

**IMPARTIAL DUE PROCESS HEARING
BEFORE THE HEARING OFFICER
APPOINTED BY THE STATE SUPERINTENDENT OF PUBLIC SCHOOLS
STATE OF NEVADA**

In the Matter of

STUDENT¹, by and through Parents
Petitioners,

v.

SCHOOL DISTRICT

**FINDINGS OF FACT AND
DECISION**

Respondent

Hearing Officer: Audrey Beeson

INTRODUCTION AND PROCEDURAL HISTORY

On May 25, 2023, School District (hereinafter “District” or “Respondent”) received *Petitioners’ Due Process Complaint* (hereinafter “Complaint”). (HO-1) This Hearing Officer was appointed on or about May 30, 2023. (HO-2) On June 2, 2023, District filed a *Notice and Response to the Due Process Request*. (HO-3)

On June 13, 2023, a *Notice of Status Conference* for June 16, 2023, was issued enclosing the following: *Agenda, Preliminary Order, Appendix A, Hearing Process Guidelines, and Rights of Parties*. (HO-4) During the status conference the District raised the issue of whether Petitioners were legal residents of the District. On June 16, 2023, a *Status Conference Report and Order, Order Granting Motion to Continue Decision Date & Notice of Second Status Conference* was issued and ordered Petitioners to provide documentary proof of their residency. The decision date was continued from August 8, 2023 to October 20, 2023. (HO-5)

On July 7, 2023, a *Second Status Conference Report and Order and Notice of Third Status Conference* and a *Notice of Pre-Hearing Conference* were issued. (HO-6; HO-7)

On August 3, 2023, District filed a *Motion to Dismiss Petitioners’ Due Process Complaint*. (HO-8) On August 4, 2023, a *Third Status Conference Report and Order, Notice of Fourth Status*

¹ Personally identifiable information is attached as Appendix A to this Order and must be removed prior to public distribution.

Conference & Re-Notice of Pre-Hearing Conference was issued. (HO-9) On August 18, 2023, Petitioners filed an *Opposition to Motion to Dismiss Petitioners' Due Process Request*. (HO-10) On August 25, 2023, District filed a *Reply in Support of its Motion to Dismiss Petitioners' Due Process Hearing Request*. (HO-11)

A hearing on the District's Motion to Dismiss and the sole issue of residency was held virtually on September 1, 2023, September 5, 2023, and September 11, 2023. (HO-13) On September 8, 2023, Petitioners raised an issue related to Forms signed by Petitioners and this Hearing Officer determined that the same was not related to the limited issue of the motion to dismiss. (HO-12) The *Findings of Fact and Decision* was issued on September 15, 2023 denying District's *Motion to Dismiss Petitioners' Due Process Complaint*. (HO-13)

A prehearing conference was held on September 27, 2023. While discussing the precise issues to be determined at hearing, based on the assertions made by Petitioners, the parties were not able to clearly determine whether one of the issues has been addressed before and relevant law on the matter, therefore the parties requested to brief the same. A briefing schedule was issued, and the parties made a joint motion to continue the decision date from October 20, 2023 to December 15, 2023. The joint motion was granted for good cause. Due to questions raised by the parties during the prehearing conference, this Hearing Officer advised the parties that the Nevada Department of Education can only enforce subpoenas in Nevada. (HO-14) On September 28, 2023, Petitioners again requested the disclosure of documents that were addressed during the prehearing conference on September 27, 2023, to which the District responded and, as result, Petitioners withdrew their request. (HO-15) The *Prehearing Conference Report and Order, Order Granting Continuance & Notice of Second Prehearing Conference* from the September 27, 2023 prehearing conference was issued on October 11, 2023. (HO-16)

On October 23, 2023, District informed Petitioners that one of Petitioners' proposed witnesses was not available for the week of the hearing dates on November 20, 2023 and November 21, 2023. (HO-17)

On October 26, 2023, District submitted *District's Memorandum of Law Regarding Reimbursement for Residential Treatment Costs*. (HO-18) On October 27, 2023, Petitioners submitted their *Legal Brief*. (HO-19)

On November 9, 2023, a *Second Prehearing Conference Report and Order and Order Granting Continuance* was issued from the second prehearing conference that took place on

November 1, 2023. Petitioners' motion for a continuance, unopposed by District, was granted for good cause and the decision date was continued from December 15, 2023 to January 5, 2024. (HO-20)

In response to Petitioners' email to District related to a request for information District received about Student in response to Forms signed by Petitioners, District advised Petitioners there is no formal right to discovery and District was providing witnesses requested by Petitioners for the hearing. Between November 22 and November 27, 2023, Petitioners reached out to the Hearing Officer regarding the request to receive documents provided in response to the Forms Petitioners signed. The Hearing Officer responded that pursuant to CFR § 300.613 and NAC 388.287, Petitioners have a right to inspect or obtain Student's educational records. (HO-21)

District responded asserting that the documents were attorney-client privileged. As a result of District's assertion, additional communications were exchanged by the Hearing Officer and Petitioners and the Hearing Officer requested copies of the Forms in dispute. (HO-22; HO-23)

Attempts to schedule a conference call to address the Forms were not successful and additional communications took place via email. (HO-24; HO-25) On December 21, 2023, District submitted *District's Memorandum in Opposition to Disclosure of Privileged Communication*. (HO-26) On December 22, 2023, Petitioners submitted *Parents' Memorandum of Right to Obtained Information and Request for Continuance*. (HO-27) The Hearing Officer received confirmation that Petitioners received documents from District in response to the Forms on December 5, 2023. (HO-28) The Hearing Officer issued a *Decision on Disclosure of Information* as well as an *Order Denying Motion for Continuance* on December 6, 2023. (HO-29; HO-30)

On December 7, 2023, both parties provided their proposed witnesses and exhibits. (HO-31; HO-32) Between December 10, 2023, and December 13, 2023, the parties agreed to additional disclosures and provided updated witness/exhibit lists. (HO-33; HO-34; HO-35)

A hearing was held virtually on December 14, 2023 and December 15, 2023. It was a closed hearing. A Court Reporter was present keeping a record of the evidentiary hearing. Petitioners were unrepresented. Respondent was represented by their attorney, Daniel Ebihara, Esq.

After the opening statement by the Hearing Officer, Respondent's counsel and Petitioners confirmed that this Hearing Officer was not missing any pre-hearing correspondence that should be admitted as a hearing officer exhibit. District and Petitioners submitted pre-hearing documents that they intended to introduce as evidence. Each party made an opening statement.

During the second day of the hearing, upon Petitioners' attempt to introduce a proposed exhibit into evidence, District's objection and questions raised by District, due to the necessity of the evidence related to the relief requested by Petitioners, and the motions made by the parties, the Hearing Officer found good cause to continue the decision date from January 5, 2024 to February 2, 2024 so that a third day of testimony and evidence related to the limited issue of the costs and billing associated with the RTF could be presented. The *Order Granting Motion for Continuance* was issued on December 21, 2023. (HO-36)

On January 8, 2024, District requested a subpoena for a proposed witness. Petitioners objected and both parties had the opportunity to reply to the other's position the following day including District's stated intention to present a rebuttal case on the third day of hearing. (HO-37)

On January 10, 2024, the Hearing Officer issued a *Determination on Respondent's Request for Subpoena* and an *Order Regarding Respondent's Request to Present Rebuttal Evidence*. Both requests were denied. (HO-38; HO-39)

The following witnesses testified: Local Education Agency Representative ("LEA")/Special Education Coordinator, Special Education Teacher/Special Education Instructional Facilitator ("SEIF"), Special School Principal, Occupational Therapist ("OT"), Coordinator IV - LINKS, Primary Autism Teacher, Doctor/Medical Director at Residential Treatment Facility ("Doctor"), Board Certified Assistant Behavior Analyst ("BCABA"), Parent I, Parent II, and RTF Director of Contracts and Revenue ("Director").

The following exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits 1-42; Joint Exhibits J-1 through J-7; Respondent's Exhibits R-1 through R-7, R-10, R-12; Petitioners' Exhibits P-1 through P-4, P-6, and P-7. The following exhibits were admitted into evidence over objections: R-8, R-15, R-16.

The record was closed on January 19, 2024. A decision is due on February 2, 2024.

JURISDICTION

The due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Act (hereinafter "IDEA"), 20 U.S.C. § 1400 *et. seq.*, and its implementing regulations, 34 C.F.R. § 300 *et. seq.*, the Nevada Revised Statutes 388, and the Nevada Administrative Code 388.

ISSUES

The issues to be determined and the parties' basic position concerning each are as follows:

Issue One

Whether placement at the District Special School is an appropriate educational placement for Student?

Relief Sought: Student's educational placement should be residential placement at Residential Treatment Facility (RTF) paid by District.

Respondent's Position:

- Upon information and belief, the Individualized Education Program (IEP) team met on May 17, 2023, and developed an IEP which provides the Student a Free Appropriate Public Education (FAPE). In that IEP, the Petitioners stated their concerns that the school may be able to provide FAPE but the Petitioners would have difficulty maintaining Student at home.
- Upon information and belief, Student's IEP team reviewed other environments before determining the most appropriate placement for Student, due to Student's unique needs, is a special school in the District.
- District reviewed Student's educational records developed by District including the Individualized Education Programs dated May 17, 2023; June 22, 2018; and May 22, 2022, and May 17, 2023 and the Multidisciplinary Evaluation Team Report dated April 4, 2022. District further reviewed all educational data provided from Student's current Residential Treatment Facility.

Issue Two

If placement at the District Special School is not an appropriate educational placement for the student, is the appropriate educational placement residential placement at Residential Treatment Facility (RTF) paid by District?

Relief Sought: Student's educational placement should be residential placement at Residential Treatment Facility (RTF) paid by District.

Respondent's Position:

- Upon information and belief, the Individualized Education Program (IEP) team met on May 17, 2023, and developed an IEP which provides Student a Free Appropriate Public Education (FAPE). In that IEP, Petitioners stated their concerns that the school may be able to provide FAPE but Petitioners would have difficulty maintaining Student at home. An IEP team's determination of placement is not dependent upon whether or not Student can live at home.
- Upon information and belief, Student's IEP team reviewed other environments before determining the most appropriate placement for Student, due to Student's unique needs, is a special school in District.
- District reviewed Student's educational records developed by District including the Individualized Education Programs dated May 17, 2023; June 22, 2018; and May 22, 2022, and May 17, 2023 and the Multidisciplinary Evaluation Team Report dated April 4, 2022. District further reviewed all educational data provided from Student's current Residential Treatment Facility.
- Petitioners failed to provide notice to District that they were placing Student in a private facility.
- Petitioners have never enrolled Student in a District school.

FINDINGS OF FACT

After considering all the evidence, as well as arguments of both parties this Hearing Officer's Findings of Fact are as follows:

Background

1. Student was assessed at age 3 through District in 2018 by a child find after school team. The child find team found Student to be eligible under the category of Autism Spectrum Disorder (hereinafter "ASD").² ASD is defined as a condition which significantly affects

² In terms of the Diagnostic and Statistic Manual (DSM), autism has basic criteria including qualitative impairments of social communication, repetitive, restrictive, or stereotyped interests or behaviors. The severity of those symptoms guides the determination of how severe the autism is. Autism is a neurodevelopmental diagnosis where the brain is not functioning in a way that there are genetic and/or congenital reasons for the brain not functioning in

the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environments or daily routine and responding to sensory experiences in an unusual manner; is usually apparent before the age of 3 years; and adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.³ In order to determine Student's eligibility of ASD, the eligibility team must have assessed Student's health and medical status, developmental history, cognitive abilities, social and emotional condition while in multiple settings, academic achievement, adaptive skills, and speech, language and other communication skills.⁴ The eligibility team also must have considered Student's sensory regulation, self-help and independent living skills, behavior problems, symbolic and imaginative play, activities and special interests, and motor skills.⁵ The IEP was developed and it was recommended that Student attend a KIDS program in District. The program is designed for preschool children who are on the autism spectrum along with some typical peers in the classes. The classes use Applied Behavioral Analysis (hereinafter "ABA")⁶ and other techniques for children with autism. Student did not attend the KIDS program in District or any other educational program in District. Student's Parents were advised by Student's medical provider to place Student in ABA Therapy rather than school. Prior to Student starting Kindergarten, schools shut down due to COVID-19, so Parents continued with the therapies they had been doing. When schools opened again, Student had begun refusing to wear clothing and continued to do so. Student has never been in traditional schooling due to behaviors of not wearing clothing, self-harming, non-verbal, not being toilet trained and having an aversion to toilets. Student refuses to get into a car. Picture Exchange Communication System ("PECS")⁷ and

the centers that are responsible for interpreting nonverbal cues, like facial expressions and body gestures and that impacts an individual's ability to socially communicate and sometimes verbally communicate and vocalize or communicate functionally. It also must be accompanied by intensive interests and/or stereotypes or repetitive behaviors. (Doctor's testimony)

³ NAC 388.028

⁴ NAC 388.387 (3)(a)

⁵ NAC 388.387 (3)(b)

⁶ ABA includes instructional strategies used to help maladaptive behaviors and increase pro-social behavior. (Coordinator IV's testimony)

⁷ PECS is a functional communication tool. Students, especially those that are nonverbal, are able to exchange pictures for things that they want, for activities or tasks that they want to do. They may be asking for a break, for a certain type of reinforcer, to use the restroom, or to go to a sensory room. (Special School Principal's Testimony)

Proloquo were introduced to Student in 2018 through early 2020. Student appeared to understand the concept of exchanging picture symbols but did not exhibit the ability to differentiate between pictures. (J-1; Parent 1's testimony)

2. Since Student's diagnosis, Parents have been able to provide Student with all interventions and therapies needed and recommended. Parents transformed their home into an OT dreamland filled with seven sensory swings, a trampoline, indoor bounce house, roller coaster, climbing structures, every toy game, book, activity and sensory needs that were recommended, Student had. Parents converted their dining room into a school-like setting, for in-home ABA to mimic the classroom. (Parent 2's testimony)
3. Student has been through years of intensive ABA therapies, speech and occupational therapy, but has never been able to generalize what was taught and carry it on outside of therapy. Once Student aged out of early intervention at age 3, Parents immediately enrolled Student into ABA and continued the same until being admitted to a residential treatment center. Parents believe that consistency across all environments would give Student the best change of learning and growing. Student has received services from Lovaas, Tandem Therapy Services, Advanced Neuro Connections and the Center for Autism and Behavioral Analysis. In addition to the formal parent training offered by these providers, Parent II has personally attended over 90% of Student's ABA sessions to gain firsthand knowledge about the programs, how they were run and how to implement those skills into Student's daily life. (Parent 2's testimony)
4. It was during Student's first month of ABA that the self-injurious behaviors began. Student would engage in severely violent behavior any time Parents tasked Student, which grew in intensity throughout the years. Student even broke a dual pane window with a protective film in the home. Student was 5 years old when that occurred. This took place prior to Student's admission into a residential treatment center. (P-1, pg. 1; Parent 2's testimony)
5. In August 2021, when Student would have been enrolled in first grade, Student's behaviors had regressed from the previous year. Student was still not potty trained, was toileting inappropriately, was disrobed 100% of the time, and the aggression had escalated. Additionally, Student had started to seek out people to attack them for no apparent reason at all – not even in response to something – just spontaneously. Parents continued full-time ABA services. Student did not have an IEP. Parents were not educated about the IDEA and

did not reach out to District to request that Student's 2018 be reviewed and updated. (Parent 1's testimony)

6. Beginning in October 2021 Student had an increase in self-injurious behaviors and aggressive behaviors towards Parents. Behaviors included hand biting, kicking walls, scratching, hitting, head banging and caused multiple injuries to Student and Parents. Student's aggressive behaviors were increasing despite multiple different medications over a period of 6 months. Student was transported to Hospital on 10/02/2021 for increasing combativeness, self-injurious and aggressive behaviors. Student was again taken to Hospital on 12/25/2021 for explosive aggression. On 12/31/2021, Student broke a window in the home with Student's head and was taken to Hospital for treatment. Student was admitted to Hospital from 1/13/2022-1/18/2022 for aggressive behavior and significant self-injurious behavior. Student was transferred to a Children's Hospital in Utah by air ambulance on 1/18/2022 for a higher level of care. On 1/24/2022 Student was accepted to Facility in Utah for further assessment and treatment. Student was discharged from Facility on 1/28/2022 for readmission to Children's Hospital. The behavioral health team at Facility felt comfortable with discharge to home, but Parents were not comfortable taking Student home as they did not feel like they could manage Student's needs at home. Multiple residential or other long-term options were explored, but there were no places available that were willing to take Student. Student was discharged from Children's Hospital to home on 2/14/2022. Student's behaviors were so bad in the home, that for the safety of Student's sibling, the sibling had to temporarily live with grandparents in Missouri for three months. In March 2022, Student was admitted to and spent approximately six months, at a Behavioral Hospital in South Carolina prior to attending a Residential Treatment Facility in Florida beginning September 2022. Although Student made some progress at Behavioral Hospital, it was not sufficient at being able to manage Student in the community or Parents' home. RTF has more special education and clinical resources that were needed in order to stabilize Student's dangerous behaviors in order to have Student safely managed in a community school and eventually home. (J-1: P-1, pgs. 1-2; Doctor's Testimony; Parent 1's Testimony; Parent 2's Testimony)
7. The parties entered into a Settlement Agreement in August 2022 which states in pertinent part as follows: (1) Petitioners will register, enroll and place Student in District school for

the 2023-2024 school year, if Petitioners are residents of District; (2) the parties agree that an annual IEP meeting will be held prior to May 22, 2023 to determine the placement of Student; and (3) Petitioners agree that should a dispute arise concerning Student's educational placement subsequent to Student's placement at Residential Treatment Facility ("RTF") and Petitioners continue to reside in District, until the dispute is resolved or a new IEP is agreed upon, Student's placement shall be in a self-contained Autism classroom with specially designed instruction, related services, and supplementary aids and services as set forth in the IEP dated May 23, 2022. (R-6)

8. Student's eligibility date is 4/4/2022. Student's eligibility category is ASD. Student's Annual IEP date is May 17, 2023. Student's May 17, 2023 IEP Team ("May IEP Team" or "May IEP meeting") consisted of the following: Parent 1, Parent 2, Local Education Agency Representative, Special Education Teacher, Regular Education Teacher, Speech/Language Therapist, Student Service Division Region Director, Occupational Therapist, RTF Education Coordinator, RTF-SLP, RTF Special Education Teacher, RTF Clinical Supervisor/Behavior Analyst and RTF Occupational Therapist. (J-3)

Residential Treatment Facility

9. Student is part of the Positive Behavior Intervention and Supports ("D-PBIS") program at RTF. The D-PBIS Autism program teaches effective communication, social skills, independence, and safety through various interventions including visual supports, reinforcement, nonverbal prompting, and antecedent manipulation. RTF is licensed as a hospital care setting and has 24-hour nursing staff, four child psychiatrists full time Monday through Friday and one on call on the weekends. Clinicians are at the facility full-time during the week and on-call during the weekends as well. Clinicians are mandated to be on campus to provide both behavior analysis and therapists to provide support. RTF has a regular school building across from the residential unit. The school contained only special education students and the classroom was set up similar to District and was using similar curriculum as District. RTF's school had more adults to students than District normally has. Student receives ABA services consistently throughout the day, a direct care professional, occupational therapy and speech. (HO-1, pg. 46; P-2, pg. 1; Doctor's testimony; Coordinator's testimony)

10. RTF has had difficulty nailing down reinforcers that are preferred incentives for Student. Student either develops satiation with those reinforcers or they seem to lose their effect. They are working all shifts seven days a week to constantly try to find reinforcers that motivate Student. (Doctor's Testimony)
11. Student has not shown that Student can generalize by learning at school during a six-hour school day and applying it at home or community outside of the school hours like most students can. For Student to learn something such as communication, self-help skills, academics, even showering, Student needs to be taught seven days a week from wake up until bedtime. Student cannot independently perform ADLs. Student has substantial medical, social and emotional problems that interfere with the ability to learn because of having a severe form of autism which is accompanied by significant communication deficits. One of the goals they are working on is improving Student's functional communication, but they can't do that until they get Student clothed, and they can't get Student to school until they get Student clothed. The first goal is to get Student clothed consistently, sufficiently do that Student can remain in school. RTF has the ability to adapt, and if Student is not fully clothed, then Student can attend school partially clothed. Student has significant impairments in being able to interpret nonverbal cues, such as facial expressions and body gestures. Student has fine motor coordination delays, sensory aversions and a behavior component which contribute to disrobing behaviors. Student's disrobement is not just due to a sensory aversion, there is also a task demand/escape component as well. (Doctor's Testimony; BCABA's Testimony)
12. Student has severe impairments with self-care skills and activities of daily living ("ADL")⁸ and needs close physical assistance with all self-care skills. Due to the challenges with Student and the regression in disrobing, RTF consulted with their national clinical support team and they are trying to implement improved interventions as a result. The outside consultants included educational experts, Board Certified analysts and psychologists. Improving Student's functional communication is one of the goals the RTF is working on but cannot do that until Student can be clothed and get into school. (P-2; Doctor's Testimony; BCABA's Testimony)

⁸ ADLs include things like eating, showering, being able to be transported, and being clothed.

13. Student has not made sufficient progress, and the self-injurious and aggressive behaviors are still severe. You can't divorce Student's disrobing from the effective reinforcers, and you can't divorce the effective reinforcers from self-injurious behaviors and aggression. (Doctor's Testimony)
14. Student has made progress with communication, receptive and expressively, since admission. Student's appropriate communication and ability to accept alternatives has gradually increased when measured on the RTF scale cards, which are their behavioral cards. Student has made progress in receptive communication when engaged with a communication partner or the person Student is working with, Student is able to follow one-step directions. Student is now very aware and understands just about everything going on around Student. Student has also had an increase in vocalizations and can now clearly say five words. The communication percentages have been increasing compared to the baseline during the first three or four months of admission. The levels are still substantially below 80 to 90 percent, which is where the RTF would like to see them. (Doctor's Testimony; BCABA's testimony; Parent 1's testimony)
15. Student needs a consistent environment to learn. Currently, Student does not have the ability to learn in a home environment. In the home environment Student is a physical danger to Student, peers, and family members due to severe behaviors. Currently, Student would not be able to be managed safely in a lower level of care without the kind of intensive multidisciplinary treatments, high degree of structure, clinical supports and direct care supports that Student receives at RTF. Education can only be taught to Student and reinforced through the consistency of a 24/7 residential setting. RTF is designed to allow Student to remain on campus if Student disrobes and then go back to school once clothed and regulate multiple times per day if needed. RTF has been working on that with Student but has not been able to accomplish it consistently or sufficiently yet. (Doctor's Testimony; BCABA's Testimony; Parent 2's testimony; Parent 1's testimony; P-2)
16. Student receives full-time educational services provided daily as defined by the school calendar. Student is provided academic and IEP related tasks to be completed during the school day while not in the school setting. When Student is unable to make it to the

classroom, the schoolwork is being brought to the unit⁹ for Student to be taught. The special education teacher drops off the schoolwork, and the behavior analyst and teacher instruct the direct care staff to complete the schoolwork with Student. A supervisor ensures that the schoolwork is being done through a schoolwork log, and that's sent back to the special education teacher for review and feedback. The special education teacher modifies the academic plan as she sees fit in consultation with the behavior analyst. They also have speech language therapists, OT therapists and teachers that come to the unit. Student is currently on Phase 3A of PECS and is learning to discriminate between preferred and nonpreferred visual icons. Student completed Phase 1 which requires the learner to look at, reach for, pick up and hand the picture/symbol to the person they are communicating with. Phase 2 was skipped because it involves "Distance and Persistence" which involves the learner to still use a single picture and learn to generalize using the picture in different places with different people across distances. RTF schoolteachers are always available for a parent-teacher conference. Student had significant improvement increasing the amount of time spent in the school setting in the late winter, early spring and then it tapered. (J-3, pg. 5; P-2; J-4; Doctor's Testimony)

17. While Student's educational progress was affected by school attendance, as of October 2023, Student was able to: (1) identify Student's name from a field of two choices when provided full physical prompts; (2) identify the colors red, green and blue when provided full physical prompts; and (3) demonstrate an ability to attend preferred sensory items for 15 seconds without redirection. This is improvement from the educational progress reported as of May 15, 2023 that states Student's progress included: (1) Student made progress using visual supports to request desired items and activities; (2) Student was able to use mands¹⁰ and visual supports to request items; (3) With nonverbal prompting, Student was able to sort colors from a field of two and identify the number 1; (4) With nonverbal prompting, Student was able to participate in techniques that reduce germs and illness. (P-2, pg. 11; HO-1, pg. 45)

⁹ Student's living area is referred to as the unit. The school building itself is on the same campus as the unit, they are across from the walkway from one another. (Coordinator's testimony)

¹⁰ "Mand" or "manding" is a request for something wanted or needed, or a request to end something undesirable.

18. Student has an Individual Safety Plan due to aggression/assault, self-injury, disrobing, and inappropriate toileting. Since admission to the RTF on 09/14/2022¹¹ Student has made progress decreasing both the frequency and intensity of self-injurious behavior and physical aggression. Student requires full assistance with all activities of daily living. Student continues to have challenges remaining clothed, toileting in the restroom and attending school. Student requires 1:1 staffing within arm's length during waking hours to block and redirect self-injurious behavior, as Student can bite hard enough to cause tissue damage. (P-1, pg. 3; J-6; J-7; Parent 1's testimony, Parent 2's testimony; Doctor's Testimony)
19. RTF uses the PECS system. They were trying to teach Student to understand that the pictures represent an object. RTF also accepts gestures or vocalizations from Student as communication. (Coordinator IV's Testimony)
20. RTF conducted a functional behavior assessment and Student has a Positive Behavior Support Plan. The purpose of the plan is to define the function of the behavior, spell out the replacement skills being taught, and the reactive strategies being used to address the behavior. Student's behaviors are complicated. Student could be escalating for one function, but then as Student escalates, it could turn into something more respondent or internal. When that point is reached, RTF staff must wait for Student to calm down, and it could take a while. Student gets self-injurious, which could be dangerous, especially when hitting the head, which is a huge concern for a possible concussion or brain injury. Student gets to that level of escalation quickly. Student does not tolerate change very well and is easy to frustrate so things must be taken very slow with Student. Changes in environment hinders Student's ability to learn. (J-6; Coordinator IV's Testimony; BCABA's testimony)
21. Student can go from zero to a hundred quickly and not show precursors or identifiable antecedents to the behaviors before becoming aggressive or self-injurious. Student is extremely combative when physically restrained. Student has done tissue damage to RTF staff that try to restrain Student as well as to Student when escalated or emotionally heightened. Student has torn up the upper arms by biting them resulting in multiple bruises and has resorted to hard head banging despite the use of soft mats, having 1:1 supervision

¹¹ J-7, page 1 contains a typographical error and lists 9/14/2023, however, the report was generated on 6/20/2023, therefore the date of 09/14/2022 is the date that this Hearing Officer is using in the Findings of Fact.

and other interventions. A lot of the behaviors result from task demand. (J-3, pg. 7; HO-1, pg. 43; P-2, pg. 5; Doctor's Testimony; BCABA's Testimony; Parent 1's Testimony)

22. At the end of July 2023, Student was having a difficult time tolerating other students. Unlike most, Student did not have a roommate. Student would not eat with other students in open areas and instead would eat in Student's room. RFT staff tried to get Student with the other students as much as possible, and then they would try to transition Student into the school in the classroom. At that time, the longest time Student spent in class was two hours over the course of a day. Student remained in class for as long as tolerated, then used the break card to go for a walk, and then return to the classroom. Student was just learning to use the break card at that time. For Student's safety, Student needed the continuous ABA throughout the day. (Coordinator IV's Testimony)
23. RTF staff know Student well and block Student from self-injurious behaviors and then redirect Student. Student has a direct care professional for 16 hours a day and an adult outside of Student's room at night to make sure that Student is safe. At the time that OT and Coordinator IV observed Student at the RTF in July 2023, for Student's safety, Student needed the continuous ABA throughout the day. (P-2, pg. 8; Coordinator IV's testimony; Parent 2's testimony)
24. As of May 17, 2023, Student engaged in disrobing 44%, however as of November 27, 2023, Student engaged in disrobing 100% of intervals. Prior to Student's regression in disrobement, Student could only tolerate very brief van rides. If the rides were too long Student would begin to have a meltdown or have a meltdown shortly after getting out of the vehicle. (HO-1, pg. 41-42; J-3, pg. 6; P-2, pg. 7; Doctor's testimony)
25. Currently, Student cannot be regularly dressed, wear a pullup, or travel in a vehicle for 30 to 45 minutes at a time. Student needs to learn basic ADL skills to be able to get to school consistently in the community. At this time, Student only remains dressed for periods of ten seconds. Student cannot tolerate being around peers. Student has a difficult time with loud noise and with sensory overstimulation, which are triggers that are present around peers. Student's prognosis is guarded, because of the combination of the autism and the intellectual disability, Student has significant challenges. Student is capable of learning skills if Student continues receiving the intensive multidisciplinary services that are so important to maintain educational and living progress. Student cannot currently be

managed at home within the family, to be educated with a conventional school system. Student needs 24-hour staff support and supervision. RTF has also seen where Student has challenges sleeping throughout the night. The more people that are around and trying to talk to Student and communicate, the more likely Student's agitation will escalate. Student requires teaching in a natural environment 24 hours a day, seven days a week to make any kind of gains educationally. (P-2, pg. 2; Doctor's testimony; BCABA's testimony; Parent 1's testimony)

26. The type of parent or family training that is needed for Student is intensive on-site training, during the normal course of a day, in real time. Parents have been engaging in that type of ABA training at RTF. (Doctor's testimony)
27. Student's plan of care, which contains clinical goals parallel to Student's IEP goals, tries to capture things that the IEP does not capture. It is important for Student to make progress in both the clinical care goals as well as the IEP goals to be discharged. One of the RTF's goals is to get Student to the point where Student's medical needs are distinct from educational needs. Student also needs to be able to be clothed and not disrobed most of the time to allow Student to transition to therapeutic appointments, to school, to be able to be managed in the community. Student's behaviors (disrobing, self-injury, aggression) interfere with Student's education. (P-2; Doctor's testimony)
28. Student's discharge goals include displaying a rate of 90% or higher of replacement behaviors and school attendance while demonstrating behaviors targeted for reduction at 5% or less of intervals as well as zero incidents of dangerous/maladaptive behaviors requiring personal emergency interventions, medical care, or incident report for 90 consecutive days prior to discharge as measured by daily progress tracking sheets and milieu staff reports. (P-2, pg. 12; Doctor's testimony)
29. Discharge at this time would be against medical advice as Student has not made enough progress towards treatment goals and continues to engage in physical aggression, self-injurious behavior, disrobing, and inappropriate toileting. Discharge barriers include, but are not limited to, inappropriate toileting due to extreme resistance to being potty trained

or wearing a pullup that is unmanageable in the home setting; although decreased¹², episodes of physical aggression and self-injurious behaviors can still be severe enough to cause tissue damage to self and others; the 24-hours a day multidisciplinary team is necessary to redirect Student's aggression and self-injury, and to maintain the tissue damage to Student at a minimum; the 24-hours a day multidisciplinary team is necessary to support Student in performing any ADLs unassisted, in addition to keeping Student safe from the health hazard if spontaneous toileting inappropriately/freely on the floor; Student's disrobing and inappropriate toileting remain significant barriers to school attendance, community integration and planned activities; Student continues to require 1:1 support and supervision from trained staff members during all waking hours to maintain safety. (P-2, pg. 12)

30. To prepare Student and Student's family for discharge, a plan was developed to facilitate a smooth transition. Local off campus visits will continue with the family and assigned 1:1 staff member to practice the skills Student is learning at the RTF in a more natural setting; the duration of off campus visits will increase and different areas will be incorporated. Once Student displays safe and prosocial behavior for longer periods of time and across settings, the team will slowly fade out the 1:1 staff member while also reintroducing Student to the younger sibling on neutral ground. Once all previous steps are done successfully, brief home visits will start to get Student used to the home setting. The duration will increase over time. There are a lot of variables involved and it is hard to predict a timeline currently. It is critical to take things at the right pace to avoid regression and potential harm to either Student or the younger sibling. The team is working to set Student and the family up for success to minimize the potential for future residential placement. The family engagement and participation in both Student's treatment and the discharge planning process is vital. (P-2, pgs. 12-13)

¹² A significant factor in the reduction of Student's episodes of physical aggression and self-injurious behaviors is because there has been a trained multidisciplinary team within arm's length 24-hours a day to redirect Student's aggression and self-injury before the behaviors go too far, as well as 24-hours a day nursing to assess injuries caused to Student, and without a trained multidisciplinary team to redirect the aggression and self-injury, the tissue damage to Student and others would be far worse. (P-2)

May 17, 2023 IEP

31. Prior to the May IEP meeting, the LEA and SEIF participated in approximately 3 or 4 meetings with the RTF and was debriefed on Student's progress. Emails were also exchanged with the RTF teachers and service providers. The purpose of the meetings with the RTF was to obtain information regarding Student's present levels to help develop Student's IEP. Student's present levels had to come from the RTF staff because the IEP Team is not in Florida with Student. Student's IEP is driven by present levels. The present levels drive the goals, the specially designed instruction and services, as well as the location and accommodations. (J-2; LEA's Testimony; SEIF's Testimony)
32. On April 13, 2023, Parents emailed District in pertinent part as follows: Student is finally getting medical stable enough to actually start working on education; The IEP Team is making adjustments to the last IEP to better effectuate education; Student is unable to discharge RTF at this time; Education continues at RTF until Student is ready to discharge; Upon discharge, Student will continue education in a District self-contained classroom with 1:1 aide during all school hours, with transportation to/from school with 1:1 aide during transport too; Note, settlement on the last IEP stated that we will enroll Student in a District classroom if we are still residents of Nevada, which we are (we are out of state temporarily while Student receives treatment, with full intent to return immediately to Nevada once Student is able to discharge); As Student is not currently able to discharge RTF, this term is unenforceable (we cannot and will not discharge Student out of RTF against medical advice of doctor here.); Please let us know if there seems to be any significant disagreements with any of the above. (HO-1, pg. 32)
33. The meeting held on 4/17/2023 concluded with a recommendation from Student's psychiatrist that Student should continue with the current treatment and arrangements at RTF. (J-3, pg. 8)
34. Prior to the May IEP meeting, Parents emailed back and forth with the IEP Team related to their concerns and things they felt needed to be in the IEP. The draft of the IEP was sent to Parents along with revised drafts anytime additional information was received from the RTF and added to the IEP. The placement page of the draft IEP was not completed because placement is not determined until the IEP meeting takes place. District did not respond to Parents' email dated 4/14/2023 attached as Exhibit 5 to Petitioner's Complaint wherein

Parents asked to be notified ahead of time if Student's placement "from the RTF would change." Further, on 5/15/2023, Parents emailed District regarding Student's placement, that Student "must remain at RTF" due to medical necessity and therefore the only environment available to choose from to provide an education. This Hearing Officer finds it credible that Parents were under the assumption that the IEP was being written with placement at RTF. Likewise, this Hearing Officer also finds it credible that due to that assumption, Parents did not raise any objections to the IEP as written and did not request additional goals (such as those related to showering) because Student was already engaging in certain services through the RTF. Student's placement code in Student's 2022 IEP is listed as "SPED in Separate Class" and that placement chosen by the 2022 IEP Team was self-contained program. (HO-1, pgs. 30, 31-32, 33, 34; J-2; R-5 LEA's Testimony; SEIF's Testimony; Parent 2's Testimony; Parent 1's testimony)

Present Levels

35. Assessments conducted for Student include: Multi-Disciplinary Team ("MDT") Report 4/4/2022; RTF School Student Progress Report 3/21/2023; Review of Present Levels April 2023; RTF Positive Behavioral Interventions and Supports ("D-PBIS"); Autism Program Teacher Observations April 2023; Adaptive Behavior Assessment System 3rd Edition ("ABAS-III") 3/10/2023; Occupational Therapist observations and data collected April 2023; Treatment/Service Plan 4/17/2023; Parent input; progress update 5/15/2023; Behavior Analyst observation and input April 2023; review of medical record from RTF dated 3/20/2023; review of electronic medical record; meeting with treatment team and parents; parent report regarding genetic testing 4/17/2023. (J-3)
36. Academically, Student has not made much progress since the prior IEP. Student cannot identify letters or Student's name and cannot write words or letters. Student cannot read and is not doing math. (J-3, pg. 4; LEA's Testimony)
37. Regarding communication, Student is not very verbal and engages in a lot of manding¹³ and bringing a person to where Student needs or what Student wants. Student was using a modified sign language and was being introduced to PECS at RTF. (J-3, pg. 5; LEA's Testimony)

¹³ "Mand" or "manding" is a request for something wanted or needed, or a request to end something undesirable.

38. Student receives speech therapy and occupational therapy (“OT”) at RTF. Student’s deficit areas related to occupational therapy include sensory processing – being able to accept and process different stimuli from the environment, in particular how it impacts emotional regulation as well as wearing and tolerating clothing. (LEA’s Testimony; OT’s Testimony)
39. District is aware of Student’s behavioral issues, including self-injurious behaviors, scratching, hitting and kicking other people, and disrobing. (J-3, pg. 6; LEA’s Testimony)
40. RTF presented Student’s deficits in the areas of self-help skills, such as eating, toilet training, dressing and brushing teeth. Student’s progress in those areas was low because Student wasn’t attending school. (J-3; LEA’s Testimony)
41. The May IEP includes “Health/Medical Information” from RTF including an RTF Behavioral Health Record dated 3/20/23 as well as the recommendation from Student’s psychiatrist from a meeting held on 4/17/2023 wherein the recommendation was for Student to continue with the current treatment at the RTF. It does not include, however, the updated information from the RTF Treatment/Service Plan Report dated 5/15/2023, that was provided to District on 5/17/2023 immediately prior to the IEP Team meeting. No testimony was given from District to explain why the May IEP was not updated during the meeting to reflect the 5/15/2023 information. (J-3; HO-1)
42. Student’s strengths (very empathetic, a very good people person, makes good effort, most often easy-going and happy) were determined based on a discussion among RTF staff and the Parents, District did not have any current firsthand knowledge of Student. Student has not been in a District school for District to observe Student. (J-3, pg. 8; LEA’s Testimony)

Goals

43. Once the present levels were determined with input from the RTF and parents, the IEP Team moved on to creating the goals for Student. SEIF worked back and forth with the RTF special education team and service providers, along with the Parents, to develop Student’s goals. Student’s May IEP contains nine goals in the following areas: reading (1 goal), written expression/fine motor (1goal), math (1 goal), communication (1 goal), behavior/social (2 goals) and self-help (3 goals). Each goal contains benchmarks or objectives to help Student reach goals in steps. No concerns or objections were raised by Parents because they believes that the goals were being written to be implemented at RTF. (J-3; LEA’s Testimony; SEIF’s Testimony; Parent 1’s testimony)

44. Student's goals address the need to help Student to tolerate clothes for longer periods of time. Using the sensory processing approach of being able to address the tactile system and the neuro system by being able to provide deep pressure to regulate the neuro system to release dopamine in the brain to cause a positive feeling so that Student can increase the right level of tolerance and desensitize the skin so that Student can tolerate clothing on the skin for longer periods of time. Methods are tailored to Student, such as the use of weighted blankets, a modified brushing protocol, a neck pillow, rolling up in a blanket or beanbag, and the use of therapy swings. Benchmarks for the self-help goal of dressing include by the end of the 1st quarter of the 2023-2024 school year, Student will remain fully clothed during the school day for 30 minutes; for the 2nd quarter, 1 hour; and for the 3rd quarter, 4 hours. (J-3, pg. 7, 13; OT's Testimony)
45. Student's May IEP contains the Parents' concerns regarding Student's placement within the IEP due to the fact that Student cannot exist in a home setting the other 18 hours in a school day, and it is against medical advice of the doctors at the RTF for Student to be discharged at this time. (J-3; LEA's Testimony; SEIF's Testimony)

Specially Designed Instruction

46. The location for Student's specially designed instruction and services is a self-contained classroom where all students in that classroom have special education services, a special education teacher, and additional adult support staff. (J-3, pg. 14; LEA's Testimony)
47. Student's Specially Designed Instruction ("SDI") was developed during the IEP Team meeting and is based on Student's deficit areas and needs. Student's SDI includes: 200 minutes per week in reading; 195 minutes per week in written expression; 200 minutes per week in math; 400 minutes per week in communication; 400 minutes per week in social/behavioral; and 400 minutes per week in self-help. (J-3; LEA's Testimony)

Other Services

48. Accommodations for Student include: a Behavior Intervention Plan ("BIP"); close adult supervision; one on one assistance throughout the school day; reinforcement for desired behavior; using a "first this, then" language and format when teaching; OT to provide educationally relevant adaptive equipment; OT will train staff on brushing protocol; OT will train staff on sensory diet; staff will follow sensory diet per OT recommendations; pairing of visual and verbal instructions, fade upon mastery; provide frequent checks for

on-task-behavior-redirect with least intrusive prompt; class time will be broken into 5 minute work sessions and 2 minute breaks for Student to engage in a preferred reinforcement; provision of a personal visual schedule and a timer so Student can see and hear the schedule; begin prompting at 10, 5 and 1 minute intervals prior to an activity ending or a transition to another location; notify Student of any upcoming changes to schedule; model the verbal word or phrase simultaneously with gestures, signs and symbols; Student is exempted from participating in mandated district-wide and/or schoolwide progress monitoring/benchmarking, such as the Measure of Academic Progress (MAP) Assessment; and Student is on a functional skills curriculum to the IEP Team has exempted Student from participating in schoolwide and/or district-wide progress monitoring, such as MAPS. (J-3, pg. 15; LEA's Testimony)

49. District has not been able to complete a Functional Behavior Analysis ("FBA") to identify the function of Student's behavior to then specifically address that behavior by teaching replacement behaviors because Student is not physically in the District. An FBA will be developed upon Student's enrollment in District. (J-3; LEA's Testimony)
50. Student's related services include 120 minutes per month of speech/language and 120 minutes per month of OT during the school year as well as 60 minutes per month of speech/language and 60 minutes per month of OT during the Extended School Year ("ESY"). (J-3)
51. Student's IEP does not contain transportation services as one of Student's related services. (J-3)

Placement Decision

52. The IEP Team determined placement last during Student's IEP meeting, starting from the least restrictive environment first. (J-3; LEA's Testimony; SEIF's Testimony)
53. The IEP Team considered a regular classroom with supplementary aids and services in a general education classroom where services would be brought to Student. Knowing that is not feasible for Student at this time, that choice was rejected. (LEA's Testimony)
54. The IEP Team next considered regular class and special education class, such as a resource combination. The Team rejected that option because Student needs more than a resource class to help with skills. (LEA's Testimony)

55. The IEP Team moved on to consider a self-contained program which is on a comprehensive school campus and is composed of only other students with special education needs and a special education teacher assigned to that classroom and to those students in that class. Students would be exposed to their general education peers on campus where they would go to specials, lunch and recess with their special education peers. Student needs more support than a self-contained program based on the goals and accommodations in the IEP, so that placement was also rejected. (LEA's Testimony)
56. The IEP Team then considered a special school and selected the same. The IEP Team felt that based on Student's IEP and the fact that District has not had the opportunity or chance to provide any services for Student, that Student's needs can be met at one of the special schools. Student's goals and benchmarks are familiar, or commonly seen, in some of District's special schools. The IEP Team was looking at Special School, in particular, for Student. (J-3; LEA's Testimony; SEIF's Testimony)
57. Special School only has students that receive special education services and all of the teachers are special education teachers. It is also staffed with related services and support staff that help the classrooms and the school. It is like a self-contained classroom but is on a campus that's just for students with special education needs. The particular focus of Special School is for students who are cognitively quite a bit lower than most students but may also have some behaviors that need to be addressed. It is a smaller environment with more 1:1 for students and higher adult staff to student ratio. (LEA's Testimony; SEIF's Testimony)
58. Parents did not agree with the placement determination made by the IEP Team and voiced a desire for Student's placement to be a residential treatment center. Parents felt that the RTF was the only placement for Student due to Student's medical needs and the self-injurious behaviors. (J-2; LEA's Testimony; SEIF's Testimony; Parent 1's testimony; Parent 2's testimony)
59. The Speech/Language Therapist ("SLP") agreed with the Parents that placement should be a residential treatment center based on her personal interactions with Student during the initial evaluation completed through Child Find two years prior. SLP was the only member of the IEP Team from District that met Student and has first-hand knowledge pertaining to Student. SLP informed the IEP Team that after what she saw in the Parents' home and after

reviewing the tremendous progress Student has been making in treatment, she believes that Student should remain at a residential treatment center. (J-2; HO-1)

60. After hearing Parents' concerns and objections to the proposed placement of a special school, the IEP Team agreed to disagree with the Parents because the IEP Team believed that Student's needs could be met in a special school and that Student did not need a residential treatment center. The IEP Team believed that with the one-on-one assistance throughout the school day in a classroom with a teacher and an extra adult for support staff, that someone assigned to Student specifically would be more beneficial so that Student can get the support needed throughout the day with that undivided attention. (LEA's Testimony)
61. If the IEP Team agreed that Student's placement should have been a residential treatment center, the LEA had the authority to commit the District to that placement for the 2023-2024 school year. (LEA's Testimony)

District's Ability to Meet Student's IEP

62. District utilizes PECS, applied behavioral analysis, can provide speech therapy and OT, and has autism program units that are broken down in elementary by primary and intermediate units. Primary units usually have Kindergarten, and grades 1 and 2, while intermediate units usually have grades 3, 4 and 5. Each classroom has no more than 8 students. (LEA's Testimony)
63. All the accommodations listed in Student's May IEP can be fulfilled by District. District provides students with one-on-one assistance throughout the school day as listed in Student's May IEP. (J-3; LEA's Testimony)
64. Special School have had other students with similar self-injurious behaviors within District that have received services at Special School. SEIF has not met Student or witnessed any of Student's meltdowns. Based on SEIF's lack of firsthand knowledge about Student, this Hearing Officer gave less weight to SEIF's assertion that District could handle Student's self-injurious behaviors. (SEIF's Testimony)
65. If a student is displaying disrobing behaviors and the District is aware, they put precautions into place within the student's classroom so that when it happens, the dignity of the child is preserved as much as possible such as dressing shields that are put up in an area of the room or the use of mats that are put all the way up to hide and protect the student from the

rest of the class and the District would be working on the goal for the student to get their clothes back on. (LEA's Testimony)

66. District provides special education transportation. There are special education bus routes that pick up students curb-to-curb from home to school. The bus uses seatbelts or safety harnesses, if needed. Dependent upon a student's need, there are various accommodations available, including one-on-one adult assistance assigned to just one student. District's policy does allow a one-on-one aide to help a parent get a child into the bus so long as it is not violate District's policy regarding physical, mechanical and aversive restraints. That one-on-one aide will not be allowed to help the Parents get Student get dressed if Student disrobes before being placed on the bus, and if Student is not dressed, Student will not be allowed to ride disrobed on the bus. No explanation was given about Student's May IEP's failure to include this related service. (LEA's Testimony; J-3)
67. District provides the accommodation supplemental home instruction. When a student is out of school due to any reason, such as medical, District will have a teacher provide the student with services that the student missed, some of which can be done at home. Supplemental home instruction can be decided by the IEP Team. If District receives directions from a doctor, then District places the medical need of the Student in the IEP without needed to go through the IEP Team. (SEIF's Testimony)
68. District has a LINKS (Linking Instructional Needs and Key Supports) team that supports students with autism and emotional and behavioral disorders in schools. The LINKS team also has a parent training program as well as a school-based ABA program. The LINKS parent training allows parents and the student to go to one of their offices, five days in a row, for an hour a day, and they provide training to the parents on behavioral issues and concerns that they are having with their child at home. It is individualized and the program works with the parents and the student. LINKS can also meet the parents and student at a mutual location or go to the student's home. The parent training is for the parent and child and is not about the school, unless that is the issue that the parent raises. (Coordinator IV's testimony)
69. District conducts an FBA and then creates a behavior intervention plan ("BIP"), which contains the data from the FBA, to promote replacement behaviors similar to the RTF's positive behavior support plan. District is on a six-hour, eleven-minute school day, so

District might pare down Student's BIP, but can otherwise implement the same plan. (Coordinator IV's testimony)

Special School

70. Special School is a 100 percent special education school that serves students with autism, intellectual disabilities and behaviors. Characteristics that would lead an IEP Team to determine that a student should be placed at Special School include students working well below grade level; students having behavioral issues that prevent them from functioning appropriately on a comprehensive campus (including social problems, physical aggression or verbal outbursts); and students with ASD diagnoses, intellectual disability or multiple impairment, which would combine a combination of both. (Special School Principal's Testimony)
71. Special School has an intensive level of support including staff all trained in Autism Society of America ("ASA") and ASD through the Cleveland Clinic Children's Hospital partnership. Special School uses Cleveland Clinic's room design techniques, curriculum, data question techniques, de-escalation techniques and prompting hierarchy. They have a large group of licensed staff, including a social worker, an autism transition teacher, a behavior mentor, a counselor, an alternative class placement team (a special education certified teacher and counselor that responds to classrooms for behavior escalations). (Special School Principal's Testimony)
72. District partnered with Cleveland Clinic's Children's Hospital and the Lerner School of Autism in Cleveland. This particular entity focuses on students that are on the lower end of the autism spectrum. Special School follows their data question techniques, and their staff completes the training to handle behaviors, ensuring that they tailor tasks aligned to a student's IEP goals and that are specific to the lower cognitive level students. The training is called Crisis Prevention Intervention ("CIP") training. CIP training teaches verbal and physical de-escalation techniques, and if physical restraint is necessary, it is done in the safest and most efficient manner. (Special School Principal's Testimony)
73. LINKS provides support for Special School. LINKS is contracted with the Cleveland Clinic and has a consultant at Special School one week a month. A LINKS person is on site for the entire school day those five days to help teachers implement behavioral

programs, implement the curriculum, maybe curricular choices, and to support the program. (Coordinator IV's Testimony)

74. Special School uses ABA, a technique to address students' behaviors with autism. The technique includes de-escalating behaviors with a protocol using a prompting hierarchy, using a full physical prompt, or partial physical prompts to comply and complete tasks. The overarching goal is to address behaviors through that process. They break individualized instruction down per each student's IEP. (Special School Principal's Testimony)
75. Prompting hierarchy can include a verbal cue, then a "first then" protocol (first put on clothes, then you can play with that toy). Teachers are always assessing what a student's primary reinforcer might be because that can change from time to time. (Special School Principal's Testimony)
76. Special School can provide Student's speech therapist and occupational therapist. They can implement the strategies that have been found successful for Student at RTF. They have access to the equipment and a variety of sensory items that the classroom teachers have access to, so as Student's interests change, the school can adjust to Student's needs. If Special School doesn't have a particular item that works for Student, they are able to order it to meet Student's specific needs. A lot of the specific sensory items that Student is benefitting from at RTF are very embedded in the everyday life and classroom management for the different teachers, and they are very knowledgeable in using them. (Special School Principal's Testimony; OT's Testimony; R-3)
77. Special School has a sensory room, which allows students access the physical touch of different items and how they feel. The lights are muted and dimmer, so it has a calming effect. The goal is to calm behavior and to give students free choice. The room is aligned with the PECS system so students can go into the room, look at the PECS board and pick the activity that they choose to work on, and the teacher guides them through that activity. The teacher that runs the room might want to target specific behaviors and therefore might limit the PECS choices to focus on that maladaptive behavior or communication. The teacher works together with the assistive technology specialist who is trained in PECS. (Special School Principal's Testimony)

78. Special School also trains students' parents in PECS. Through District's messaging system their assistive technology specialist invites parents out to Special School and is also great at making one-on-one phone calls to parents to train parents through the PECS system so that parents can use PECS at home effectively. This allows students to use the same communication system at school and at home so that the training and teaching never ends. (Special School Principal's Testimony)
79. The present levels contained in Student's IEP are very similar to students at Special School. Special School can implement Student's IEP goals, can implement Student's specially designed instruction, as well as Student's accommodations. Special School has one-on-one special school specialized program teacher assistants that are assigned to one student. Special School also has students that have one-on-one assistants on the school bus. Sometimes the one-on-one assistant is the same assistant on the bus as in the school, depending on whether they are employed with transportation as well. (Special School Principal's Testimony)
80. Special School has staff that are trained in de-escalation techniques, and if a student needs to be restrained, multiple staff respond. They have radios at the school so that the principal can stay in constant communication with how a situation is evolving if the principal needs to attend. (Special School Principal's Testimony)
81. Special School has safety protocols for students that disrobe. Sometimes it is easier to work with a student that disrobes in the classroom rather than move the other students to a different area where instruction can continue. They also have mats that they can put up to protect the student from view and block the view of other students. Special School would work to address that behavior, verbally using prompting hierarchy, using reinforcement, using the token board, to try and get the student to put clothes back on. If staff cannot get clothes on the student and they remain disrobed the entire day, staff would notify the parents and see if they wanted to pick the student up from school. If parents cannot come get the student, then staff would continue to work with the student. Special School has blankets and staff would try to make sure that the student is covered and as safe as possible. They would continue verbally prompting, using any other kind of reinforcement, token boards to try and get the student dressed. The staff that work with Student would be specifically trained on strategies to help Student due to the sensory needs that lead to

disrobing. If the disrobing is not sensory process related, the behavioral specialist would try to determine what the antecedent is for the disrobing. It would be a collaborative process between all the specialists to distinguish the antecedent. If it becomes necessary to transport a student, Special School cannot transport the student home unless it is the regular transportation time for that student. During his tenure of nine years, Special School Principal has not had a student that has been disrobed from the second they got to school until the end of the day. (Special School Principal's Testimony; OT's Testimony)

82. Special School also has an alternative class placement room where students who are aggressive or are engaging in a serious behavior, where staff works with the student in that room that way the staff is taking away the other stimuli that might be antecedent for that behavior. The alternative class placement teacher, and possibly a staff Specialized Program Teacher's Assistant ("SPTA"), would work with the student to try and work through that behavior in more of a setting that is separate from the classroom. (Special School Principal's Testimony)
83. Special School has a functional living skills apartment that has a standard sink that you would see in a typical kitchen, and a refrigerator. They teach students how to wash, how to wash dishes that are already clean, and how to clean out a refrigerator. It also has a bathroom in it. The bathroom is not used at any time, so they teach students how to clean and organize a bathroom. (Special School Principal's Testimony)
84. Special School can provide the same education as the RTF school and would be able to provide behavioral interventions as well as school education. Special School Principal has reviewed Student's IEP but has not reviewed all of the documents in Student's educational records, has not had any discussions with Parents, or anyone outside of District in regard to Student, Student's behaviors and Student's education. (Special School Principal's Testimony)
85. For Student to be educated at Special School, Student would have to be able to be transported safely to and from school and be able to be around other students without escalating. Special School could teach Student alone in a classroom, but in hallways, and in and out of school, Student would have to be able to minimally tolerate other students. (Coordinator IV's testimony)

Cost of Residential Treatment Facility

86. Fees paid by District for the 2022-2023 were related to a contract that RTF secured with District, however that contract was not as specific as Student's IEP. The contract provided that District would provide direct payment for the education services of the residential treatment center for the 2022-2023 school year in an amount not to exceed \$97,388 to provide for Student's education, one-on-one aide, occupational therapy, speech therapy, and physical therapy for a period of two hundred (200) days. Although the contract was not signed by RTF, but was signed by Parents and District, because it is for payment to RTF, and because many school districts deal directly with the parents and not the RTF, they accept the contract even though they do not countersign. (R-6; Director's testimony)
87. RTF had a contract in place for Student's residential treatment and requested an updated contract for Student's education from District for the 2023-2024 school year in August 2023. RTF provided District with their new fiscal year 2024 rates on 6/27/2023.¹⁴ (R-10; Director's testimony)
88. Student's residential treatment is currently being paid by Medicaid. (Director's testimony)
89. Letters of Agreement from 9/14/2022 through 12/31/2023 confirmed the negotiated rate between RTF and Nevada Medicaid. The daily rate (set by Nevada Medicaid to cover Student's 1:1 services) was supplemented. The per diem rate of \$780 per day was negotiated for the period between 9/14/2022 and 02/28/2023; the per diem rate of \$1,320 per day was negotiated for the period between 03/01/2023 and 12/31/2023 for Student's daily rate and a portion of the 1:1 services Student receives. RTF has two services, Residential and 1:1 service. RTF had to secure an additional rate for the 1:1 service as Student would not have been accepted at RTF if the services were not covered by the 1:1 due to Student's acuity. (R-12; R-15, pg. 4; Director's testimony)
90. Student receives 24 hours of 1:1 supervision because Student's level of acuity requires that for Student's safety and those around Student. While Student is not always in a classroom, Student still receives education in the unit where Student can be safely taught. District is billed for the 1:1 supervision for those 6 hours of education per school day, the remaining hours in a day are billed under Student's residential contract. Student's Enhanced

¹⁴ The rate sheet was not attached or part of R-10.

Supervision Logs attached to the billing invoices for the 2022-2023 school year note IEP 1:1 hours spent with Student. (R-16; Director's testimony)

91. RTF's fees for the period of 07/01/2023 – 06/30/2024 total \$671,211.20, not including Pharmacy, Lab, or Outside Medical Services. The breakdown in costs is as follows: Residential Treatment at a rate of \$650 for 366 days for a cost of \$237,900; Education at a rate of \$227.44 for 200 school days for a cost of \$45,488.00; 1:1 Enhanced Staffing at a rate of \$43.25 for 24 hours a day, 8784 hours annualized for a cost of \$379,908; and Occupational Therapy Per IEP at a rate of \$131.92 for 5 hours monthly, 60 hours annually for a cost of \$7,915.20. Occupational, Physical and Speech Therapy rates reflect their local provider's cost(s). These fees are driven by Student's IEP and reflect the fees if residential placement was listed in Student's IEP. RTF's fees for residential treatment do not delineate the cost of room and board for the educational versus the medical services. (P-6; Director's testimony)
92. Residential Treatment and Education are fees for all students at RTF. The 1:1 Enhanced Staffing and Occupation Therapy per IEP are specific to Student and based on Student's IEP. Student's need for a 1:1 substantially raises the total cost. (P-6; Director's testimony)

CONCLUSIONS OF LAW AND DISCUSSION

Based upon the above Findings of Fact, the arguments of counsel and Petitioners, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

[Note: District continues to contest the decision regarding the residency of the Petitioners and Petitioners asserting this action in the State of Nevada and District has not waived their right to appeal that decision.]

I.

Whether placement at the District Special School is an appropriate educational placement for Student?

District argues that the May IEP Team developed an IEP which provides Student a FAPE, that Petitioners' concerns [only] related to the difficulty of maintaining Student in the home, that the IEP Team reviewed other environments before determining that the most appropriate placement due to Student's unique needs is a special school in the District. District further argues

that District reviewed Student's educational records and all educational data provided from Student's RTF.

Parents argue that the reason they did not object to any portion other than placement in the IEP is because they were under the assumption that the IEP was being written with the RTF in mind for placement, and had they realized that it was not, they would have made objections based on the same. Parents argue that Student's progress and learning has been due to the RTF's approach of teaching Student skills 24 hours a day, seven days a week with absolute consistency to reinforce the teaching and prevents Student from hurting Student and others. The Parents further argue that to pull Student out of the current residential placement would be detrimental and extremely harmful to providing Student an education.

A. Whether the May IEP provided Student with a FAPE.

i. Purpose of the IDEA

The purpose of IDEA is to ensure that all children with disabilities have available to them a FAPE and related services designed to meet their unique needs and prepare them for further education, employment and independent living.¹⁵ A child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.¹⁶

Autism is defined as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.¹⁷ "Autism Spectrum Disorder" is further defined as a condition which significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive

¹⁵ 20 U.S.C. § 1400(d); 34 C.F.R. § 300.1 (a)

¹⁶ 34 C.F.R. § 300.8 (a)(1)

¹⁷ 34 C.F.R. § 300.8 (c)(1)(i)

activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner; is usually apparent before the age of 3 years; and adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both. The term includes, without limitation, a group of developmental disorders such as Asperger's disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in this subsection. The term does not apply to a pupil if the pupil's educational performance is adversely affected primarily because the pupil has an emotional disturbance.¹⁸

ii. Free Appropriate Public Education

A FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA, including the requirements of this part; include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.¹⁹

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education and includes speech and language services if the services are specially designed instruction to meet the unique needs of the child.²⁰ Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.²¹ At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.²²

¹⁸ NAC 388.028

¹⁹ 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17

²⁰ 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (a); NAC 388.115

²¹ 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (b)(3)

²² 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39 (b)(1)

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.²³

Transportation includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment (such as special buses, lifts, ramps) if required to provide special transportation for a child with a disability.²⁴ Speech-language pathology services includes identification of children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the habilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding speech and language impairments.²⁵

Psychological services includes administering psychological and educational tests, and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; planning and managing a program of psychological services, including psychological counseling for children and parents; and assisting in developing positive behavioral intervention strategies.²⁶

Occupational therapy means services provided by a qualified occupational therapist; and includes improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss

²³ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a); NAC 388.101

²⁴ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(c)(16)

²⁵ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(c)(15)

²⁶ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(c)(10)

of function.²⁷ Recreation includes assessment of leisure function; therapeutic recreation services; recreation programs in schools and community agencies; and leisure education.²⁸ Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.²⁹

iii. Individualized Education Program

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.³⁰ Individualized education program team or IEP Team means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.³¹

The purpose of an IEP is to create a special and unique program of services designed to provide educational benefits to a child who has a disability. Just because a child would be capable of learning in a general education class without support if he were not disabled does not mean that any support given is “medical.”

Rowley sheds light on what appropriate progress will look like in many cases: For a child fully integrated in the regular classroom, an IEP typically should be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” 458 U.S., at 204, 102 S.Ct. 3034. This guidance is grounded in the statutory definition of a FAPE. One component of a FAPE is “special education,” defined as “specially designed instruction ... to meet the unique needs of a child with a disability.” §§ 1401(9), (29). In determining what it means to “meet the unique needs” of a child with a disability, the provisions of the IDEA governing the IEP development process provide guidance. These provisions reflect what the Court said in *Rowley* by focusing on “progress in the general education curriculum.”³²

Rowley did not provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. A child's IEP need not aim for

²⁷ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(c)(6)

²⁸ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(c)(11)

²⁹ 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(c)(8)

³⁰ 20 U.S.C. § 1401(14); 34 C.F.R. § 300.22

³¹ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.23

³² *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 387, 137 S. Ct. 988, 992, 197 L. Ed. 2d 335 (2017)

grade-level advancement if that is not a reasonable prospect. But that child's educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.³³ The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.³⁴

iv. Least Restrictive Environment

Each public agency must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.³⁵ Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum required must include the alternative placements listed in the definition of special education under § 300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.³⁶

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the LRE provisions, including §§ 300.114 through 300.118. The child's placement is determined at least annually; is based on the child's IEP; and is as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. A child

³³ *Id.*

³⁴ *Id.*

³⁵ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2)

³⁶ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115

with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.³⁷

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.³⁸

“Courts have concluded that residential placement is necessary to provide a severely autistic child with an appropriate education. *See, e.g., Stacey G. v. Pasadena Indep. School Dist.*, 695 F.2d 949 (5th Cir.1983); *Drew P. v. Clarke County School Dist.*, 676 F.Supp. 1559 (M.D.Ga.1987). The focus in determining whether residential placement is necessary must be on whether the placement is required for educational purposes apart from the medical, social or emotional problems that are segregable from the learning process. *Kruelle v. New Castle County School Dist.*, 642 F.2d 687, 693 (3d Cir.1981); *Vander Malle v. Ambach*, 667 F.Supp. 1015 (S.D.N.Y.1987).”³⁹ In *Ash v. Lake Oswego Sch. Dist. No. 7J*, 766 F. Supp. 852 (D. Or. 1991), ***aff’d and remanded***, 980 F.2d 585 (9th Cir. 1992), the court found that an appropriate education for that student was one what would make it possible for the student to be successful outside of a classroom setting. In that case, the evidence showed that an appropriate education for that student is one that only a twenty-four-hour-a-day, seven-day-a-week educational environment can provide. *Id.* at 865. Further, that student’s medical, social and emotional problems were so severe that they were not segregable from his learning process and therefore the residential placement was required for educational services. *Id.* Daily living skills, such as toileting, eating and dressing, could only be taught to him and reinforced in the consistency of a residential setting. *Id.*

ANALYSIS

The question here is whether Student’s May IEP with regard to placement in the LRE is reasonably calculated to enable Student to receive educational benefits in light of this Student’s circumstances. The determination of when a child with a disability is receiving those educational benefits required by the IDEA can be difficult.⁴⁰ The issue here is whether District’s placement of Student in a special school is the LRE for this Student, or whether placement in a special school

³⁷ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116; NAC 388.245(4)

³⁸ 20 U.S.C. § 1412(a)(1), 1412(a)(10)(B); 34 C.F.R. § 300.104

³⁹ *Ash v. Lake Oswego Sch. Dist. No. 7J*, 766 F. Supp. 852, 862 (D. Or. 1991), ***aff’d and remanded***, 980 F.2d 585 (9th Cir. 1992)

⁴⁰ *Id.* at 863.

denies Student sufficient access to a FAPE through which Student can derive an educational benefit.

Similar to the student in *Ash*, Student has not shown that Student can generalize by learning at school during a six-hour school day and applying it at home or community outside of school hours like most students can. (FOF 11) For Student to learn communication, self-help skills, academics, even showering, Student needs to be taught seven days a week from wake up until bedtime. (FOF 11) Student has substantial medical, social and emotional problems that interfere with the ability to learn because of having a severe form of autism which is accompanied by severe communication deficits. (FOF 11) Student needs a consistent environment to learn. Student does not have the ability to learn in a home environment. (FOF 15) Student cannot be managed safely in a lower level of care without the kind of intensive multidisciplinary treatments, high degree of structure, clinical supports and direct care supports that Student receives at RTF. (FOF 15) Education can only be taught to Student and reinforced through the consistency of a 24/7 residential setting. (FOF 15) SLP informed the IEP Team that after what she saw in the Parents' home and after reviewing the tremendous progress Student has been making in treatment, she believes that Student should remain at a residential treatment center. (FOF 59) The opinions of LEA, SEIF, and Special School Principal were given less weight by this Hearing Officer than the opinions of the SLP, Doctor, BCABA and Parents who all have first-hand knowledge of Student and Student's needs on a day-to-day basis.

When determining the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.⁴¹ At the time that the May 17, 2023 IEP was written, in July 2023 when District staff visited Student at RTF, and currently, Student could not and cannot remain clothed long enough to be transported, cannot be safely transported and cannot be around other students without escalating. (FOF 25; 24; 22) RTF's 24-hour multidisciplinary team is necessary to redirect Student's aggression and self-injury, to maintain the tissue damage to Student at a minimum; and to support Student in performing any ADLs unassisted, in addition to keeping Student safe from the health hazard if spontaneous toileting inappropriately/freely on the floor. (FOF 29) Student continues to require 1:1 support and supervision from trained staff members during all waking hours to maintain safety. (FOF 29) Student does not tolerate change very well and is easy to frustrate so things must be taken slowly

⁴¹ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.116

with Student. (FOF 20) Changes in environment hinder Student's ability to learn. (FOF 20) Student's IEP does not address Student's need for learning in a 24/7 environment. The meeting held on 4/17/2023 concluded with the recommendation from Student's psychiatrist that Student should continue with the current treatment and arrangements at RTF. (FOF 33)

Therefore, Student's IEP, and the District's placement of special school, does not give consideration to the potential harmful effect on Student, should Student be removed from RTF, nor does it give consideration to the quality of services of a 24/7 placement at a residential treatment center that Student needs.

Student has received significant educational benefits from RTF based on the following findings: that Student has made progress with communication, receptive and expressively since admission; that Student's ability to accept alternatives has gradually increased; that Student has made progress in receptive communication when engaged with a communication partner or the person Student is working with; that Student is now very aware and understands just about everything going on around Student; and that Student has also had an increase in vocalizations. (FOF 14) Additionally, as of October 2023, Student was able to: (1) identify Student's name from a field of two choices when provided full physical prompts; (2) identify the colors red, green and blue when provided full physical prompts; and (3) demonstrate an ability to attend preferred sensory items for 15 seconds without redirection. (FOF 17) This is improvement from the educational progress reported as of May 15, 2023 that states Student's progress included: (1) Student made progress using visual supports to request desired items and activities; (2) Student was able to use mands⁴² and visual supports to request items; (3) With nonverbal prompting, Student was able to sort colors from a field of two and identify the number 1; (4) With nonverbal prompting, Student was able to participate in techniques that reduce germs and illness. (FOF 17)

Therefore, Student's IEP with regard to placement in the least restrictive environment, and District's placement of special school is not reasonably calculated to enable Student to make progress in light of Student's circumstances as required by the IDEA.⁴³ Furthermore, Student requires a residential placement to obtain an educational benefit under the IDEA.

⁴² "Mand" or "manding" is a request for something wanted or needed, or a request to end something undesirable.

⁴³ *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 387, 137 S. Ct. 988, 992, 197 L. Ed. 2d 335 (2017).

II.

If placement at the District Special School is not an appropriate educational placement for the student, is the appropriate educational placement residential placement at Residential Treatment Facility (RTF) paid by District?

District argues that Student's residential placement at RTF is necessitated by medical, rather than educational concerns because Parents stated that a residential treatment center is necessary because they are unable to maintain the student at their home and because to release Student would be against medical advice. District argues that Parents failed to provide notice to District that they were placing Student in a private facility and Parents have never enrolled Student in a District school. (HO-18)

Parents argue that a residential placement is necessary for Student's educational progress because Student cannot generalize what is being learned outside of services, therefore Student needs education in a natural environment 24 hours a day, seven days a week to make any educational gains.

A. Medical or Educational Purpose

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.⁴⁴

If a private-school placement is a residential facility, the placement is appropriate only if it is “ ‘necessary to provide special education and related services.’ ”⁴⁵ The requirement that the residential placement be necessary furthers the IDEA's purposes of assuring that “children with disabilities, including children in ... private institutions ..., are educated with children who are not disabled,” and that “separate schooling ... occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”⁴⁶ Whether a residential placement is necessary to provide special education and related services—that is, whether the “student is incapable of deriving educational benefit outside of a residential placement”—is ultimately a question of fact.⁴⁷

The analysis must focus on whether [the residential] placement may be considered

⁴⁴ 20 U.S.C. § 1412(a)(1), 1412 (a)(10)(B); 34 C.F.R. § 300.104

⁴⁵ *B.S.*, 82 F.3d at 1500 (quoting 34 C.F.R. § 300.302 (1996) (since recodified at 34 C.F.R. § 300.104 (2009))).

⁴⁶ 20 U.S.C. § 1412(a)(5)(A).

⁴⁷ *Ashland Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1009 (9th Cir. 2009)

necessary for *educational* purposes.⁴⁸ (emphasis added). If “the placement is a response to medical, social, or emotional problems ... quite apart from the learning process,” then it cannot be considered necessary under the IDEA.⁴⁹ Educational benefit is not limited to academic needs but includes the social and emotional needs that affect academic progress, school behavior, and socialization. The student's IEP defines what goals are relevant in providing the measure of whether a student is getting an educational benefit in the placement.⁵⁰

“Courts have concluded that residential placement is necessary to provide a severely autistic child with an appropriate education. *See, e.g., Stacey G. v. Pasadena Indep. School Dist.*, 695 F.2d 949 (5th Cir.1983); *Drew P. v. Clarke County School Dist.*, 676 F.Supp. 1559 (M.D.Ga.1987). The focus in determining whether residential placement is necessary must be on whether the placement is required for educational purposes apart from the medical, social or emotional problems that are segregable from the learning process. *Kruelle v. New Castle County School Dist.*, 642 F.2d 687, 693 (3d Cir.1981); *Vander Malle v. Ambach*, 667 F.Supp. 1015 (S.D.N.Y.1987).”⁵¹ In *Ash v. Lake Oswego Sch. Dist. No. 7J*, 766 F. Supp. 852 (D. Or. 1991), **aff’d and remanded**, 980 F.2d 585 (9th Cir. 1992), the court found that an appropriate education for that student was one what would make it possible for the student to be successful outside of a classroom setting. In that case, the evidence showed that an appropriate education for that student is one that only a twenty-four-hour-a-day, seven-day-a-week educational environment can provide. *Id.* at 865. Further, that student’s medical, social and emotional problems were so severe that they were not segregable from his learning process and therefore the residential placement was required for educational services. *Id.* Daily living skills, such as toileting, eating and dressing, could only be taught to him and reinforced in the consistency of a residential setting. *Id.*

ASD is defined under the NAC as a condition which significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner, and adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both. (FOF 1) Student has severe impairments with self-care skills

⁴⁸ *Clovis Unified School District v. California Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir.1990)

⁴⁹ *Ashland Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1010 (9th Cir. 2009)

⁵⁰ *Cnty. of San Diego v. California Special Educ. Hearing Off.*, 93 F.3d 1458, 1467 (9th Cir. F1996)

⁵¹ *Ash v. Lake Oswego Sch. Dist. No. 7J*, 766 F. Supp. 852, 862 (D. Or. 1991), **aff’d and remanded**, 980 F.2d 585 (9th Cir. 1992)

and ADLs and needs close physical assistance with all self-care skills. (FOF 12) Because of the combination of Student's substantial social and emotional problems that interfere with the ability to learn because of having a severe form of autism which is accompanied by significant communication deficits, Student needs a greater degree of consistency than many other handicapped children, and full-time care is necessary to allow Student to learn. (FOF 11)

ANALYSIS

Past attempts to educate Student in the home setting, and even at Behavioral Hospital were unsuccessful. (FOF 3, 6) Behavioral Hospital was not sufficient at managing Student in the community or Parents' home. (FOF 6) In *Clovis*, the Ninth Circuit's analysis focused on the finding that the student was hospitalized because of an 'acute' psychiatric crisis and therefore the student was hospitalized primarily for medical, i.e. psychiatric reasons, therefore hospitalization was not a 'related service' for which the school district was responsible under the IDEA.⁵² While Student's early hospitalizations between October 2021 and January 2022 might be considered similar to the hospitalization in *Clovis*, Student's placement at RTF in September 2022 was because RTF has more special education and clinical resources that were needed in order to stabilize Student's dangerous behaviors in order to have Student safely managed in a community school and eventually home. (FOF 6) The RTF's D-PBIS Autism program teaches effective communication, social skills, independence, and safety through various interventions including visual supports, reinforcement, nonverbal prompting, and antecedent manipulation. (FOF 9)

While the RTF does provide for Student's medical needs as a licensed hospital, (FOF 9) RTF provides for Student's educational needs through the school on campus, the ABA services provided consistently throughout the day, a direct care professional, occupational therapy and speech. (FOF 9) Student receives full-time educational services provided daily as defined by the school calendar. (FOF 16) Student is provided academic and IEP related tasks to be completed during the school day while not in the school setting. (FOF 16) When Student is unable to make it to the classroom, the schoolwork is being brought to Student to be taught. (FOF 16) The special education teacher drops off the schoolwork, and the behavior analyst and teacher instruct the direct care staff to complete the schoolwork with Student. (FOF 16) A supervisor ensures that the schoolwork is being done through a schoolwork log, and that's sent back to the special education

⁵² *Clovis Unified School District v. California Office of Administrative Hearings*, 903 F.2d 635, 645 (9th Cir.1990)

teacher for review and feedback. (FOF 16) The special education teacher modifies the academic plan as she sees fit in consultation with the behavior analyst. (FOF 16) They also have speech language therapists, OT therapists and teachers that come to Student. (FOF 16) RTF can continue to educate Student without Student getting dressed, and if Student disrobes, RTF is designed to allow Student to remain on campus if Student disrobes and then go back to school once clothed and regulated for multiple times in a single day if needed. (FOF 11, 15)

District's policy does allow a one-on-one aide to help a parent get a child into the bus so long as it is not violate District's policy regarding physical, mechanical and aversive restraints. (FOF 66) That one-on-one aide will not be allowed to help the Parents get Student get dressed if Student disrobes before being placed on the bus, and if Student is not dressed, Student will not be allowed to ride disrobed on the bus. (FOF 66) If it becomes necessary to transport Student back home, Special School cannot transport Student unless it is the regular transportation time for Student. (FOF 81)

Similar to the student in *Ash*, Student has not shown that Student can generalize by learning at school during a six-hour school day and applying it at home or community outside of school hours like most students can. (FOF 11) For Student to learn communication, self-help skills, academics, even showering, Student needs to be taught seven days a week from wake up until bedtime. (FOF 11) Student has substantial medical, social and emotional problems that interfere with the ability to learn because of having a severe form of autism which is accompanied by severe communication deficits. (FOF 11) Student needs a consistent environment to learn. Student does not have the ability to learn in a home environment. (FOF 15) Student cannot be managed safely in a lower level of care without the kind of intensive multidisciplinary treatments, high degree of structure, clinical supports and direct care supports that Student receives at RTF. (FOF 15) Education can only be taught to Student and reinforced through the consistency of a 24/7 residential setting. (FOF 15) SLP informed the IEP Team that after what she saw in the Parents' home and after reviewing the tremendous progress Student has been making in treatment, she believes that Student should remain at a residential treatment center. (FOF 59) The opinions of LEA, SEIF, and Special School Principal were given less weight by this Hearing Officer than the opinions of the SLP, Doctor, BCABA and Parents who all have first-hand knowledge of Student and Student's needs on a day-to-day basis.

Student has not yet made sufficient progress related to the self-injurious and aggressive behaviors to be discharged. (FOF 13, 29) You can't divorce Student's disrobing from the effective reinforcers, and you can't divorce the effective reinforcers from the self-injurious behaviors and aggression. (FOF 13) A significant factor in the reduction of Student's episodes of physical aggression and self-injurious behaviors is because there has been a trained multidisciplinary team within arm's length 24-hours a day to redirect Student's aggression and self-injury before the behaviors go too far, as well as 24-hours a day nursing to assess injuries caused to Student, and without a trained multidisciplinary team to redirect the aggression and self-injury, the tissue damage to Student and others would be far worse. (FOF 29, footnote 12)

Therefore, Student's residential placement at RTF is required for educational services apart from the medical, social or emotional problems segregable from the learning process.

B. Notice and Reimbursement/Costs

Reimbursement for a residential facility can only be granted when the school district fails to provide a FAPE and that facility is necessary to provide special education and related services.⁵³

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.⁵⁴ The cost of reimbursement may be reduced or denied if: (i) at the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (ii) at least ten (10) business days (including any holidays that occur

⁵³ 34 C.F.R § 300.104; 34 C.F.R § 300.148

⁵⁴ 34 C.F.R § 300.148 (c).

on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described directly herein above.⁵⁵

The Supreme Court held in *Burlington and Florence County School Dist. Four v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed.2d 284, that § 1415(i)(2)(C)(iii) authorizes courts to reimburse parents for the cost of private-school tuition when a school district fails to provide a child a FAPE and the private-school placement is appropriate, regardless of whether the child previously received special-education services through the public school.⁵⁶ This Hearing Officer has already found that District failed to provide Student a FAPE because Student's May IEP with regard to placement in the LRE of special school was not reasonably calculated to enable Student to receive educational benefits in light of this Student's circumstances, and residential placement at RTF is appropriate for this Student. Therefore, the argument by District that Petitioners are attempting to expand the remedy to issues beyond educational services need not be addressed. (HO 18)

District's next argument is that reimbursement is not required because Petitioners failed to enroll Student in a District school. District's argument fails because Parents did not remove Student from public school. Here, Student was assessed and determined to be eligible through District at age 3 by a child find team. (FOF 1) It is Student's current May 17, 2023 IEP prepared by the District that is at issue. Removal and not enrollment, establishes the regulatory benchmark when determining compliance with the parental notice provision.⁵⁷

i. Notice

Parents objected to placement in the May IEP, stating that Student needed to remain at RTF. (FOF 58) District objected to Parent 1's testimony that Student's placement prior to the May IEP was RTF. This Hearing Officer made a finding that Student's placement in the 2022 IEP was self-contained program. (FOF 34) Therefore, District's objection was properly addressed herein above. While Parents did not state with particularity that they were rejecting the IEP to provide FAPE to their child or their intention to enroll in RTF at public expense, District was aware that Parents believed that "Student's placement would remain" RTF⁵⁸ prior to the May IEP meeting, were aware during the IEP meeting that Parents objected to placement in a special school and were

⁵⁵ 34 C.F.R § 300.148 (d).

⁵⁶ *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2486, 174 L. Ed. 2d 168 (2009)

⁵⁷ See *Letter to Miller*, 55 IDELR 293 (OSEP 2010)

⁵⁸ Student received education services at the residential treatment center as a result of the Settlement Agreement. (R-6)

aware that Parents wanted Student to remain at RTF, and Parents subsequently filed their Complaint on 5/25/2023 stating the same. Parents did not remove Student from a public school. (FOF 34, 58) (HO-1)

ii. Reimbursement/Cost

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.⁵⁹

Congress sought to ensure that children confined to hospitals or homes for either physical or mental illnesses would not be denied an education. School districts, therefore, are required to send tutors and other trained specialists to both homes and hospitals to meet the educational needs of handicapped children. However, section 1401(16) does not require school districts to pay the costs of a child's room and board at home and similarly does not require them to pay the room and board costs at a hospital.⁶⁰

RTF's fees for education as well as the fees for 1:1 and Occupational, Physical and Speech Therapy Services are distinguishable from the fees for the residential treatment. (FOF 91) The RTF's fees for residential treatment do not delineate the cost of room and board for the educational versus the medical services. (FOF 91)

Petitioners were placed on notice on November 9, 2023 that they would need to provide evidence supporting the appropriateness of the relief sought. (Documents evidencing the cost of the RTC.) (HO-20, 36) The parties' respective requests for a continuance of the decision date were granted on December 21, 2023. (HO-36) Petitioners' P-6 was entered into evidence on the final day of hearing. Because there was not sufficient evidence presented related to the room and board for educational services only, non-medical care and room and board cannot be determined. This Hearing Officer must use the evidence that is available to make any order pertaining to cost/reimbursement of the RTF.

This Hearing Officer took into consideration District's objection to the assertion that a substantial change in the due process request, based on the Petitioner's "proposed resolution" stated that District "shall only be responsible for providing for the education portion of the RTF,

⁵⁹ 20 U.S.C. § 1412(a)(1), 1412(a)(10)(B); 34 C.F.R. § 300.104

⁶⁰ *Clovis Unified Sch. Dist. v. California Off. of Admin. Hearings*, 903 F.2d 635, 647 (9th Cir. 1990)

as Nevada Medicaid provides for the residential portion of the RTF.” (HO-1) This Hearing Officer issued a Second Prehearing Conference Order on 11/09/2023 that set forth the Petitioners’ Proposed Remedy: Student’s placement should be Residential Placement at RTF paid by District.” (HO-20) The parties were given five (5) business days to advise this Hearing Officer of any omission or misstatement. (HO-20) District did not advise this Hearing Officer of any omission or misstatement in the Order. Further, the District made it clear on several occasions that they would be required to pay for the entire RTC. During the last day of hearing, this Hearing Officer made it clear that this Hearing Officer does not have jurisdiction over Medicaid or Insurance or anything that District does after a decision is made and stated that District is well within their right to work with agencies that provide support to share in the cost of placement.⁶¹

ORDER

Based upon the above Findings of Fact and Conclusions of Law, **it is hereby ordered:** that Student’s placement shall be RTF.

It is further ordered: that District is to pay for Student’s RTF fees related to the education in the amount of \$45,488, Student’s 1:1 fees during the school hours (\$43.25 x 6 x 200) in the amount of \$51,900, and Student’s Occupational, Physical and Speech Therapy Services in the amount of \$7,915.20. Therefore, District shall make payment totaling \$105,303.20 within thirty (30) days of the issuance of this Decision directly to RTF. Sufficient evidence was not provided to establish the amount of the non-medical care and room and board.

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision by filing with the Nevada Department of Education, Superintendent of Public Instruction, a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within 30 days after receiving the decision. A party to the hearing may file a cross appeal by filing a notice of cross appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within 10 days

⁶¹ 34 CFR § 300.103.

after receiving notice of the initial appeal. At the parties' request, this decision is being delivered to the parties electronically by e-mail. Receipt of this Decision and Order will be determined by the date of actual delivery of the email noted by the 'delivery receipt' this Hearing Officer receives and provides to the parties after issuance of the decision.

Dated: February 2, 2024

/s/ Audrey J. Beeson

Hearing Officer

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