

REQUEST FOR 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 Parent

Petitioner,

Date: July 8, 2020

v.

SCHOOL DISTRICT

Respondent.

Hearing Officer: Cara Brown, Esq.

DECISION AND ORDER

INTRODUCTION AND BACKGROUND

Before the undersigned Impartial Hearing Officer (“IHO”) is Petitioner’s Amended Request for Due Process Hearing (“Amended Complaint”) filed February 20, 2020.

Parent filed an initial request for an impartial due process hearing (“Complaint”) on November 19, 2019. By letter dated November 20, 2019, and sent to Parent by certified mail, the School District, among other things, acknowledged receipt of the Complaint, set forth the rights of parents who are parties to a due process hearing; referenced the *Explanation of Procedural Safeguards Available to Parents of Children with Disabilities* enclosed with the letter; and explained the mediation system provided by the Nevada Department of Education as an alternative to due process hearings.

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution. See *Letter to Schad* (FPCO 12/23/04)

1 Also, after the filing of the Amended Complaint and prior to the Hearing and without waiving
2 any arguments in support of its position that it provided Student a free appropriate public education
3 (“FAPE”), the School District agreed to:

- 4 • give Parent \$2,200 for an independent educational evaluation (“IEE”) for the Student;;
- 5 • provide Occupational Therapy for the Student; and
- 6 • consider the results of the IEE when formulating a functional behavior assessment
7 (“FBA”) and behavioral intervention plan (“BIP”) for the Student.
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10 See HO Exhibit 2-Response to Amended Complaint. See also Transcript-Day #1 at page 16, lines
11 7-12.

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13 **HEARING**

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15 The Student’s Due Process Hearing was held June 10 and 11, 2020. Present on behalf of the
16 Student was the Student’s mother (“Parent”), who represented herself. Present on behalf of the School
17 District was counsel for the School District and two Compliance Monitors from the School District’s
18 Office of Compliance and Monitoring.

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20 **Documentary Evidence Submitted and Admitted**

21 Evidence submitted by the School District prior to the Disclosure Date were Exhibits D-1 through D-16.

22 School District Exhibits admitted were:

23 Exhibits D-1 through D-10

24 Exhibits D-12 and D-4

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1 Petitioner did not submit any exhibits by the disclosure due date; but did submit one document
2 at the Hearing, which document was marked P-1. There was no objection to the admission into
3 evidence of Exhibit P-1 and the inclusion of that exhibit at the end of Exhibit D-10.
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5 Petitioner’s Exhibit(s) admitted were:

6 Exhibit P-1 (include as part of Exhibit D-10)
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8 The Hearing Officer offered the following exhibits. Neither party objected to their introduction
9 into evidence. The Hearing Officer exhibits admitted into evidence are marked as follows:

10 HO Exhibit 1 – Amended Complaint
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12 HO Exhibit 2 – Response to Amended Complaint
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14 HO Exhibit 3 – Revised Pre-Hearing Report and Order
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16 HO Exhibit 4 – Order Setting Key Dates dated April 14, 2020; and
17 Order Setting Hearing Location, Time and COVID-19 Safety Requirements
18 dated May 26, 2020

19 **Witnesses**

20 Witnesses identified in the School District’s five business-day disclosures and who testified at
21 the Hearing were:

- 22 1. Principal, School #1 (“Principal”)
- 23 2. Special Education Instructional Facilitator
- 24 3. Primary Autism Teacher, School #1 (“Primary Autism Teacher”)
- 25 4. Primary Autism Teacher - School #2
- 26 5. Speech Language Pathologist
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1 **REQUESTED REMEDIES**

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3 Parent requests the following remedies:

- 4 • An IEE
- 5 • Placement in a self-contained primary autism program on one of two special education campuses
6 in the School District
- 7 • Occupational Therapy
- 8 • A FBA
- 9 • A BIP
- 10 • A 1:1 Aide, to assist in all school needs
- 11
- 12 • Compensatory education for the following periods (though not requested in the Amended
13 Complaint, compensatory education was discussed during the course of the pre-hearing
14 conferences)
 - 15 ○ from November 21, 2019, the date he was withdrawn from School #1, to February 4,
16 2020, the date he began attending School #2;
 - 17 ○ from February 7, 2020, his last day of attendance at School #2, to March 16, 2020, the
18 date schools in the School District closed due to the COVID-19 virus; and
 - 19 ○ from March 16, 2020 to the present.

20 As noted above, prior to the Hearing and without waiving any arguments in support of its position that it
21 provided Student a FAPE, the School District agreed in its Response to the Amended Complaint to:

- 22 • give Parent \$2,200 for an IEE for the Student;;
- 23 • provide Occupational Therapy for the Student; and
- 24 • consider the results of the IEE when formulating a FBA and BIP for the Student.

25 The only remaining requested remedies are: 1) a one-to-one aide; 2) placement of the Student in an autism
26 program on a special campus; and 3) compensatory education.

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FINDINGS OF FACT

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1. The Student is a 6-year-old male who has been diagnosed with Autism Spectrum Disorder (“ASD”). See Exhibit D-5 at page 19.

2. The Student was initially referred for special education and related services on October 10, 2017 in California. See Exhibit D-14 at page 4.

3. In February 2018, after receiving Parent’s consent to evaluate, the Student’s California school district evaluated the Student to determine his eligibility. See Exhibit D-14 at pages 5-7. After assessments of the Student, the Student’s California IEP team determined the Student’s Primary Disability was “Autism” and his Secondary Disability was “Speech or Language Impairment.” Id.

a. According to the Student’s California IEP, the Student’s placement was a Special Day Class program with designated services in speech and language. See D-14 at page 29. The Student did not have a Behavioral Intervention Plan. No Supplementary Aids and Services and other Supports were determined to be needed and thus were not provided. See D-14 at page 26. Insofar as Special Education and Related Services, the IEP indicates the Student is to receive Specialized Academic Instruction in a “Separate classroom in a public integrated facility” (79% of the time); and physical education, lunch, recess, assemblies and field trips with his general education peers in a regular classroom (21% of the time). See D-14 at page 26 and page 28.

4. On February 21, 2019, approximately one and one-half years after enrolling the Student in an elementary school in California, Parent requested to: 1) move Student to a different school in the same school district in California; 2) have additional assessments conducted; and 3) receive an independent educational evaluation. The same remedies Parent is requesting here in Nevada.

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1 **Nevada – Eligibility Determination**

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3 5. In August 2019, Parent enrolled the Student in School #1, a general education campus in the
4 School District. Pursuant to Parent’s written consent dated August 22, 2019, the Student was temporarily
5 placed in a self-contained autism program which provided services consistent with those he received under
6 his California IEP pending his eligibility evaluation. See Exhibits D-3, D-14 and D-5.

7 6. After receiving Parent’s written consent to evaluate the Student, (see Exhibit D-4 at page 2), the
8 Student was evaluated by a Multidisciplinary Team (“MDT”) which included the Parent, the Principal,
9 the Student’s Primary Autism Teacher a/k/a Special Education Teacher, the Student’s General Education
10 Teacher, the Student’s Speech Therapist and the School Psychologist. See Exhibit D-5 at page at page 7.

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12 7. Current concerns/deficits noted by Parent were expressive communication, academics, behavior,
13 social skills, interaction and play. Id.

14 8. Members of the MDT provided input regarding the scope of the Student’s evaluation. They
15 reviewed data from available records, along with any other data deemed appropriate to inform their
16 decisions. Id.

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18 9. Following is a summary of the Student’s assessments, reviews, observations and evaluations and
19 the results as set forth in the Student’s MDT Evaluation Report at Exhibit D-5 pages 7-18:

20 a. *English Proficiency* – Student speaks English and Greek in the home. It was determined that
21 “English proficiency does not appear to be a controlling factor” in the Student’s eligibility profile;

22 b. *Health/Medical Status/Developmental History* – Parental consent forms for this assessment were
23 not returned to school so information regarding the Student’s health/medical status/developmental history
24 was taken from the Multi-Disciplinary Evaluation Report prepared by the Student’s California school
25 district dated February 15, 2018.

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1 c. *Cognitive ability*

2 i. Review the Developmental Assessment of Young Children Second Edition (DAYC-2)
3 administered to the Student in 2018 by the California school district;

4 ii. Administer the Differential Ability Scales 2nd Edition – Early Years upper level battery.

5 The cognitive tests show the Student’s overall cognitive abilities are “below the average range.”
6

7 d. *Academic Achievement*

8 The following assessments were administered:

- 9 • Measures of Academic Progress (“MAP”) interim computerized assessments – The Student
10 scored within the “unsatisfactory range” for beginning of year grade level reading and math skills
11 relative to common core standards.
- 12 • I-Ready computerized benchmarking - the Student fell in the “below average range” for reading
13 and math.
- 14 • AIMSWEB PLUS Early Literacy benchmarking system - the Student fell within the “well below
15 average range” for both reading and math.
- 16 • Kaufman Test of Educational Achievement, Third Edition, along with certain supplementary
17 subtests - the Student scored in the “below average range” in the areas of basic reading skills,
18 reading fluency, reading comprehension, writing, math calculation, math reasoning.
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21 See Exhibit D-5 at page 12.
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23 e. *Social/Emotional/Behavioral Assessments*

24 Based on the findings, it was determined that the Student’s “emotional functioning may be the primary
25 impact of his educational performance.”
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- 1 • Reviewed Autism Diagnostic Assessment of Young Children Second Edition administered in
2 February 2018 by the Student’s California school district’s school psychologist – the Student
3 demonstrated characteristics of a child with autism.
- 4 • Reviewed Parent administered and completed Autism Spectrum Rating Scales (February 2018).
5 The results showed the Student “may have difficulty using appropriate verbal and non-verbal
6 communication for social contact, engages in unusual behaviors, has difficulty relating to children,
7 has difficulty relating to adults, has difficulty providing appropriate emotional responses to people
8 ins social situations, has difficulty tolerating changes in routine, overreacts to sensory stimulation
9 and has problems with inattention and/or motor and impulse control.
- 10 • Classroom Observation – The Student was observed within his special education and general
11 education classrooms. He remained seated during the lesson; was generally attentive; followed
12 directions; and stayed on task. The Student was not observed to engage in any communication
13 with his peers during the lesson.
- 14 • Testing – The Student did not engaged in reciprocal communication with the examiner; did not
15 provide eye contact; answered most questions with one word or short phrases. The Student was
16 observant of noises outside the classroom. Frequent breaks were provided between subtests;
17 when tasks of increased difficulty were given, the Student asked to go back to his classroom.
- 18 • Reviewed Special Education Teacher Report dated September 23, 2019 – The Student “follows
19 all classroom rules and routines without any significant prompting.” The Student “does not have
20 any problems transitioning from one activity to another.” The Student “is able to self-advocate
21 in different situations such as asking for help with milk at lunch or if he wants or needs something
22 in the classroom.” The Student “has been able to make friends and has been able to form solid
23 connections with his peers within the special education classroom.”
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See Exhibit D-5 at pages 12-13.

1 f. *Adaptive Behavior Assessment System – Third Edition completed by Parent* shows the Student
2 has limitations in the areas of health and safety, self-care, social, leisure and communication.

3 g. *Sensory Regulation; Self-Help/Independent Living; Behavior Problems; Symbolic Skills –*
4 *completed by Parent* – Parent reported the Student would tantrum, throw objects or grab at people or
5 objects; have difficulty during transitions and with changes in routine; have difficulty controlling his
6 feelings and temper when not getting his way.
7

8 According to the Student’s California IEP, “during play-based assessment, [the Student]
9 demonstrated difficulty with responding to play, using social phrases and difficulty with turn taking.”

10 10. *Speech, Language, Communication Skills* (September 26, 2019) – areas of concern included
11 expressive, receptive and pragmatic language. Based upon the information the Student demonstrated
12 “limitations in the area of communication skills.” The Student had “below average verbal reasoning skills,
13 struggled with the ability to understand two step verbal directions and provide vocabulary orally.”
14 Additionally, the Student “demonstrated below average reading decoding, reading comprehension, math
15 computation and applications, spelling and written expression abilities.”
16

17 11. On October 21, 2019, the MDT, including Parent, signed-off on the MDT Evaluation Report and
18 the Multidisciplinary Eligibility Team, which also included Parent, determined the Student was eligible
19 for special education under the category of Autism Spectrum Disorder (“ASD”) and determined that
20 because of the Student’s ASD, the Student needs special education and related services. See Exhibit D-
21 5 at pages 17 and 19.
22

23 **IEP**
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25 12. After the MDT signed off on the MDT Evaluation Report, the School District notified Parent by
26 telephone of its desire to hold a meeting to develop an initial IEP for the Student and to determine the
27 Student’s educational placement. See Exhibit D-7.
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1 13. On October 28, 2019, the School District provided a second notice to Parent, this time a written
2 notice titled *Parental Prior Notice – Proposed Meeting Arrangement* which notified Parent that an initial
3 IEP meeting had been tentatively scheduled for November 6, 2019. The notice, also informed Parent of
4 Parent’s right to invite persons who have knowledge or special expertise regarding the Student; referred
5 Parent to the *Parental Prior Notice* for information about procedural safeguards available under the IDEA;
6 and, noted the following persons may be in attendance: the Principal, the Student’s Special Education
7 Teacher and General Education Teacher, the Student and the Student’s Speech Therapist. See Exhibit D-
8 7 at page 15.

10 14. On November 6, 2019, the initial IEP meeting was held as scheduled. Participating in the meeting
11 were: Parent, the LEA representative, the Student’s Special Education teacher, the Student’s Regular
12 Education Teacher and the Student’s Speech/Language Therapist (collectively, “IEP Team”). Exhibit D-
13 7 page 3.

15 15. Parent acknowledged receipt of the statement of procedural safeguards under the IDEA and that
16 the rights had been explained to her in her primary language.

17 16. The Student’s *Present Levels of Academic Achievement and Functional Performance* are detailed
18 in the IEP and are not disputed in this due process hearing. See D-7 at pages 5-6. See also Amended
19 Complaint.
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21 17. The Student’s *Strengths, Interest and Preferences and Parent Educational Concerns* were also
22 detailed and are not disputed in this due process hearing. See D-7 at page 6. See also Amended Complaint.

23 18. Insofar as *Special Factors*, it was determined that:

- 24 • the Student’s behavior does not impede his learning or the learning of others;
- 25 • the Student did not require assistive technology devices;
- 26 • the Student did not have limited English proficiency; but did have communication needs that require
27 IEP services;
- 28

- 1 • the Student is not blind or visually impaired and he is not deaf or heard of hearing; and
- 2 • it was further noted that the Student does not have a Specific Learning Disability and Dyslexia.

3
4 See Exhibit D-7 at pages 7-8.

5 19. *IEP Goals* were set for the Student in the following areas: 1) communication; 2) social
6 communication; 3) reading; 4) written expression; 5) math; and 6) social/emotional/behavioral. See
7 Exhibit D-7 at pages 8-10.

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9 20. The following *Special Education Services and Specially Designed Instruction* was developed for
10 the Student:

- 11 • social emotional/behavioral instruction - 155 minutes per week (“mpw”) in a self-contained
12 setting;
- 13 • social emotional/behavioral instruction during specials, lunch and recess – 400 mpw in a general
14 education setting;
- 15 • social/behavior skills – 150 mpw in the general education setting;
- 16 • math - 370 mpw in a self-contained setting;
- 17 • reading 370 mpw in a self-contained setting; and
- 18 • written expression - 370 mpw in a self-contained classroom.

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21 See Exhibit D-7 at page 11.

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23 21. Regarding *Supplementary Aids and Services*, the IEP requires the Student receive:

- 24 • clear and concise instruction;
- 25 • positive verbal reinforcement for desired behaviors in a self-contained classroom; and
- 26 • text to speech during MAPS testing.

27
28 Id.

1 22. The *Related Services* identified in the IEP were:

- 2 • Speech/Language and
- 3 • Transportation.

4
5 See Exhibit D-7 at page 13.

6 23. The IEP placement for the Student was 70% in a self-contained program and 30% in a regular
7 education environment. See Exhibit D-7 at page 13.

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9 24. There was a disagreement between the Parent and the other IEP Team members (“School
10 Officials”) as to whether the Student’s self-contained program should be in an autism program or a
11 Specific Learning Disability (“SLD”) program. Parent wants the Student to be placed in a self-contained
12 autism program on a special education campus; while the School Officials believe the Student does not
13 demonstrate behavioral difficulties at school that warrant him being placed in a self-contained autism
14 program or on a special education campus. See Exhibit D-7 at page 1.

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16 25. Due to the failure to reach a consensus, the School District provided Parent with a *Notice of Intent*
17 *to Implement IEP* dated November 6, 2019.

18 26. The *Notice of Intent to Implement IEP* noted the School Officials recommended a “lateral change”
19 in the Student’s placement from a self-contained autism program on a general education campus to a SLD
20 program on a general education campus. The recommendation was based upon “teacher observations and
21 daily behavior logs and the observation the [S]tudent does not demonstrate behavior difficulties within
22 the classroom or school environment.” The School Officials used as a basis for its action “formal and
23 informal assessments, parent input, teacher observations, student work samples, review of school records.”
24
25 Id.

26 27. The *Notice of Intent to Implement IEP* also notes the Parent wants the Student to “remain in autism
27 program due to behavior/social difficulties.” The School Officials rejected that option because
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1 “documentation[] shows the [S]tudent would benefit from a more academic based program with
2 appropriate social behaviors and peers to model from.” Id.

3 28. Due to Parent’s objection and withdrawal of the Student from School #1, the IEP which was
4 scheduled to be implemented on November 16, 2019 was not in fact implemented.

5 29. On November 19, 2019, Parent filed the Complaint to challenge the Student’s placement.

6 30. On November 21, 2019, Parent withdrew the Student from School #1 due to her concerns for his
7 safety. See Exhibit D-1, the Complaint and Amended Complaint.

8 31. Between August 22, 2019, the first day the Student attended School #1, and November 21, 2019,
9 the Student’s last day in attendance at School #1, the Student had 19 absences, 11 of which were
10 unexcused absences. See Exhibit D-1. See also Transcript – Day 2 at page 42, line 16.

11 32. There is no evidence the Student received any services between November 21, 2019, the date he
12 was withdrawn from School #1, and February 4, 2020, the date he began attending School #2.

13 33. On February 4, 2020, over two months after Parent withdrew the Student from School #1, Parent
14 enrolled the Student in School #2 which is a general education campus in the Student’s home school zone.
15 The Student attended School #2 for three (3) days and thereafter Parent withdrew him from school, again
16 for what Parent described as safety concerns. See Amended Complaint.

17 34. According to the Student’s Primary Autism Teacher at School #2, the Student was kind and verbal.
18 The Student would ask questions and follow procedures; would ask where to go for specials; would say
19 what he wanted and was pretty good when following directions. The Student would walk in line and
20 follow other directions and procedures in the classroom. Transcript – Day #2 – page 143, lines 13-21.
21 She was in the process of establishing procedures and testing the Student when he stopped coming to
22 school. Id.

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1 35. On one of the three days the Student attended School #2, during what his teacher presumes was
2 a game of tag on the playground, the Student was scratched by another student. See Transcript – Day #2
3 at page 141, lines 22-25 and page 142 at lines 1-25.

4 36. According to the Student’s Primary Autism Teacher at School #2, “[m]y class this year is really
5 a tough one. I have a lot of behavior problems and sometimes when they play, it’s kind of rough.” See
6 Transcript – Day #2 at page 142, lines 17-21.

7 37. February 7, 2020 was the last day the Student attended school in the School District. See Exhibit
8 D-1.

9 38. Parent thereafter withdrew the Student from School #2 because of her concern with Student’s
10 safety. See Amended Complaint.

11 39. There is no evidence the Student received any services since Parent withdrew him from School
12 #2.

13 40. Parent filed an Amended Complaint on February 19, 2020 raising the issues described above and
14 analyzed below.

15 41. The undersigned IHO takes judicial notice of the fact that all schools in the state of Nevada were
16 closed by gubernatorial decree on March 16, 2020 and remained closed through May 20, 2020, the end of
17 the 2019-2020 school year.

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21 **CONCLUSIONS OF LAW AND ANALYSIS**

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23 1. Pursuant to NRS 388.467, “[w]henver a due process hearing is held pursuant to the Individuals with
24 Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 et seq., regarding the identification,
25 evaluation, reevaluation, classification, educational placement or disciplinary action of or provision
26 of a free appropriate public education to a student with a disability; and a school district is a party,
27 the school district has the burden of proof and the burden of production.

1 2. As the hearing officer assigned to this case, the undersigned IHO must base the decisions in this case
2 on the preponderance of the evidence and must grant such relief as the IHO determines is appropriate.”
3 *Kelby v. Morgan Hill Unified School District*, 959 F.2d 240, ___ (9th Cir. 1992).
4

5
6 **ISSUE #1: WHETHER THE STUDENT’S PRPOSED IEP IS INAPPROPRIATE BECAUSE IT**
7 **IS BASED ON ASSESSMENT RESULTS THAT ARE ALLEGEDLY INCORRECT AND**
8 **IGNORE PARENT’S CONCERNS REGARDING THE STUDENT’S BEHAVIOR**

9 1. Parent alleges in her Amended Complaint that the Student’s IEP was inappropriate due to
10 incorrect assessment results.

11 2. Parent further alleges that School #1 and the Student’s Primary Autism Teacher at School #1
12 “ignored [her] concerns in the evaluation [by] not properly assessing [the Student] exhibiting elopement
13 and behavioral issues.” See Amended Complaint. Other than the foregoing statement, Parent does not
14 specify in what respect the evaluation results are inaccurate. *Id.* Additionally, other than mentioning
15 elopement in the Amended Complaint, the IHO can find no mention of such behavior anywhere in the
16 admitted documentary evidence, in the testimony nor in the administrative record.
17

18 **Whether the Assessment Results are Inaccurate**

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20 3. NAC 388.387(3) sets forth the assessments and considerations that must be included when
21 evaluating students with autism. The IEP Team must:

22 (a) Assess the:

- 23 (1) Health and medical status;
24 (2) Developmental history, including, without limitation, the rate and sequence of development
25 and a clear statement of strengths and weaknesses;
26 (3) Cognitive abilities;
27 (4) Social and emotional condition in multiple settings;
28 (5) Academic achievement;
(6) Adaptive skills; and
(7) Speech, language and other communication skills,
of the pupil; and

(b) Consider the:

- 1 (1) Sensory regulation;
- 2 (2) Self-help and independent living skills;
- 3 (3) Behavior problems;
- 4 (4) Symbolic and imaginative play;
- 5 (5) Activities and special interests; and
- 6 (6) Motor skills,

7 4. A description of the assessments and considerations used to evaluate the Student are set forth in
8 a Multidisciplinary Evaluation Team Report (“MDT Evaluation Report”) dated October 18, 2019 and
9 includes each of the assessments and considerations required by NAC 388.387(3). See Exhibit D-5 at
10 pages 7-18.

11 5. Following is a summary of the Student’s assessments, evaluation tools and the results:

12 a. *English Proficiency* – Student speaks English and Greek in the home. It was determined that
13 “English proficiency does not appear to be a controlling factor” in the Student’s eligibility profile;

14 b. *Health/Medical Status/Developmental History* – Parental consent forms were not returned to
15 school so information regarding the Student’s health/medical status/developmental history was taken from
16 the Student’s Multi-Disciplinary Evaluation Report prepared by California school district and dated
17 February 15, 2018.

18 c. *Cognitive ability*

- 19 • The Developmental Assessment of Young Children Second Edition (DAYC-2) administered
20 to the Student in 2018 by the California school district was reviewed;
- 21 • the Differential Ability Scales 2nd Edition – Early Years upper level battery was administered.
- 22 • The cognitive tests showed the Student’s overall cognitive abilities are “below the average
23 range”.
- 24
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1 d. *Academic Achievement*

- 2 • Measures of Academic Progress (“MAP”) interim computerized assessments – The Student
3 scored “within the unsatisfactory range for beginning of year grade level reading and math
4 skills relative to common core standards.”
5
6 • I-Ready computerized benchmarking - the Student fell in the “below average range” for
7 reading and math. D-5 page 10.
8
9 • The Student fell in the below average range for reading and math.
10 • AIMSWEB PLUS Early Literacy benchmarking system - the Student fell “within the well
11 below average range” for both reading and math.
12 • Kaufman Test of Educational Achievement, Third Edition, along with certain supplementary
13 subtests - the Student scored in the “below average range” in the areas of basic reading skills,
14 reading fluency, reading comprehension, writing, math calculation, math reasoning. See
15 Exhibit D-5 at page 12.

16 e. *Social/Emotional/Behavioral Assessments* were performed as indicated below. See D-5 at pages
17 12-13. Based on the findings, it was determined that the Student’s “emotional functioning may be the
18 primary impact of his educational performance.” See D-5 at page 13.

- 19 • Autism Diagnostic Assessment of Young Children Second Edition administered in February 2018 by
20 the Palmdale School district’s school psychologist – the Student demonstrated characteristics of a
21 child with autism.
22
23 • Parent administered and completed Autism Spectrum Rating Scales (February 2018). The results
24 showed the Student “may have difficulty using appropriate verbal and non-verbal communication for
25 social contact, engages in unusual behaviors, has difficulty relating to children, has difficulty relating
26 to adults, has difficulty providing appropriate emotional responses to people in social situations, has
27 to adults, has difficulty providing appropriate emotional responses to people in social situations, has
28

1 difficulty tolerating changes in routine, overreacts to sensory stimulation and has problems with
2 inattention and/or motor and impulse control.

- 3 • Classroom Observation – The Student was observed within his special education and general
4 education classrooms. He remained seated during the lesson; was generally attentive; followed
5 directions; his behavior was on task. The Student was not observed to engage in any communication
6 with his peers during the lesson.
- 7
- 8 • Testing – The Student did not engaged in reciprocal communication with the examiner; did not
9 provide eye contact; answered most questions with one word or short phrases. The Student was
10 observant of noises outside the classroom. Frequent breaks were provided between subtests; when
11 tasks of increased difficulty were given, the Student asked to go back to his classroom.
- 12
- 13 • Special Education Teacher Report (September 23, 2019) – The Student “follows all classroom rules
14 and routines without any significant prompting.” The Student “does not have any problems
15 transitioning from one activity to another.” The Student “is able to self-advocate in different
16 situations such as asking for help with milk at lunch or if he wants or needs something in the
17 classroom.” The Student “has been able to make friends and has been able to form solid connections
18 with his peers within the special education classroom. See Exhibit D-5 pages 12-13.

19

20 f. *Adaptive Behavior Assessment System – Third Edition* completed by Parent shows the Student
21 has limitations in the areas of health and safety, self-care, social, leisure and communication. Pages See
22 Exhibit D-5 at 13-14.

23 g. *Sensory Regulation; Self-Help/Independent Living; Behavior Problems; Symbolic Skills*
24 completed by Parent indicates the Student would tantrum, throw objects or grab at people or objects.
25 Parent also reported difficulty during transitions and with changes in routine. Parent also reported the
26 Student has difficulty controlling his feelings and temper when not getting his way. See D-5 at page 15.
27

1 According to the Student’s California IEP, “during play-based assessment, [the Student]
2 demonstrated difficulty with responding to play, using social phrases and difficulty with turn taking.” See
3 Exhibit D-5 at page 15.

4 h. *Speech, Language, Communication Skills* (September 26, 2019) – areas of concern included
5 expressive, receptive and pragmatic language. Based upon the information the Student demonstrated
6 “limitations in the area of communication skills.” See D-5 at page 17.

8 The “final considerations” of the MDT were summarized as follows:
9

10 Results from evaluation completed by the [out-of-state school district] indicated
11 characteristics associated [the Student] demonstrated below average reading decoding,
12 reading comprehension, math computation and applications, spelling and written
13 expression abilities. Comparison of the Adaptive Behavior Assessment System Third
14 Edition rating scales completed by [the Student’s] parent in 2018 and 2019 indicate
15 some growth in the Conceptual and Practical Domains but do still indicate below
16 average adaptive skills when compared to same aged peers. [The Student\] qualifies
17 for special education services in the state of Nevada under Autism Spectrum Disorder.

18 See Exhibit D-5 at page 17.

19 6. NAC 388.340(5) provides, “[w]hen interpreting evaluation data to determine the eligibility of the
20 Student for special education and related services and programs of instruction and to determine the
21 educational needs of the Student, the School District shall: (a) draw upon information from a variety of
22 sources, including, without limitation, aptitude and achievement tests, input from the parent of the Student,
23 recommendations from the pupil’s teachers and information about the physical condition, social or
24 cultural background of the pupil and the adaptive behavior of the pupil; and (b) ensure that the information
25 obtained from sources pursuant to paragraph (a) is properly documented and carefully considered.”

26 7. The MDT Evaluation Report shows the MDT approached its interpretation of the evaluation data
27 in the manner required by NAC 388.340(5) in that the team drew upon information from a variety of
28 sources, including, without limitation, aptitude and achievement tests, input from the Student’s Parent,

1 recommendations from the pupil's teachers and information about the physical condition and social
2 background of the pupil and the adaptive behavior of the pupil. See Exhibit D-5 at pages 7-18.

3 8. With respect to Parent's concerns regarding the tantrum behavior she observed at home, the
4 School District's MDT noted the concern; considered the Student's 2018 MTD Report prepared by the
5 Student's out-of-state school district which indicated "[Parent] states that [the Student] has tantrums and
6 cries when trying to express himself or asked to share at home. She says he struggles to control his pitch
7 and volume, *but this has not been observed at school*" (See Exhibit D-14 at page 5); and conducted its
8 own observation which revealed the Student does not exhibit tantrum behaviors at school.
9

10 9. The Student's Primary Autism Teacher noted specifically, the Student *did not* have "melt downs"
11 and that he did not "scream, kick, scratch." He listened. He followed directions. See Transcript – Day 2
12 at page 65, lines 19-25 and page 66, lines 1-16.
13

14 10. The Student's Speech Pathologist further testified that the Student never had any tantrums during
15 speech therapy sessions. See Transcript – Day 2 at page 56, lines 22-25 and page 57, lines 1-2.

16 11. The preponderance of the evidence shows the Parent's concerns regarding Student's behavior
17 were not ignored and that the Student's behavioral issues were assessed in accordance with NAC
18 388.387(3).
19

20 12. The preponderance of the evidence supports a conclusion that the assessments were interpreted
21 in accordance with NAC 388.340(5).

22 13. None of the evidence supports a conclusion that the results of the Student's evaluation are
23 inaccurate.

24 14. The assessments were administered and interpreted by: 1) a speech pathologist; 2) the Student's
25 Primary Autism Teacher who has an undergraduate degree in autism and a masters in early childhood
26 education and who has been employed with the School District for 20 years; 3) the Student's general
27
28

1 education teacher, 4) a psychologist and 5) the Parent. See Transcript – Day 2 at pages 10 and 11; pages
2 60-61 and Exhibit D-5 at page 7.

3 15. The Speech Pathologist indicated that she has no reasons to believe the assessments she performed
4 had an incorrect conclusion. See Transcript – Day 2 at page 58, lines 16-19.

5 16. The Student’s Primary Autism Teacher indicated she believes the tests she performed were
6 accurate and reliable and that they are used all the time. See Transcript – Day 2 at page 128, lines 22-25
7 and page 129, lines 8-22.

8 17. The preponderance of the evidence shows the Student’s IEP was not inappropriate because of
9 inaccurate assessment results.
10

11
12 **ISSUE #2 – WHETHER THE STUDENT WAS DENIED A FAPE BECAUSE OF THE SCHOOL**
13 **DISTRICT’S FAILURE TO INCLUDE A BIP IN THE STUDENT’S IEP**

14
15 1. In *Board of Education of the Hendrick Hudson Central School District, Westchester County, Et. Al*
16 *v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court found that a free appropriate public
17 education is satisfied by “. . . providing personalized instruction with sufficient support services to
18 permit the child to benefit educationally from that instruction.” Id. at 203.

19 2. “. . . The “basic floor of opportunity” provided by the Act consists of access to specialized
20 instruction and related services which are individually designed to provide educational benefit to
21 the handicapped child.” Id. at 201.

22 3. “The Supreme Court established that "an IEP need not promise any particular level of benefit," so
23 long as it is "'reasonably calculated' to provide some benefit, as opposed to none.” See *Andrew F.*
24 *v. Douglas County School District RE-1*, 137 S.Ct. 988, 69 IDELR 174 (2017).

25 4. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably
26 calculated to enable a child to make progress appropriate in light of the child's circumstances. The
27
28

1 "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of
2 education requires a prospective judgment by school officials. *Id.*, at 207. The Act contemplates
3 that this fact-intensive exercise will be informed not only by the expertise of school officials, but
4 also by the input of the child's parents or guardians. *Id.*, at 208-209. Any review of an IEP must
5 appreciate that the question is whether the IEP is reasonable, not whether the court regards it as
6 ideal. *Id.*, at 206-207.

- 8 5. The Ninth Circuit articulated the standard this way: “[t]he correct standard for measuring education
9 benefit under the IDEA is not merely whether the placement is “reasonably calculated to provide
10 the child with educational benefits” but rather, whether the child makes progress toward the goals
11 set forth in her IEP.” *County of San Diego v. California Special Education Hearing Office*, 93 F.3d
12 1458; 24 IDELR 756 (9th Cir. 1996).

14
15 **The MDT Evaluation Report Results**

- 16 6. The MDT Evaluation Report indicates the Student’s overall cognitive abilities are below average
17 as are his abilities in the areas of basic reading skills, reading fluency, reading comprehension,
18 writing, math calculation and math reasoning. See D-5 at page 9-12.
- 19 7. There is no dispute as to the Student’s evaluation results and present levels related to academics
20 and how any deficits are addressed in the Student’s IEP. Rather, the issue raised by the Parent is
21 whether the Student will receive a FAPE if a BIP is not included in his IEP.
- 22 8. With regard to the Student’s social/emotional/behavioral skills, the assessments administered by
23 the school psychologist in the Student’s out-of-state school district determined the Student
24 demonstrates characteristics of a child with autism. See Exhibit D-5 at page 12.
- 25 9. The Parent reported the following social/emotional/behavioral concerns during the Student’s MDT
26 evaluation:
27
28

1 a. “the Student may have difficulty using appropriate verbal and non-verbal communication
2 for social contact, engages in unusual behaviors, has difficulty relating to children and
3 adults, has difficulty providing appropriate emotional responses to people in social
4 situations, has difficulty tolerating changes in routine, overreacts to sensory stimulation
5 and has problems with inattention and/or motor and impulse control.” See Exhibit D-5 at
6 page 12; and

7
8 b. the Student would tantrum, throw objects or grab at people or objects. Parent also reported
9 difficulty during transitions and with changes in routine. Parent also reported the Student
10 has difficulty controlling his feelings and temper when not getting his way. See D-5 at
11 page 15.

12 Also, according to the Student’s California IEP, “during play-based assessment, [the Student]
13 demonstrated difficulty with responding to play, using social phrases and difficulty with turn
14 taking.” Id.

15
16 10. Insofar as adaptive and sensory skills, the Student has average home living skills; and independently
17 eats, toilets and takes care of daily living skills with minimal prompting.” See Exhibit D-5 at page
18 15.

19
20 11. Regarding speech, language and communication skills, areas of concern included expressive,
21 receptive and pragmatic language. The Student demonstrated “limitations in the area of
22 communication skills.” See D-5 at page 17. He had “below average verbal reasoning skills,
23 struggled with the ability to understand two step verbal directions and provide vocabulary orally.”
24 Id.

25
26 **The IEP’s Behavioral Interventions and Supports**

27 12. “It is incumbent upon IEP Teams to implement the IDEA's procedural and substantive requirements
28 to ensure that children with disabilities receive the behavioral supports they need to enable them to

1 advance appropriately toward attaining the annual goals specified in their IEPs and to be involved
2 in and make progress in the general education curriculum.” 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV);
3 1414(d)(3)(B)(i) and 1414(d)(3)(C).

4
5 13. There is no provision in the IDEA requiring a BIP to be included in the IEP. 20 U.S.C. §
6 1414(d)(3)(B)(i) provides, however, that the IEP team shall "in the case of a child whose behavior
7 impedes the child's learning or that of others, consider the use of positive behavioral interventions
8 and supports, and other strategies to address that behavior." See also NAC 388.284 (2)(b) and (3)(b).

9
10 14. Here, Parent believes a BIP is necessary to control behaviors such as tantrums which she has
11 witnessed but which the Student has not exhibited at any of the three schools he has attended in his
12 6 years and that, in any event, are not interfering with the Student’s ability to learn nor his peers
13 ability to learn.

14
15 15. The Student’s behavior does *not* impede his learning or that of others. See D-5 – IEP. Nevertheless,
16 the IEP team incorporated positive behavioral interventions and other strategies to address the
17 behaviors concerning to Parent and noted in the Student’s California MDT evaluation report.

18
19 16. The Student’s IEP establishes a “social/emotional/behavioral” annual goal which states “[the
20 Student] will demonstrate appropriate turn taking skills achieving a criteria of 4 out of 5 trials as
21 implemented by Special Education Teacher and teaching staff. The “benchmark or short-term
22 objective” was for the Student to “take turns during board games and other classroom activities”
23 and wait for his turn during those activities. See D-7 at page 10.

24
25 17. The Student also had a social communication goal which states “by the annual review, in a
26 classroom setting, [the Student] will demonstrate increased social language skills achieving criteria
27 of 70% as measured by observation and documentation as implemented by Special Education
28

1 Teacher and supported by Speech/Language Pathologist. See D-7 at page 9. There were
2 benchmarks or short-term objectives attached to that goal. Id.

3
4 18. *Specially Designed Instruction* geared toward the Student’s social/emotional/behavioral skill
5 deficits included 155 minutes per week of instruction in a self-contained classroom and 550 minutes
6 per week in a general education setting, including (specials, lunch and recess). See Exhibit D-5 at
7 page 11.
8

9 19. The *Supplementary Aids and Services* (i.e. modifications, accommodations and support) provided
10 to the Student and geared toward his social/emotional and behavioral deficits are: providing “clear
11 and concise instruction” during class instruction; providing “positive verbal reinforcement for
12 desired behaviors” and text to speech during MAPS testing. Id.
13

14 20. *Related Services* provided to the Student are: speech and language therapy, occupational therapy
15 and transportation. Id.

16 21. According to the LINKS and Student Services Coordinator, “[b]ased on what I’ve read in the IEP
17 with the present levels and looking at the accommodations and the goals and benchmarks, and
18 specifically looking at the present levels for social/behavioral, what was listed as concerns under the
19 social/behavioral were more of turn-taking. And that’s addressed in the IEP. So there isn’t anything
20 else in there that would necessarily warrant a behavior plan. So if I’m a teacher receiving the Student
21 and looking over their IEP, I wouldn’t necessarily be looking for a behavior plan for this student.
22 See Transcript – Day 2, page 203, lines 19-25; page 204, lines 1-4.
23

24 22. Here, the evidence shows the School District followed the IDEA procedures when it developed the
25 Student’s IEP and it considered Parent’s concerns and provided the Student with necessary
26 behavioral supports even though the Student’s behavior *did not* impede his learning or that of others.
27
28

1 A BIP is not necessary given that the goals and benchmarks detailed in the IEP are designed to
2 address the Students social/emotional/behavioral issues revealed during the MDT Evaluation.

3 23. The Special Education Instruction Facilitator testified that “behavioral supports [the Student] needs
4 are very minimal. I mean, the teacher noted that he has trouble sharing and taking turns. I don’t
5 feel like that that is a severe behavior... Every time I went in there, he was always sitting at his
6 desk, he was trying to work, and he was—he followed, you know, directions of the teacher. I mean,
7 he looked and saw, okay, you know, my class is lining up, I need to go lineup sometimes without
8 being told. He was able to follow those queues. We did not have any behavioral issues with him.”

9
10 See Transcript – Day 1 page 202, lines 10-25.

11 24. When asked whether the IEP is structured in a way that will enable the Student to receive
12 educational benefits, the School District’s Special Education Instructional Facilitator, said “yes.”

13
14 See Transcript – Day 1 at page 194, lines 6-9.

15 25. According to the LINKS and Student Services Coordinator, “if there were some goals and
16 benchmarks or goals and objectives that address behavior, *he may not necessarily need a behavior*
17 *plan. However, we usually recommend students with autism have a behavior plan so we can be*
18 *consistent across environments (i.e. specials, general ed, resource, middle school to high school).*

19
20 Transcript – Day 2 at page 199, lines 6-25; and page 200, lines 1-6.

21 26. Based upon what she has read about the Student’s present levels and understanding she has not
22 observed the Student in class, the LINKS and Student Services Coordinator believes the Student’s
23 IEP is a appropriate. See Transcript – Day #2 at page 197, lines 12-18.

24 27. Based upon her reading of the Student’s IEP, and without seeing the Student in the classroom, the
25 LINKS and Student Services Coordinator believes the Student’s IEP is reasonably calculated to
26 provide the Student a meaningful education. See Transcript – Day 2, page 210 at line 5-10.
27

1 28. The LINKS and Student Services Coordinator further testified that in “reviewing the documents,
2 [the Student] appears to have gained quite a few skills from the out-of-district IEP to the School
3 District’s IEP, which tells me that his rate of learning is fairly quick, which is great, and we want
4 to see that. We have seen language increase. We have seen, based on those documents, his behavior
5 decrease in the classroom. See Transcript – Day 2 at page 181, lines 11-17. In other words the
6 Student is making progress toward his goals.
7

8 29. Although the LINKS and Student Services Coordinator has not observed the Student, the
9 undersigned IHO finds her credible given her educational background and work experience. The
10 Coordinator has a Master’s Degree in Special Education, a Ed.S. in Educational Administration and
11 Supervision and a BA in Speech Language Pathology. Since 2004, the Coordinator has among other
12 job duties, coordinated School District wide professional learning for teachers and staff working
13 with students with autism and emotional/behavioral disorders. For two years she also worked as
14 speech language pathologist with an autism KIDS Program in the School District and developed
15 IEPs with classroom teaching staff. See Transcript – Day 2 at pages 170-174.
16

17 30. In this case, the preponderance of the evidence shows the Student’s IEP was designed around the
18 results of his MDT Evaluation. See D-5 and D-7.
19

20 31. The preponderance of the evidence indicates that the behavioral interventions, strategies and
21 supplemental aids and services for Student in the IEP allow the Student to access general education
22 and his *Specially Designed Instruction* and otherwise make progress toward the goals in his IEP.
23 In light of that, the Student did not need a BIP was not denied a FAPE due to the School District’s
24 failure include a BIP in the Student’s IEP.
25

26 32. Prior to the Hearing and without waiving its position that it provided the Student a FAPE, the School
27 District agreed provide a BIP for the Student based upon the Student’s IEE and FBA.
28

1 **ISSUE #3 – WHETHER THE SCHOOL DISTRICT DENIED THE STUDENT A FAPE WHEN**
2 **IT REFUSED TO INCLUDE A ONE-TO-ONE AIDE IN THE STUDENT’S IEP**

- 3 1. The Parent *does not* specify in the Amended Complaint why or in what capacity she believes a one-
4 to-one aide is needed.
- 5 2. The IEP already includes speech/language therapy and occupational therapy.
- 6 3. According to the Special Education Instructional Facilitator, the Student does not need a one-to-one
7 aide for academics because she observed him and he wants to learn; he follows directions very easily;
8 if he needs to be redirected, its done in a very quick manner and he is able to get back on task. See
9 Transcript – Day 1, page 204, lines 8-17. The Special Education Instructional Facilitator added, if the
10 Student comes to school, she thinks he will be able to catch up. See Transcript – Day 1, page 204,
11 lines 18-20. The student was absesnt 19 times during the three month period he attended School #1..
12
- 13 4. Per the Student’s Primary Autism Teacher, she and the other School Officials do not believe the
14 Student needs a one-to-one aide. See Transcript – Day 2 at page 79. Lines 3-14.
- 15 5. The Speech Therapist concurred and testified she saw no need for the Student to have a one-to-one
16 aide as the Student works independently and follows directions. See Transcript – Day 2 at page58,
17 lines 21-25 and page 59, lines 1-2.
- 18
- 19 6. Even without a one-to-one aide, the LINKS and Student Services Coordinator says she has seen the
20 Student’s speech improve and any behaviors decrease.
- 21 7. The LINKS and Student Services Coordinator further noted the idea is to try to move students to
22 independence and one-to-one aides make students more dependent. The way teachers design their
23 programs and small group and individual work “would probably be able to meet his needs.” See
24 Transcript at page 215. “[I]t doesn’t seem that a classroom would need another person in there to be
25 able to address his needs. Id.
- 26
- 27 8. The preponderance of the evidence shows a one-to-one aide was not required to assist the Student to
28 benefit from special education.

1 9. The preponderance of the evidence supports a conclusion that the Student was not denied a FAPE
2 because of the School District's refusal to include a one-to-one aide in the Student's IEP.

3
4 **ISSUE #4 – DID THE SCHOOL DISTRICT ACT APPROPRIATELY WHEN IT RECOMMENDED**
5 **PLACING THE STUDENT IN A SELF-CONTAINED SPECIFIC LEARNING DISABILITY**
6 **(“SLD”) PROGRAM ON A GENERAL EDUCATION CAMPUS**

7 1. Pursuant to 34 C.F.R. §300.327, parents of a child with a disability must be members of any group
8 that makes decisions on the educational placement of their child. In implementing this requirement,
9 the educational agency must use procedures consistent with the procedures required for parental
10 participation in IEP meetings. 34 C.F.R. §300.501(c).

11
12 2. The placement decision in the instant case was made by: Parent, a LEA Representative/Special
13 Education Instructional Facilitator, the Student's Special Education Teacher, the Student's Regular
14 Education Teacher and the Speech/Language Therapist who were knowledgeable about the Student,
15 the meaning of the evaluation date, and the placement options. See Exhibit D-7 at page 3.

16 3. NAC 388.245 provides, in pertinent part:

17
18 1. A pupil with a disability may not be placed in a special class or in a school different than
19 the one the pupil would normally attend, or otherwise removed from the regular
20 educational environment, unless:

21 (a) The pupil's individualized educational program otherwise provides; and

22 (b) The nature or severity of the disability of the pupil is such that, even with the use of
23 supplementary aids and services, the pupil cannot be educated satisfactorily in the regular
24 educational environment.

25 A pupil with a disability, including a pupil in a public or private institution or other care
26 facility, must be educated with pupils who are not disabled to the maximum extent
27 appropriate and may not be removed from an age-appropriate regular classroom solely
28 because the pupil needs modification to the general curriculum.

2. A public agency shall provide a continuum of alternative placements to meet the needs
of any pupil with a disability for special education and related services necessary to
implement the individualized educational program for each pupil with a disability. This
continuum must include, as appropriate:

(a) Consultative and supplementary services provided with regular class placement; and

- 1 (b) Instructing the pupil in:
2 (1) A regular class;
3 (2) A special class;
4 ((3) A special school;
5 (4) A community-based program;
6 (5) The pupil's home;
7 (6) A hospital; or
8 (7) An institution.

9

10 4. In developing a pupil's individualized educational program, the committee which
11 develops the program shall provide for the least restrictive environment to the maximum
12 extent appropriate. In making this determination, the committee shall consider any
13 potential harmful effects on the pupil and the quality of services required by the pupil.
14 The committee shall provide for the placement of the pupil in a regular class unless the
15 committee determines that the pupil cannot receive an appropriate education in a regular
16 class, even with supplementary aids and services. The basis for any such determination
17 must be clearly set forth in the individualized educational program of the pupil.

18 5. Unless the needs or performance of the pupil preclude such participation, a pupil with
19 a disability must be allowed to participate with pupils who are not disabled at mealtime,
20 recess, or any other nonacademic or extracurricular activity occurring at school [for] to
21 the maximum extent appropriate and the public agency shall ensure that the pupil receives
22 the supplementary aids and services determined appropriate by the individualized
23 educational program committee for the pupil to participate in those activities. If a pupil
24 with a disability is excluded from such participation because of the pupil's needs or
25 performance, the basis for the exclusion must be clearly set forth in the individualized
26 educational program of the pupil.

27 4. NAC 388.255 provides:

28 Except as otherwise provided in NAC 388.265, any change in the placement of a
pupil with a disability must comply with NAC 388.245 and be based upon:

1. The current individualized educational program of the pupil;
2. The initial evaluation or most recent reevaluation of the pupil, as applicable; and
3. Information relating to the current educational performance of the pupil.

5. The School District offers the continuum of alternative placements set forth in NAC 388.245((2)).

6. The Student's academic and speech/language skills are below average as is his
social/emotional/behavioral skills Based upon the nature and level of the Student's deficits, the IEP Team
determined the Student should be educated in a self-contained classroom 70% of the school day and spend

1 30% of the school day in the regular education environment. See D-5 at pages 7-12 and See D-7 at page
2 13.

3 7. In compliance with NAC 388.245(5), the Student’s 30% general education time includes
4 mealtime, recess and other non-academic or extracurricular activities. See D-7 at pages 13..

5
6 8. The School Officials determined that the Student’s placement should be changed from a self-
7 contained autism classroom on a general education campus to a self-contained SLD program on a general
8 education campus.

9 9. Based on formal and informal assessments, parent input, teacher observation, the School Officials
10 recommended the change in placement. See D-7 at page 1.

11
12 10. Procedurally, the School District complied with its obligation to give the Parent prior written
13 notice of the proposed change. See Exhibit D-7 at pages 15-17 and page 1. See also Transcript – Day
14 One page 105, lines 23-25 and page 106, lines 1. See also Transcript – Day 2 at page 78, lines 1-9.

15 11. Parent wants the Student to remain in a self-contained autism program but on a special education
16 campus where there is no exposure to general education peers for the Student’s age group. In other words,
17 Parent wants a more restrictive placement for the Student than that determined by School Officials.
18 Amended Complaint.

19
20 12. Parental preference is a factor the IEP Team may consider in making a placement decision, but
21 IDEA does not permit the placement decision to be solely based on parental preference. *Letter to Lugar*
22 17 IDELR 834 (OSEP 1991).

23 13. “The overriding rule is that placement decisions must be determined on an individual, case-by-
24 case basis, depending on each child's unique needs and circumstances and based on the child's IEP. In all
25 cases, however, placement decisions *must not be made solely on factors such as category of disability,*
26 *severity of disability, availability of special education and related services, configuration of the service*
27

1 delivery system, availability of space, or administrative convenience.” See Comments to IDEA Reg. Fed.
2 Register vol. 71 #156 page 46588. See also *Letter to Trigg* 50 IDELR 48 (OSEP 2007). Emphasis added.

3 14. In Parent’s Amended Complaint Parent states the Student’s teacher insists he be placed in a SLD
4 program when his diagnosis is primary autism. As OSEP has advised, placements that are determined
5 based solely on the category of a child's disability are not consistent with the IDEA regulations. Id.
6

7 15. The self-contained SLD program proposed by school officials on the IEP Team focuses on
8 academics and has up to 16 students, a teacher and one adult assistant. See testimony of the School
9 District’s Regional Special Education Services Director – Transcript – Day 2 at page 239, lines 16 – 18.

10 16. The self-contained autism program, on the other hand, focuses on behaviors and has up to eight
11 students, a teacher and one adult assistant. See Transcript – Day 2 at page 239, line 25 and page 240,
12 lines 1-7.
13

14 17. Per the Regional Director of Special Education Services, “the main difference would be the
15 behavioral components. [] The autism program is more designed for students whose behavior is
16 significantly impacting [their] ability to learn and we’re really working on those behavioral skills to
17 hopefully eliminate them and – so that they can start to learn some of those academic skills and standards.
18 And, in the SLD program, the main focus is on academics. ...they’re working off the Nevada Academic
19 Content StandardsSo those students who are significantly below grade level, meaning they’re at least
20 more than one, they’re typically two or more grade levels behind academically. And the essence of it is
21 meeting them at their instructional level and getting them towards the academic standard for that grade
22 level which they’re in. They also [] provide functional curriculum for those students that need it.” See
23 Transcript – Day 2 at page 240, lines 17-25 and page 241, lines 1-14. The program also works on
24 behaviors. Id. at lines 15-16.
25
26

27 18. The Student’s Speech Pathologist agreed with placing the Student in a self-contained SLD
28 program versus a self-contained autism classroom. She indicated there is “definitely” an advantage “with

1 the social skills deficit, he'll be around physical peers more frequently and who maybe can display some
2 higher social skills. So I would say the language is higher and the social skills would be higher, and they
3 would be more model students for [the Student].” See Transcript – Day #2 page 58 lines 1-6.

4 19. The Student’s Primary Autism Teacher added:
5

6 He “really is a great kid, just “really eager to learn. When I would sit with him to do
7 reading, he would just get his book, run in the back and get his little – and just [read]
8 on when everybody else was just running around in the room. And, honestly, I had
9 – I really felt bad, I really did. And I was like, this child wants to learn so bad and its
10 noisy in here and there’s so much going on. And I had, you know, other people come
11 –you know, like – facilitator, my principal and just – I thought it was—I felt that if
12 that was my child, I would want somebody to do that for me. I felt like it would be
13 better for him, that environment.

14 Transcript – Day 2 at page 117, lines 23-25 and page 118, lines 1-12.

15 **Least Restrictive Environment**

16 20. To the maximum extent appropriate, children with disabilities are to be educated with children who
17 are nondisabled. NAC 388.245(4).

18 21. In *Sacramento Unified School District v. Rachel Holland*, 14 F.3d 1398, 20 IDELR 812 (9th Cir.
19 1994). Cert. denied, the U.S. District Court used the following test for determining if a child with
20 disabilities was mainstreamed to the maximum extent appropriate:

- 21 a. The educational benefits available to the child in the regular classroom, supplemented with aids
22 and services, compared to the educational benefits of a special education classroom;
 - 23 b. The non-academic benefits to the child with disabilities of interaction with nondisabled children;
 - 24 c. The effect of the presence of the child with disabilities on the teacher and other children in the
25 classroom; and
 - 26 d. The costs of supplementary aids and services necessary to mainstream the child with disabilities
27 in a regular classroom setting.
- 28

1 22. According to the Student’s Primary Autism Teacher, the Student would benefit academically and
2 socially from exposure to the general education class environment. See Transcript – Day 2 at page
3 120, lines 3-10 and page 121 at lines 1-2.

4 23. The LINKS and Student Services Coordinator agreed and recommends the Student be on a
5 comprehensive campus because:
6

7 “he’s shown from one IEP to the next to be able to maintain to establish/maintain
8 behavioral control. We’ve seen behaviors decrease. We’ve seen him gain skills.
9 So I wouldn’t think that that would stop, that he would continue to improve and
10 move on. .. we may see different behaviors pop up, but that – that’s not different
11 than any other student. And then we would adjust our intervention. But he seems
12 to respond very well. So I would want to keep a student that’s responds well on a
comprehensive campus with his general education students and models. If he were
to go to a special school, you don’t have the appropriate peer models for students
to learn from. And we do – we have seen behavior increase with students coming
into our special schools.

13 See Transcript – Day 2 at page 185, lines 1-20.
14

15 24. The Regional Director for Student Services also agreed and stated that if the Student spends some of
16 the school day in a general education class “it’s hugely beneficial. “There’s a lot of research that
17 supports his being in general education to the greatest extent possible because of observational
18 learning, peer interaction [and] peer modeling.” See Transcript – Day 2 at page 246, lines 19-25 and
19 page 247, line 1.
20

21 25. Per the School District’s Special Education Instructional Facilitator, “we had talked to mom during
22 the IEP about eventually he would be able to – we would like to see him in a gen ed classroom, and
23 this was kind of, like, going to be the stepping stone to get him there. I mean, that’s where I see him
24 going. A special school or a –some—somewhere where he would not have access to curriculum and
25 appropriate social behavioral skills would not benefit him at all. And it – he doesn’t need that.” See
26 Transcript – Day 1 at page 190, lines 6-19.
27
28

1 26. According to the LINKS and Student Services Coordinator, the Student's IEP is appropriate.

2 "[L]ooking at the IEP, it does seem to be a "complete IEP that addresses the deficit areas in the goals
3 and benchmarks." Transcript - Day 2 at page 197, lines 12-18.

4 27. Per the Student's Primary Autism teacher, the Student's IEP is calculated to enable him to receive
5 educational benefits.

6 28. The preponderance of the evidence supports a finding that the School District acted properly when it
7 recommended changing the Student's placement to a self-contained SLD program on a general
8 education campus.
9

10
11 **ISSUE #5 – WHETHER THE SCHOOL DISTRICT PROVIDED ADEQUATE SAFETY**
12 **SUPPORTS FOR THE STUDENT**

13
14 1. The "IDEA requires a state to implement procedural safeguards providing parents or guardians
15 with "an opportunity to present complaints with respect to *any matter* relating to the identification,
16 evaluation, or educational placement of the child, or the provision of a free appropriate public education
17 to such child." 20 U.S.C. § 1415(b)(6) (emphasis added) This broad language suggests that Congress did
18 not intend to exclude from consideration any subject matter -- including safety concerns -- that could
19 interfere with a disabled child's right to receive a free appropriate public education." *Lillibask ex rel.*
20 *Mauclair v. State of Connecticut Dept. of Educ.*, 42 IDELR 230 (2nd Cir. 2005). *See generally*
21 *Department of Housing. & Urban Dev. v. Rucker*, 535 U.S. 125, 131 (2002) ("As we have explained, 'the
22 word "any" has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (*quoting*
23 *United States v. Gonzales*, 520 U.S. 1, 5 (1997))).
24
25

26 2. On October 7, 2019, the Student came home with a scratch he sustained when another student
27 randomly threw a pencil box at him. The Primary Autism Teacher at School #1 reported the incident to
28 Parent on a Daily Report Log and noted "[a]lthough we try our best to avoid incidents like this,

1 unfortunately some of our students display these types of behaviors on a regular basis.” See Exhibit D-
2 10 at page 5.

3 3. On November 18, 2019, the Student’s Primary Autism Teacher at School #1 sent another note to
4 Parent indicating “[a]nother student in our classroom punched [the Student] in the face. He seems to be
5 ok. I just wanted you to be aware.” See Exhibit 10 – P-1. There is no evidence that the Student needed
6 to go to the nurse in connection with this event.
7

8 4. The Student’s Primary Autism Teacher testified that she and the adult assistant “try our best to
9 help them and to seat them in the right proper place in the classroom. We do try to intervene.” See
10 Transcript – Day 2 at page 110, lines 17-19.
11

12 5. While enrolled in School #2, the Student received a scratch from another student during what the
13 Primary Autism Teacher at School #2 presumes was a game of tag on the playground. See Transcript –
14 Day 2 at page 142, lines 7-10. According to the teacher, her “class this year is really a tough one. I have
15 a lot of behavior problems and sometimes when they play, it’s kind of rough.” See Transcript – Day #2
16 at page 142, lines 17-21.

17 6. It appears that Parent believes a BIP is necessary, in part, because the Student was involved in
18 three incidents though not from the same student. See Transcript – Day 2 at page 109, lines 21 – 23.
19

20 7. As the Student’s Primary Autism Teacher noted, BIPs are for students who are exhibiting
21 behaviors; and the Student in this case was *not* exhibiting behaviors in connection with any of the
22 incidences and does not need a BIP because of them. See Transcript – Day 2 at page 109, lines 21 – 25
23 and page 110 at lines 1-4.

24 8. There is no evidence that the Student was the target of any of the incidences; rather, the
25 preponderance of the evidence shows the incidences were either the result of being in an environment
26 where behaviors are prevalent or a scratch sustained on the playground.
27

1 9. Based on the preponderance of the evidence, the IHO finds that the Student's injuries were not
2 the result of the failure to have safety supports in the Student's IEP.

3
4 **COMPENSATORY EDUCATION RELIEF**

- 5
6 1. In *Park v. Anaheim Union High School District*, 444 F.3d 1149, 45 IDELR 178 (9th Cir. 2006), 46
7 IDELR 151, 464 F.3d 1025 (9th Cir. 2006), the Ninth Circuit instructed that "[c]ompensatory
8 education services can be awarded as appropriate equitable relief." 20 U.S.C. § 1415(i)(2)(B)(iii)
9 ("shall grant such relief as the court determines appropriate").
10
11 2. "Appropriate relief is relief designed to ensure the student is appropriately educated within the
12 meaning of the Individuals with Disabilities Education Act." *Parents of Student W. v. Puyallup Sch.*
13 *Dist.*, 31 F.3d 1489, 1496-97 (9th Cir. 1994).
14
15 3. The basis of the compensatory services remedy is the past denial of educational and related services.
16 See 34 IDELR 292 (OSEP 2000).
17
18 4. Here, the undersigned IHO determined the IEP is designed to provide the Student a FAPE.
19
20 5. There is no evidence that there was a past denial of educational and related services in this case.
21
22 6. School #1 and School #2 stood ready to deliver the *Specially Designed Instruction* and *Related*
23 *Services* described in the Student's IEP prior to the Parent withdrawing him from school for Parent's
24 concerns regarding the Student's safety.
25
26 7. The IEP Team determined moving the Student from a self-contained autism classroom where
27 behaviors are the predominate issue being addressed to a self-contained SLD classroom where the
28 primary focus is academics and behaviors are generally not so intense.
29
30 8. Parent exercised her right to disagree with the lateral change from a self-contained autism class to a
31 self-contained SLD class and instead withdrew the Student from school and filed a due process

1 complaint to request that the Student stay in the autism program where behaviors can and often due
2 lead to injuries.

3 9. The IHO found by a preponderance of the evidence that the School District did not fail to provide
4 appropriate safety supports for the Student.

5 10. Because the Student was not denied a FAPE, the Student is not entitled to Compensatory Education.
6

7
8
9 **CONCLUSION**

10 1. The preponderance of the evidence:

11 a. Does not support a conclusion that the Student's assessments and evaluation results were
12 incorrect. Parent was very involved in the evaluation process and her concerns with the
13 Student's behavior were considered.

14 b. Supports a conclusion that the IEP was appropriate. It addresses the Student's
15 social/emotional/behavioral deficits by including interventions, strategies and modification
16 and addresses his other deficits in a manner that allows the Student to make progress toward
17 his goals.

18 c. Supports a conclusion that the IEP provides the Student a FAPE even though it does not
19 have a BIP or provide for a one-to-one aide.

20 d. Supports a conclusion that the School District provided adequate safety supports for the
21 Student.

22 e. Supports a conclusion that the School District acted appropriately when it recommended
23 the Student be placed in a self-contained SLD program on a general education campus.
24

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1 **ORDER**

2 IT IS HEREBY ORDERED, that Parent’s request for a 1:1 Aide at all times for the Student is
3 DENIED; and

4 IT IS HEREBY FURTHER ORDERED, that Parent’s request for the Student to be placed in a
5 self-contained autism classroom on a special education campus is DENIED; and
6

7 IT IS HEREBY FURTHER ORDERED, that the Student is not entitled to compensatory
8 education because the Student was not denied a FAPE.

9
10 Dated this 8th day of July 2020

11 
12 Cara Brown, Esq.
13 Impartial Hearing Officer
14

15 **NOTICE OF RIGHT TO APPEAL**

16 Pursuant to NAC 388.315(1), a party may appeal from the decision of a hearing officer made pursuant to NAC 388.310
17 by filing with the Superintendent a notice of appeal which identifies the specific findings and conclusions being appealed
18 and forwarding a copy of the notice of appeal to the other parties within 30 days after receiving the decision. A party to
19 the hearing may file a cross appeal by filing a notice of cross appeal with the Superintendent which identifies the specific
20 findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within
21 10 days after receiving notice of the initial appeal.
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