, (2) significantly impeded the parent's opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. *Id.* at (a)(2). However, a hearing officer may also order a LEA to comply in the first instance with procedural requirements, moving forward, even if there has been no denial of FAPE resulting from previous violations. See 34 C.F.R. § 300.513(a)(4).
14. Fortunately, as a matter of law, the task of apportioning the harm caused by procedural deficiencies and substantive deficiencies is not required. Regardless whether the procedural violations caused a denial of FAPE, I will order the District to comply with the IDEA's procedural requirements moving forward, as described in detail at the end of this Decision. I will address the substantive denial of FAPE, *infra*.

Services in Reading, Writing, and Math

15. The NMPED Dyslexia Handbook provides that "[s]tructured literacy is an umbrella term for evidence-based programs aligned with the International Dyslexia Association's Knowledge and Practice Standards. This approach to reading instruction is grounded in science. . . through the elements and principles of effective, explicit, systematic reading instruction identified by the science of reading over several decades of empirical research." Exh. P-30 at 7 (NMPED Dyslexia Handbook, 2020).
16. The principles of Structured Literacy Instruction identified in NMPED's Dyslexia Handbook are that instruction be: 1) explicit; 2) systematic and cumulative; 3) diagnostic, and 4) multi-sensory. Exh. P-30 at 8. The definition of "diagnostic instruction" is: "Teachers use informal and formal assessment to continuously monitor progress and identify the skill level and needs of individual students. Students must reach a level of automaticity with each skill before they are ready to move on to more complex skills." Exh. P-30 at 8.
17. "Dyslexia is a neurobiological disorder, and brain plasticity decreases through childhood. Research has shown that it takes four times as long to effectively intervene with a fourth-grade student as it does when a child is in late kindergarten because of brain development and because of the increase in content students must learn as they grown older (National Inst. of Child Health

and Human Development).” P-30 at 10 (emphasis added).

18. The ability of a dyslexic student to become a proficient reader is directly linked to the instruction the student receives:

Dyslexia is a lifelong condition. With proper help, many people with dyslexia can learn to read and write well. Early identification and intervention using an evidence-based, multi-sensory structured literacy intervention program taught by a highly trained specialist is the key to helping individuals with dyslexia achieve in school and in life. Individuals with dyslexia may need one-on-one help to move forward at their own pace. . . . [S]tudents with dyslexia often need a great deal of structured practice and immediate, corrective feedback to develop automatic word recognition skills (International Dyslexia Assoc., 2020).

Exh. P-30 at 11 (emphasis added).

19. I conclude that SFPS has failed to provide B.R. FAPE, in violation of both the IDEA and New Mexico state standards. The “north star” in my analysis remains whether B.R. was provided specialized reading instruction in accordance with the IDEA, relying on the guidance provided by *Endrew F.*, 580 U.S. _____, 137 S. Ct. at 999-1000.
20. In this instance, I conclude that the District failed to ensure that B.R. received specialized daily instruction that correlated with her reading disability. The educational program offered by the IEP was not “appropriately ambitious” in light of [the child’s] circumstances.” *Endrew*, 137 S. Ct. at 1000.
21. I listened carefully to three days of testimony and have reviewed the exhibits admitted, largely to the extent either party drew attention to and explained the significance of an exhibit through testimony or argument.
22. As the Hearing Officer, I agree with Petitioners that the District failed to provide B.R. with necessary specialized instruction, based on research, to meet her individual needs in reading, writing, and spelling. 20 U.S.C. §1414(d)(1)(A)(i)(IV); §6.31.2.9(B)(10)(b) NMAC. B.R. has not received specialized instruction that is reasonably calculated to enable her to make progress appropriate in light of her circumstances.
23. I also agree with Petitioners that the District failed to provide Student with an education which met State standards.
24. With regard to her disability in math, Petitioners have failed to prove by a preponderance of the evidence that the District denied B.R. FAPE.

Lack of Staff Training

25. When IDEA was last re-authorized in 2004, Congress added a section on personnel qualifications, 20 U.S.C. §1412(a)(14), which is applicable to LEAs through operation of 20 U.S.C. §1413(a)(1). The State Educational Agency ("SEA") is required by IDEA to "establish[] and maintain[] qualifications to ensure that personnel . . . are appropriately and adequately trained, including that those personnel have the content knowledge and skills to serve children with disabilities." 20 U.S.C. §1412(a)(14)(A).
26. IDEA's statutory definition of "specific learning disability" includes "dyslexia." 20 U.S.C. §1401(30)(B).
27. Beginning in 2010, New Mexico law created state standards which specifically apply to education for students with dyslexia. NMSA 1978, § 22-13-32.
28. NMSA 1978, § 22-13-32 created new requirements that each school district create a "literacy professional development plan" setting forth its plan to train staff. See, e.g., NMSA §22-13-32(E) (includes requirement for a plan for "training in evidence-based reading intervention for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia"); NMSA §22-13-32(F) ("School districts . . . shall train special education teachers to provide structured literacy training [sic] for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services."). The amendments to NMSA § 22-13-32 required NMPED to "adopt rules, standards and guidelines necessary to implement this section"; NMPED's regulations were issued effective July 14, 2020. See NMSA § 22-13-32(H); Section 6.31.17.1 NMAC et seq. (7/14/20). The regulations include both standards specific to all students and standards specific to students with dyslexia eligible for special education.
29. The state standards created by statute include the following:
 - E. Within the course of the 2019-2020 and 2020-2021 school years, *every school district* and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for structured literacy training by a licensed and accredited or credentialed teacher preparation provider for all elementary school teachers and for training in evidence-based reading intervention for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia. The plan shall continue to be implemented each school year and may be updated as necessary. The department shall provide lists of

recommended teacher professional development materials and opportunities for teachers and school administrators regarding evidence-based reading instruction for students at risk for reading failure and displaying the characteristics of dyslexia.

F. *School districts* and charter schools shall train school administrators and teachers who teach reading to implement appropriate evidence-based reading interventions. School districts and charter schools shall train special education teachers to provide structured literacy training for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.

NMSA 1978, § 22-13-32 (emphasis added).

30. Amendments to state education regulations made in July 2020 included the addition of a new section on educational standards for general education: §6.30.17.1 NMAC et seq. This new regulatory section outlined specific requirements for students with dyslexia.
31. The New Mexico Public Education Department ("NMPED") has implementing regulations defining the following terms:
 - a. "Structured literacy" is defined: systematic, cumulative, explicit, diagnostic, and multi-sensory instruction that includes deep content knowledge and specific teaching expertise that focuses on the elements of phonological awareness, word recognition, phonics and decoding, spelling, and syntax at the sentence and paragraph levels for prevention of reading deficits. §6.31.17.7(F) NMAC.
 - b. Requirements for professional development include that a school district has a "literacy professional development plan that includes a detailed framework. . . for professional development in evidence-based reading interventions" for special education teachers who work with dyslexic students and that each school district is required to "provide sustained professional development." §6.30.17.11(A),(B) NMAC.
32. A preponderance of the evidence supports that the District has not complied with New Mexico's statutory and regulatory requirements for professional development for special education teachers and administrators who work with dyslexic students at Mandela. This procedural violation contributed to the denial of FAPE and will be remedied by a direction that the District access the assistance of the New Mexico Public Education Department to design and implement a literacy professional development plan.

B. Other Claims for Procedural or Substantive Violations of the IDEA

Reliance on Parents to Provide Services

33. In the Findings of Fact, I have already detailed the District's reliance on parents to oversee B.R.'s LEXIA lessons. Petitioners have not requested reimbursement for the private evaluations they obtained, reimbursement for their time commitment in overseeing LEXIA, or any other substantive relief resulting from these procedural violations. Nor have Petitioners submitted any evidence of what they paid for B.R.'s evaluations. I therefore consider Petitioners' complaints concerning the denial of a "free" education as a procedural violation only.
34. Moving forward, the relief provided by this Order will include necessary evaluations. Accordingly, the question of an appropriate remedy for the District's failure to pay for evaluations, as a procedural violation, is subsumed in the relief awarded for the denial of FAPE.
35. Reliance on Parents to oversee B.R.'s work on the LEXIA program is very troubling as a demonstration of the District's lack of attention to B.R.'s need for specialized instruction. However, I consider this as part and parcel of the District's over-reliance on LEXIA, which appears to have no value as specialized instruction. There were no witnesses at the Due Process hearing who were able to explain the value of LEXIA, as anything remotely resembling specialized instruction to address B.R.'s disabilities. After three days of frequent references to LEXIA, I was left entirely unsure of how LEXIA even functions, either as to process or substance. The remedy for the District's over-reliance on LEXIA will be an order directing that LEXIA may be used by B.R. in Parents' discretion, but should not be relied upon in any manner whatsoever as specialized instruction. Any minutes devoted to LEXIA will not count as minutes of specialized instruction.

Assistive Technology and Speech-Language Services ("Related Services")

36. As already described, *supra*, in reviewing a student's IEP and the implementation of her program, the Due Process Hearing Officer must be highly cognizant of the Supreme Court's clear direction that the DPHO is not invited "to substitute [her] own notions of sound educational policy for those of the school authorities which [she] reviews.' *Rowley*, 458 U.S. at 206, 102 S.Ct. 3034, as cited in *Endrew F.*, 137 S. Ct. at 1001-02.
37. Petitioners have not shown by a preponderance of the evidence that the District's failure to provide assistive technology and other assistance to B.R., to enable her to access the general education curriculum resulted in a denial of

FAPE. See generally *Miller ex rel S.M. v. Bd. of Educ. of Albuquerque Pub. Sch.*, 455 F. Supp. 2d 1286, 1310–12 (D.N.M. 2006), *aff'd sub nom. Miller ex rel S.M. v. Bd. of Educ. of Albuquerque Pub. Sch.*, 565 F.3d 1232 (10th Cir. 2009).

38. Petitioners *have* shown by a preponderance of the evidence that the District committed a procedural violation of the IDEA in failing to assess B.R.'s need for assistive technology.
39. Petitioners have not shown by a preponderance of the evidence that the District ignored "sound educational policy" in deciding not to re-evaluate B.R.'s needs in the area of Speech-Language therapy, the design of an SLP program, or the implementation of the program.

C. SFPS Cannot Require B.R. to Change Her Placement

40. There are two aspects to the District's reliance on Mandela's status as a "school of choice" to excuse its current failure and its future hesitation to provide special education services to B.R. that fully comply with the IDEA and State standards. The first question is whether this is a viable affirmative defense to the District's failure to provide specialized instruction during the statutory time frame. The second question is whether the District can require, moving forward, that B.R. attend a neighborhood Santa Fe school, other than Mandela.
41. The District's affirmative defense reads as follows:

The Petitioners have brought a claim against the Santa Fe Public Schools for a denial of FAPE when the Petitioners have unilaterally selected a school with a vigorous baccalaureate program requirement with full knowledge of the limited special education support available

See SFPS Board of Education Answer, Second Affirmative Defense (filed 10/16/23).

42. Notably, in this regard, the District's stated position during the Due Process hearing was that B.R. could receive specialized instruction at an unidentified SFPS high school, other than Mandela, but not at Mandela. To the extent that the District in fact failed to provide special education services to B.R. during the statutory time period, retroactively attempting to raise Mandela's concerns about disruption of the IB program as an "affirmative defense" to the ensuing Due Process Complaint is legally frivolous, if not nonsensical. The District has cited to nothing in the IDEA or applicable precedent that would allow for this defense after the fact, when a school district has provided what it contends is FAPE at a magnet school, yet later seeks to avoid responsibility by blaming the parents for selecting the school in the first place. And even if it were a proper defense, the District presented no evidence that Petitioners had "full knowledge of the limited

special education support available.” Indeed, the evidence at the Due Process hearing was to the contrary.

43. The District’s Closing Argument appears to focus instead on the second question – whether the District can be directed to continue providing instruction to B.R. at Mandela. See Santa Fe Public Schools Board of Education Closing Brief (filed 01/31/24). The District’s position at the Due Process hearing appeared to be that while Mandela was able to provide FAPE during the statutory time period that is the subject of Petitioners’ Due Process Complaint, Mandela could not do any more for B.R. moving forward, without a fundamental change to the IB program at Mandela. In its Closing Brief, SFPS predicts that if Mandela is forced to *continue* providing FAPE at Mandela, “[t]he likely scenario would be a removal of the IB International program as a school of choice, and the closure of this small high school.” *Id.*, page 15. The District therefore “requests that the Due Process Hearing Officer give a thorough and considered review of both the evidence offered to determine if the preponderance was met and for the impact this decision may have on the future of not only this student, but the future of countless other students.” *Id.*
44. For their part, Petitioners respond that the District was required to but failed to provide prior written notice that it did not intend to provide FAPE, either at any time prior to or during the statutory time period or moving forward. Petitioners’ Closing Argument, page 13 (filed 01/31/24). “To the extent SFPS can claim [Mandela] is exempt from provision of FAPE to B.R., such justification for denial of FAPE cannot be applied retroactively because there was never any PWN to Parents. Retroactive application would be a gross departure from the procedural rights accorded to parents and students under the IDEA.” I agree.

To protect each child's right to a free appropriate public education, states receiving federal funds under the IDEA must establish procedures to ensure that parents have meaningful involvement in decisions concerning their children's educational programming and an opportunity to seek review of decisions they think are inappropriate. Accordingly, parents must receive prior written notice whenever the school district proposes to initiate or change, or refuses to initiate or change, “the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.” 20 U.S.C. § 1415(b)(1)(C). The notice must explain the school district's decision and the procedural safeguards available to the parent who chooses to challenge the decision by filing a complaint. 34 C.F.R. § 300.505.

Ass'n for Cmty. Living in Colorado v. Romer, 992 F.2d 1040, 1043 (10th Cir. 1993)(citations omitted).

45. The final wrinkle in this analysis is that the “location” of services is not one

hundred percent synonymous with service “placement.”

Here, the term “placement” is used colloquially to refer to the location of delivery of services. As discussed in more detail below, however, the technical meaning of “placement” under the IDEA . . . is the level of special education and related services required by a child's IEP, not the specific school or geographic location where those services are delivered. 34 C.F.R. § 300.115 (describing the “continuum of alternative placements” to include “regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions”); see also *Urban ex rel. Urban v. Jefferson Cty. Sch. Dist. R-1*, 89 F.3d 720, 727 (10th Cir. 1996) (distinguishing between an appropriate education and placement in a specific school).

G.W. v. Boulder Valley Sch. Dist., No. 16-CV-00374-PAB-SKC, 2019 WL 4464130, at *2 n. 4 (D. Colo. Sept. 18, 2019). The Tenth Circuit has described “educational placement” in more general terms: “An educational placement is changed when a fundamental change in, or elimination of, a basic element of the educational program has occurred.” *Erickson v. Albuquerque Pub. Sch.*, 199 F.3d 1116, 1122 (10th Cir. 1999)(citation omitted).

46. I am not required to decide whether SFPS could exclude some students with some types of disabilities from some schools in the District.³ Here, B.R.’s existing history at Mandela demonstrates without question that attendance at Mandela is part of her educational placement.
47. The District’s position is that having attended Mandela for two years, B.R. should now be excluded from participation in a program she enjoys and where she feels comfortable, because providing special education services to B.R. will require her to miss some of the IB program, including, for example, art class or theater class. See TR 2, pages 636-639.
48. Missing a course that the State of New Mexico considers an elective, however, is not remotely dispositive on the question whether B.R. should be forced out of Mandela. Notably, if B.R. misses a course that Mandela considers “required” for the IB diploma, but the State of New Mexico considers an “elective” for a New Mexico diploma, B.R. would still receive a New Mexico high school diploma, but not the IB diploma. In the words of Mandela’s principal, B.R., along with other students who fail to complete the IB program path for one reason or another, “can still graduate from the State of New Mexico. *But their transcript is not going to look very good, because they’re not taking the required classes at Mandela.*”

³ For example, SFPS only offers services for “medically fragile children” at a specific school, to include life skills. TR 3, page 855.

Id., page 638 (emphasis added).

49. Mandela also speculates that trying to succeed in Mandela's "rigorous" program will be anxiety-provoking for B.R.. This speculation about future concerns for B.R. does not change the present result for B.R.
50. Significantly, in 2007, the United States Department of Education issued a *Dear Colleague* letter (12/26/2007) warning that public schools and school districts could not discriminate against students with disabilities who wanted to enroll in "challenging academic programs, such as Advanced Placement and International Baccalaureate." Exh. P-28 at 1.
51. "Conditioning enrollment in an advanced class or program on the *forfeiture of needed special education or related aids and services* is . . . inconsistent with the principle of individualized determinations, which is a key procedural aspect of the IDEA. . . ." *Dear Colleague* letter (Exh. P-28 at 3)(emphasis added).
52. The "Dear Colleague" letter is in keeping with *Endrew's* mandate that a child's special education program should be "appropriately ambitious in light of [the child's] circumstances." *Endrew*, 137 S. Ct. at 1000.
53. The "Dear Colleague" letter is also in keeping with the stated purpose of the IDEA to end the impediment to progress created "by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 U.S.C. § 1400 (c)(4).
54. I therefore conclude that moving forward, the District cannot expel B.R. from Mandela and force her to enroll in an unnamed high school in the Santa Fe Public Schools on the basis that B.R.'s disabilities make the IB program too challenging, or that accommodating B.R.'s disabilities places a hardship on Mandela in preserving the purity of the IB program.

D. Whether Student Is Entitled to an Equitable Remedy
and What that Remedy Should Be

55. The Hearing Officer has equitable authority to fashion all appropriate relief to address the District's violations of the IDEA. *Burlington School Comm. v. Mass. Dep't. of Ed.*, 471 U.S. 359, 369, 374 (1985); *Florence County School District Four v. Carter by and through Carter*, 510 U.S. 7, 15-16 (1993). The emphasis in each case is on the unique circumstances of the student as well as the particular IDEA violations committed by the School. "[T]he essence of equity jurisdiction is to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. . . . Appropriate relief is relief designed to ensure that the student is appropriately educated within

the meaning of the IDEA.” *Reid v. District of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005).

56. Compensatory education is, as the term suggests, educational service that is intended to compensate a disabled student who has been denied the individualized education guaranteed by the IDEA. *Id.* at 518. The goal in awarding compensatory education should be “to place disabled children in the same position they would have occupied *but for* the school district’s violations of IDEA.” *Id.* (emphasis added).
57. “In every case, ..., the inquiry must be fact-specific and, to accomplish IDEA’s purposes, the ultimate award must be reasonably calculated *to provide the education benefits that likely would have accrued from special education services the school district should have supplied in the first place.*” *Id.* at 524 (emphasis added). The court noted in *Reid* that “whereas ordinary IEPs need only provide “some benefit,” compensatory education awards *must do more* – they must compensate.” *Id.* at 525 (emphasis added). The court explained that “this flexible approach will produce different results in different cases depending on the child’s needs. Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.”
58. *M.S. v. Utah Sch.*, 822 F.3d 1128 (10th Cir. 2016), provides guidance to determine how the DPHO should approach equitable relief. In *M.S.*, the Tenth Circuit rejected the Hearing Officer’s delegation of authority to the school to determine the student’s future program. In addressing the inherent problem in such delegation, the Court noted the problem of the “endless loop” created by allowing a school to continue on course with only the equivalent of an advisory opinion by the Hearing Officer, a result which would inevitably occur without an intervening equitable force to break the cycle.
59. In this context, the Tenth Circuit quoted the following construction by the Fourth Circuit of the nature and purpose of “compensatory education”:

compensatory education involves discretionary, prospective, injunctive relief crafted by a court *to remedy* what might be termed an educational deficit *created by* an educational agency’s failure over a given period of time to provide a FAPE to a student.

M.S., 822 F.3d at 1135-1136 (emphasis added), *quoting from G. ex rel. RG v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir. 2003).

58. Throughout the Due Process Hearing, the District made its position clear that it sees no reason to change the approach to B.R.’s program that created or contributed to the educational deficit in the first place. Thus the Tenth Circuit’s

warning in *M.S.* clearly applies equally here: “Allowing the educational agency that failed or refused to provide the covered student with a FAPE to determine the remedy for that violation is simply at odds with the review scheme set out at § 1415(i)(2)(c).” *M.S. ex rel. J.S.*, 822 F.3d at 1135.

59. Here, the District has failed to design and implement a strategy to provide FAPE to B.R. Accordingly, the only effective equitable remedy available in some instances is to require the District to hire personnel to provide the services necessary to accomplish what the District should have but has not accomplished in the lengthy time it has had to do so.
60. Petitioners have proven by a preponderance of the evidence that the passage of time without an appropriate reading program has more likely than not placed B.R. in a worse position that she would have been had she been provided FAPE from the beginning of the statutory period. The Hearing Order therefore will direct the District to provide an appropriate reading program, without a limit on the duration of the program, other than the completion of B.R.’s reading program or B.R.’s graduation.
61. Procedural defects do not support a remedy in the form of compensatory education, unless there is a “rational basis” to believe at least one of three things is true: (1) the procedural errors seriously hampered the parent’s opportunity to participate in the decision process, (2) compromised the student’s right to an appropriate education, or (3) caused a deprivation of educational benefits. See *O’Toole v. Olathe Unified School Dist. No 233*, 144 F.3d 692, 707 (10th Cir. 1998). Technical deviations alone are insufficient to establish a violation of the IDEA. See *Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996). Procedural violations must adversely impact the student’s education or significantly impede on the parent’s opportunity to participate in the process. See *Systema v. Acad, Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir.2008). Procedural defects must amount to substantive harm in order to support an award of compensatory services. See *Garcia v. Bd. of Educ. of Albuquerque Pub Sch.*, 520 F.3d 1116, 1125-26 (10th Cir. 2008).
62. In this case, as described in this Decision, there were both substantive and procedural violations that denied FAPE. Regardless, however, even in the absence of a denial of FAPE, a hearing officer may also order a LEA to comply in the future with non-technical procedural requirements. See 34 C.F.R. § 300.513(a)(4). Where a procedural violation is non-technical but has not resulted in the denial of FAPE, the Hearing Officer will direct that the District comply with specific procedural requirements in the future.

V. Remedies

As remedies for the foregoing violations, as DPHO, I direct the District to proceed as follows:⁴

1. Within a reasonable time from the date of entry of this Decision, not to exceed thirty days without the express consent of Petitioners, the District shall provide specialized reading/writing/spelling instruction by a teacher trained in a research-based delivery of reading curricula designed to address the needs of a teenager with dyslexia, delivered in a 1/1 setting in lieu of attendance of a regular class schedule class designated as elective credit by the State of New Mexico. This Decision will not rule on the duration of the program, other than the completion of B.R.'s reading program or B.R.'s graduation. "Completion" of the reading program must be defined by an evaluator who is competent to make this assessment, not solely by whether B.R. has come to the end of a particular reading program.
2. Based on the evidence presented concerning what is available in the Santa Fe community, this instruction should be delivered by a teacher who has received training and certification as a CALP or CALT (Certified Academic Language Therapist), such as is explained in the testimony of Jennifer Reyes, TR 1 at 232-239 ; this instruction should begin now and continue until completion of B.R.'s reading program or B.R.'s graduation, for at least the next two school years (2024-25, 2025-26). The selected contractor or employee will be given authority by the District to select a reading instruction curriculum specific to dyslexia therapy (e.g., Sounds and Syllables or Wilson Reading) for a student of B.R.'s severity and age; with such reading instruction to continue through B.R.'s education until completion of the program whether that be in two school years or more, and at the District's expense; and with such reading instruction to also be available for B.R. each summer beginning with summer 2024; with attendance of the selected contractor or employee at all IEP meetings.
3. To assist this process, the District shall immediately engage a qualified expert or

⁴ With reason, the remedies I am directing are explicit and detailed.

As Ms. Taylor testified at the Due Process hearing, "Mandela is different," meaning – for example – that Mandela focuses on the IB curriculum as supplanting what would otherwise appear in an IDEA-compliant IEP. TR 2, at 461-63. I have therefore decided what remedies are required based on my understanding of the entire record, which is that Mandela has often been operating on the incorrect view that Mandela's compliance with the IDEA and State statutes is optional, and may be considered as merely one factor to consider in the design of special education services for B.R.

experts, acceptable to Petitioners, to evaluate and advise the parties on remedies needed and make recommendations, the suitability of SFPS personnel to provide any recommended remedies, and the availability of private providers. Upon Petitioners' request, the District shall again engage such expert or a similarly qualified expert to conduct an annual review of B.R.'s special education services, until the completion of B.R.'s reading program or B.R.'s graduation. This expert may be but is not required to be the same person as B.R.'s reading teacher.

4. For the purposes of B.R.'s specialized instruction, the District may not rely on the "SRA Corrective Reading Program," without approval of the retained expert and Petitioners' consent.
5. At the option of Petitioners, the District shall provide B.R. access to the LEXIA program, with oversight by a Mandela teacher or other employee who is specifically designated to review B.R.'s progress at monthly intervals. Access to the LEXIA program shall not be treated as contributing in any way to Mandela's responsibility to provide special education services to B.R..
6. At the option of Petitioners, the District shall provide guidance to Petitioners regarding the nature, purpose, and content of the program of reading instruction selected for B.R., with the goal of enabling Petitioners to assist B.R. with her program at home. Such guidance will be provided by B.R.'s teacher.
7. The District will perform an evaluation with regard to B.R.'s need for assistive technology and follow all resulting recommendations. The evaluation should include what technology would aid B.R.'s work production, including but not limited to speech to text dictation and use of a reading pen (portable to allow Student to receive immediate decoding assistance when the text is on a handout or worksheet rather than on the computer). The District will select a specific employee to monitor whether B.R. needs assistance in accessing any recommended assistive technology, and to provide or arrange for guidance for B.R. and her parents regarding how to access such technology.
8. At the option of Petitioners and B.R., the District shall contract and pay for B.R. to receive up to 3 hours per week of tutoring on high school class subjects, outside of school hours, to ensure she is able to keep up with class assignments and written work required, as compensatory education ; with such tutoring to begin now, as soon as an appropriate tutor is located and can start, and to continue through the 2024-25 school year at District expense; such tutor may be a SFPS employee who is knowledgeable about the course work at Mandela.
9. At the District's expense, the District shall obtain training for all District staff with responsibility for providing special education services, whether specifically at Mandela or District-wide. Such training shall be provided based on professionals

recommended or determined by the New Mexico Public Education Department, to include the possibility of NMPED performing the training. Such training shall include the following:

- a. The required contents for an IDEA-compliant IEP and IEP meeting, including but not limited to how to set goals, how to measure progress toward goals, and how to measure present levels of performance, pursuant to 20 U.S.C. § 1414 (d)(1)(A). The training should also address the prohibition against the "predetermination" of any matter prior to the IEP.
 - b. In addition, training should include federal and State requirements to provide effective special education services to students with dyslexia, and in particular the State's dyslexia handbook.
10. Should more than one session or trainer be required to cover the two topics, the District must defer to the judgment of the trainers.
 11. The District shall designate a District administrator, with expertise in special education, to attend all of B.R.'s IEPs, to ensure that there are persons attending the IEP who can explain the required contents of the IEP to Parents and attendees, in accordance with the requirements of the IDEA.
 12. At the District's expense, the District shall contract with a special education transition services professional, to be identified after consultation with NMPED or from list(s) provided by NMPED, to meet with Parents and B.R. and develop a written report outlining B.R.'s needs for transition goals, planning and services.
 13. The District shall designate a District administrator, with expertise in special education, to oversee Mandela to ensure that the provision of special education services to B.R. is prioritized over Mandela's administrative scheduling objections. Mandela administrators must recognize at all times that adherence to the IDEA and State statutes is not optional.
 14. The District shall designate a District employee to ensure that progress toward goal reports are submitted timely and are transmitted to Parents within two weeks of submission.

ORDER

Therefore, for the foregoing reasons and under the foregoing terms, Petitioners' Request for Due Process Hearing Against the Local Educational Agency is GRANTED in part and DENIED in part. Other than as noted herein, there is jurisdiction over the parties and the subject matter. See 34 C.F.R. § 513. Any claims or defenses otherwise raised which are not specifically addressed herein will be, and hereby are,

DENIED.

REVIEW

Any party aggrieved by this decision has the right to bring a civil action in a court of competent jurisdiction pursuant to 29 U.S.C. § 1415, 34 C.F.R. § 300.516, and § 6.31.2.13(I)(24) NMAC 2018-19. Any such action must be filed within 30 days of receipt of the hearing officer's decision by the appealing party.

It is so administratively ordered.

A handwritten signature in blue ink, reading "Nancy L. Simmons", is written over a horizontal line.

Nancy L. Simmons, Esq.
Due Process Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Memorandum Decision and Order was electronically transmitted via email to the Parties, and a copy was electronically transmitted via email to New Mexico Public Education Department to Miguel Lozano, Esq., this 15th day of February, 2024.

A handwritten signature in blue ink, reading "Nancy L. Simmons", is written over a horizontal line.

Nancy L. Simmons, Esq.
Due Process Hearing Officer