STATE OF NEVADA
DEPARTMENT OF EDUCATION

In the Matter of	State Review Decision
STUDENT[1] by and through the parents, Appellants	State Review Officer, Gretchen Greiner
v.	Gregory D. Ivie, Esq., for Appellants
CLARK COUNTY SCHOOL DISTRICT Appellee	Daniel Ebihara, Esq., Director, Officer of Compliance and Monitoring for Appellee

I. PROCEDURAL BACKGROUND

Appellants filed this appeal of an impartial hearing officer's (IHO) decision and it was timely received by the Nevada Department of Education (NDE) on June 19, 2018. A state review officer (SRO) was appointed on June 20, 2018 and a decision was due on July 19, 2018. A status conference was conducted by telephone on June 28, 2018. The issues were discussed and a schedule established for the submission of briefs. On July 5, 2018, having met and conferred with Mr. Ebihara, Mr. Ivie requested a one week extension for filing the opening brief due to an important family event out of town which made it difficult for him to meet the briefing schedule. Mr. Ebihara did not object. Student is currently receiving extended school year services and an extension would not delay the decision for the fall term. Therefore, the continuance of the hearing decision to July 27, 2018 was granted on July 9, 2018 by written order.

The appointed SRO suffered a death in the immediate family and resigned from the review on July 9, 2018. The NDE assigned the review to this SRO on July 9, 2018. A status call was held with the parties on July 10, 2018. In attendance were Mr. Ivie for the Appellants, Mr. Ebihara for the Appellee (hereinafter District), and this SRO. Both parties stated that they were satisfied with the issues as defined in the status call summary for the June 28, 2018 call and that they would be able to meet the dates for submitting their respective briefs. The Appellants' brief was scheduled to be submitted to this review officer on July 13, 2018 and the brief for the District was to be submitted to this review officer on July 20, 2018. Both briefs were timely submitted.

[1] Personally identifiable information is attached as Appendix A to this decision and must be removed for public distribution.

Mr. Ivie made a motion to extend the deadline for a decision given the volume of information this SRO would need to review prior to rendering a decision, as well as dealing with the briefs to be submitted. Given that the Student was continuing to receive extended school year services and this extension would not interfere with the fall term, the emergency reassignment of this SRO and the expected volume of information, the SRO determined there was good cause for the extension. Therefore, the extension was granted with the decision to be rendered on August 3, 2018. Neither party requested the opportunity to provide additional evidence and this SRO determined no additional evidence was necessary.

Having reviewed the entire record, including the IHO's decision, transcripts of the hearing and exhibits submitted therein and the parties' submitted briefs, this SRO decides this appeal as follows.

II. STANDARD OF REVIEW

Under both Individuals with Disabilities Education Act (IDEA) and Nevada Administrative Code (NAC), this SRO is required to make an "independent decision" reviewing the entire record of the hearing below. (34 CFR 300.514(b)(2)(v); NAC 388.315(f). This SRO has done so here.

The SRO finds persuasive the language of *Carlisle Area Sch. Dist. V Scott P.,* 22 IDELR 13 (3rd Cir. 1995). The Court noted that in two-tier systems under IDEA, the SRO must exercise "plenary review" to make the "independent decision" IDEA requires. However, in doing so, it held that the SRO should defer to an IHO's findings based on credibility judgments, unless the non-testimonial, intrinsic evidence in the record will justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion. Accordingly, this is the standard of review that this SRO will use in rendering this decision.[2] The IHO in this case did not make any credibility statement, but did determine the findings of fact that will provide the foundation for this SRO to make a determination regarding the weight to be accorded witness testimony.

III. ISSUES ON APPEAL

Did the IHO err in -

1. concluding that moving the Student from a self-contained Autism program to the self-contained Functional Living Skills (FLS) program did *not* constitute a change in placement?
2. determining that the proposed change of the Student's program from the self-contained Autism program to a self-contained FLS program would *not* deny the Student a Free Appropriate Public Education (FAPE)?
3. determining that the provision of two rotating 1:1 aides complied with the requirement for the Student's IEP and the Student was not denied a FAPE

[2] *See also Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 103 LRP 33278 (9th Cir. 2001) (impliedly approving the Third Circuit's approach in *Carlisle*).

because of the District's failure to provide the Student with a exclusive assignment of a dedicated 1:1 aide?

In the discussion of the issues for hearing, it was clarified that the Appellants were not seeking relief for prior violations of the aide requirement, but rather were seeking prospective relief in the form of a dedicated aide (an aide or aides with exclusive duties for Student) and a clarification in the IEP that the aide would be provided across all settings.[3] (SRO Exh. 3)

This SRO must ensure that the procedures of the hearing below were consistent with the requirements of due process. (NAC 388.315). Appellants raised issues during the June 28, 2018 conference call in regard to the procedural conduct of the hearing, which were briefed and responded to by the District and are as follows:

1. Whether Appellants were denied due process by the IHO's failure to allow counsel to fully cross-examine witnesses;
2. Whether the IHO pre-determined the case prior to hearing all the evidence (specifically Appellants' expert witness) by having a conversation with both counsel in the hallway before the hearing was conducted indicating that the IHO agreed with the four factors outlined by OSEP, *Letter to Fisher*, 21 IDELR 992 (OSEP 1994) in deciding the question of change of placement;
3. Whether the IHO erred by failing to give appropriate weight to the testimony of the expert witness;
4. Whether the IHO appropriately applied the burden of proof.

The Appellants were provided an opportunity by the previous SRO to raise additional issues regarding the conduct of the hearing. While the Appellants had originally raised the concern that the IHO had pre-determined the issues involving change of placement, in the brief he included the issue of the 1:1 aide. It is unclear whether or not the Appellants intended to bring forward a new issue, but this SRO will address it below, when speaking to the other assertions of pre-determination.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After having completely reviewed the record below and the written arguments submitted by the parties on appeal, this SRO finds that the Decision of the Hearing Officer below is clearly stated, with the Findings of Fact being supported by a preponderance of the evidence, and the Conclusions of Law being legally sound and correct. The record read in its entirety does not compel a contrary conclusion. Accordingly, the Findings of Fact and Conclusions of Law of the Hearing Officer below are adopted as this SRO's own "independent decision."

To address the issues raised by Appellants on appeal, this SRO makes the following additional Findings of Facts and Conclusions of Law.

[3] Notwithstanding the District prevailed at hearing, the IHO ordered a remedy. Given that neither the Appellant nor District raised the Order in this appeal, the ordered remedies were not at issue before this SRO.

1. Did the IHO err in concluding that moving the Student from a self-contained Autism program to the self-contained Functional Living Skills (FLS) program did *not* constitute a change in placement?

If the District determines, based on the Student's individual needs, that Student should have the same educational program and opportunities for interaction with nondisabled peers as he would at the current educational placement, "the change in location alone would not constitute a change in educational placement." (*Letter to Fisher*, 21 IDELR 992 (OSEP 1994); See also *Letter to Trigg,* 50 IDELR 48 (OSEP 2007)) As noted in the IHO decision, the *Letter to Fisher* is consistent with case law *Doe v. Maher,* 793 F.2d 1470, 1481 (9th Cir. 1986), affirmed, *Honig v. Doe*, 484 U.S. 305 (1988). See also *N. D. et al. v. State of Hawaii Department of Education*, 600 F.3d 1104, 54 IDELR 111 (9th Cir. 2010).

The District and the IHO viewed moving the Student from the Autism program to the FLS program as a proposed change in program not a change in placement as it met the four factors outlined in *Letter to Fisher*: the Student's IEP was not revised; the Student would be able to be educated with nondisabled children to the same extent; the Student would have the same opportunities for nonacademic and extracurricular activities; and the new placement option is the same option on the continuum of alternative placements. (*Letter to Trigg,* 50 IDELR 48 (OSEP 2007), "noted that when two or more equally appropriate locations are available, the district can assign the child to the school or classroom of it's choosing.")

The Appellants' argument that moving the Student to the FLS program is a change of placement is based on the asserted lack of Applied Behavioral Analysis (ABA) methodology in the FLS classroom, causing a material change in the Student's educational program. Contrary to Appellants' argument, as discussed in the IHO's Decision and in the Procedural Issue Three below, the testimonial evidence in this case supports the availability of ABA resources for students, as needed, in the District's FLS programs. Therefore, this SRO agrees that this proposed change in program would not cause a substantial or material change in the Student's educational program that would constitute a change in placement.

In spite of not viewing the proposed change in program as a change in placement, the District nonetheless treated it as such. The District provided the parents with prior written notice alerting them that there was a change in placement proposed, conducted an IEP where the change was discussed, facilitated a visit to the proposed program by the parents, conducted a second IEP to discuss the proposed change, and when the parents disagreed with the proposed change, the District gave the parents prior written notice of their intent to implement the IEP. (IHO Finding of Fact (FOF) #17 through 34) By doing so, the District more than met all of the requirements for a change in placement. Therefore, the IHO did not err in determining that the change to the FLS program is not a change in educational placement. (The appropriateness of the proposed FLS program for the Student was separately stated by the Appellants as Issue Two. See the discussion below.)

2. Did the IHO err in determining that the proposed change of the Student's program from the self-contained Autism program to a self-contained FLS program would *not* deny the Student a FAPE?

Board of Education of the Hendrick Hudson Central School District, Westchester County, Et. Al v. Rowley, 458 U.S. 176 (1982) provides a two prong test for determining if an IEP is appropriate for a child with a disability. The first prong, whether a school district complied with the procedural requirements in the IDEA while developing the IEP, is not at issue here.

The previous SRO viewed this issue as "purely a substantive appropriateness issue under the second prong of the Supreme Court's decision in *Rowley*: what are the child's needs, was the IEP designed to meet those needs and provide educational benefit, could the IEP be implemented in the FLS program, and is it in the least restrictive environment?" This SRO would concur. As discussed previously, the Appellants' objection to the FLS program raised at hearing was that the FLS program was not an autism program, with the primary teaching methodology of ABA.

The SRO finds the analysis of the IHO regarding the application of *Rowley* and *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 69 IDELR 174 (United States Supreme Court (2017) to the facts in this case to be thorough, thoughtful, and comprehensive, including with regard to the availability of ABA in the FLS program. (IHO Decision, p. 21) Therefore, no additional Findings of Fact or Conclusions of Law are necessary. The SRO affirms the determination that the proposed change of program is reasonably calculated to enable the Student to make appropriate progress in light of circumstances and is appropriately ambitious in all regards. Therefore, the IHO did not err in determining that the proposed change in the Student's program from the self-contained Autism program to a self-contained FLS program would not deny the Student a FAPE.

3. Did the IHO err in determining that the provision of two rotating 1:1 aides complied with the requirement for the Student's IEP and the Student was not denied a FAPE because of the District's failure to provide the Student with a exclusive assignment of a dedicated 1:1 aide?

In accordance with NAC 388.281(6)(g) and IDEA, 34 C.F.R. 300.17(d) and 300.323(c)(2), the District was required to provide the services and instruction deemed necessary for the Student by the IEP team. The Student's IEP, which was agreed to by the parents, requires a 1:1 aide attend all field trips; a 1:1 adult assistance (classroom staff and related services staff) to maintain completion of functional tasks, self-help tasks, injurious behaviors, elopement, and behavioral concerns throughout the entire school day; and a 1:1 adult assistant (classroom staff and related services staff) to assist with feeding, toileting and dressing. (IHO FOF #7).

While the Student's IEP only required adult assistance in most regards, the District provided this adult assistance through a 1:1 aide from the inception of the 2017-18

school year. (IHO FOF #56) While it was not a 1:1 aide dedicated exclusively to the Student, the Student's IEP did not require that. The only occasions that the Appellants cited at hearing and in this appeal in support of the allegation that the District failed to implement the requirement for 1:1 adult assistance as required by the Student's IEP were two incidents in Physical Education (PE) class.

When the Student fell and bruised a knee, the aide was present (IHO FOF #58), but it is unclear whether or not an aide was with the Student when the Student fell and chipped teeth (IHO FOF #57). Even if it is assumed that there was no 1:1 adult assistance present for the Student during the PE class incident involving the Student's teeth, does this constitute a denial of FAPE? No. The District is obligated to provide services "in conformity with" the Student' IEP. (IDEA, Section 1401 (9)) The 9th Circuit has held that:

> "…when a school district does not perform exactly as called for by the IEP, the School district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when the services provided to a disabled child fall significantly short of those required by the IEP." *Van Duyn v. Baker School Dist.,* 107 LRP 51958 (9th Cir. 2007)

Even if the District failed to provide 1:1 adult assistance to the Student for a single PE class, this failure would not be a material failure across a school year of PE classes. "Minor discrepancies between the services provided and the services called by the IEP do not give rise to an IDEA violation." (*Van Duyn v. Baker School Dist*., 107 LRP 51958 (9th Cir. 2007; See also 34 C.F.R. 300.513 (a))

The District met the terms of the 1:1 adult assistance for the Student throughout the school day as required by the IEP for the 2017-18 school year and the Student progressed. Therefore, the IHO did not err in finding that the failure to provide the Student with a dedicated, exclusive 1:1 aide was not a denial of FAPE.

PROCEDURAL ISSUES

At the initial status conference, the Appellants brought forward several issues regarding the conduct of the IHO during the hearing. Although there were four procedural issues identified during the June 28, 2018 status call, the previous SRO provided the Appellants the opportunity to bring up additional issues related to alleged Hearing Officer error when the Appellants submitted their brief. In their brief, the Appellants listed concerns that the IHO had pre-determined the issues of the case prior to the testimony of the Appellants' expert witness during a conversation off the record with counsel. It appears that the Appellants added an additional area of alleged pre-determination in regard to the 1:1 aide to the previously stated change of placement issues based on a conversation that occurred on the record prior to the testimony of the Appellants' expert witness. Although not clearly stated, in an abundance of caution, this additional allegation on the issue of the 1:1 aide will be discussed under Procedural Issue Three. The procedural issues are as follows:

1. Whether Appellants were denied due process by the IHO's failure to allow counsel to fully cross-examine witnesses.

Under Title 34 CFR 300. 512(a)(2), any party in a hearing has the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. In the June 28, 2018 conference call, the Appellants asserted that the IHO did not allow counsel to fully cross-examine witnesses. However, the Appellants did not identify any occasion the IHO denied the Appellants right to cross-examine any witness at the time of the initial status conference call or in the subsequently submitted brief and this SRO found none.

This SRO thoroughly reviewed the transcript of the hearing. In the course of the hearing, both counsel were given the opportunity by the IHO for re-direct and re-cross with every witness. With some witnesses, additional re-direct and re-cross opportunities were utilized. At no point in the hearing did either counsel state on the record that they felt that they had not had ample time to cross-examine any witness. The record reflects that the IHO made efforts to determine if the counsel questioning a witness was done before handing the witness over to the opposing attorney or releasing the witness.

The IHO afforded each counsel the opportunity to thoroughly examine each witness throughout the hearing. There is no evidence that the Appellants were restricted in opportunity to cross-examine witnesses.

Therefore, it was determined that the Appellants were afforded the right to cross-examine witnesses and was provided due process in this regard.

2. Whether the IHO pre-determined the case prior to hearing all the evidence (specifically Appellants expert witness) by having a conversation with both counsel in the hallway before the hearing was conducted indicating that the IHO agreed with the four factors outlined by OSEP, Letter to Fisher, 21 IDELR 992 (OSEP 1994) in deciding the question of change of placement.

Under the IDEA, 34 CFR 300.511(c) and NAC 388.306(10)(a), a Hearing Officer must be impartial and must conduct the hearing with no preconceived ideas or biases and render the decision solely on the evidence presented at the hearing and the applicable law.

The Appellants allege in their brief that the IHO called the counsel for the Appellants and the District into the hall prior to the testimony of the Appellants' final witness, at which time the IHO spoke to the parties off the record. According to the Appellants' brief:

(1) "[The IHO] felt that the Student had a 1:1 aide at all times even though it may not have been a dedicated one. [The Appellants] asserted that there was a question as to whether or not an aide was present when the Student fell and chipped [] teeth;
(2) This was not a change in placement in [the IHO's] opinion because the four factors in the OSEP Letter to Fisher had been met.

(3) Similarly because the four factors in Letter to Fisher had been met, that it was not a denial of FAPE to effectuate the proposed move.
(4) [The IHO] felt that the FAPE requirements in *Endruw [sic] F.* has been met."

The Appellants' counsel states that when he asked if the IHO could reserve any definitive determinations until the last witness was heard, the IHO responded that "this is where she was headed with this case". The District does not recall any such conclusions or facts being issued by the IHO prior to the end of the hearing.

This hall conversation was off the record, and the Appellants did not make a motion to recuse the IHO or otherwise raise the issue of any impropriety or grounds for disqualification on the part of the IHO once the hearing resumed and went back on the record. In addition, the Appellants did not seek to introduce additional evidence to support these asserted factual statements of the IHO in this proceeding. As a result, there is no evidence to substantiate the assertions of fact in the Appellants brief regarding what was said, and the parties clearly do not agree.

What remains then is to review the conduct of the IHO that is on the record after this conversation took place. The Appellants last witness was an expert witness. The record shows that the IHO was attentive and engaged with this witness, as demonstrated by the IHO's expansive questioning of the expert witness. (Transcript (T) Vol. III, p. 394-408) From the questions asked, the IHO was continuing to seek information to assist in determining the issue on appeal with regard to whether the District's proposal was a change of location or a change in placement and whether the proposed change of the Student's program would provide FAPE to the Student, including the expert's experience with FLS programs while employed by the District.

Regardless of what may have been said or not said during the conversation in the hallway, the IHO's independent questioning of this witness after the off-the-record conversation demonstrated that the IHO did not discount the testimony of the expert witness, as asserted by the Appellants brief, and maintained an open mind with regard to the determination before her.

Therefore, it is determined that the IHO did not pre-determine the issue of change of placement or the issue of FAPE before the testimony of the final witness for the Appellants.

The Appellants also assert that the IHO had "made up her mind regarding the presence of the 1:1 aide" when the Student fell and chipped teeth in reference to a discussion on the record during the testimony of the Student's parent. (Appellants Brief) The IHO had stated that a 1:1 aide was present with the Student at all times prior to the conversation in the hall. (T Vol. III, p. 327) The Appellants addressed this statement on the record with the IHO, stating that there was no aide with the Student when the Student fell in PE and chipped teeth. (T Vol. III, p. 329) The IHO responded that it was possible that she had misunderstood, and that she would be basing her opinion on the record, not on her memory. (T Vol. III, p. 331) The IHO's FOF #57 states that it was unclear if there was a 1:1 aide with the Student when the Student fell and chipped teeth. Given this change from the IHO's prior statement, the evidence does not support the Appellants'

assertion that the IHO had pre-determined this issue prior to the testimony of the expert witness either.

Therefore, it is determined that the IHO did not pre-determine the issue of the whether there was a 1:1 aide with the Student when the Student fell and chipped teeth.

3. Whether the IHO erred by failing to give appropriate weight to the testimony of the expert witness.

The IHO has broad authority to make determinations regarding what weight should be given to expert testimony. This is directly addressed in the discussion of IDEA regulations, Federal Register/Vol. 71, No. 156/Monday August 14, 2006/ Rules and Regulations, Pg. 46691, which states "It would be inappropriate to regulate in the manner recommended by the commenter. Such determinations are made on a case-by-case basis in light of the specific facts of each case at the discretion of the hearing officer. We believe that the hearing officer, as the designated trier of fact under the Act, is in the best position to deterine whether expert testimony should be admitted and what weight, if any, should be accorded that expert testimony. We would expect that these decisions will be governed by commonly applied State evidentiary standards, such as whether the testimony is relevant, reliable, and based on sufficient facts and data."

The IHO made no findings on credibility or comparative weight with regard to the testimony of the expert witness; however, the IHO did make Findings of Fact with regard to the testimony. (IHO FOF #62 through #78, inclusive) The IHO accepted this witness as an expert in the education of children with autism and the use of ABA. (IHO FOF #62) As set forth in the IHO's Findings of Facts adopted by this SRO, the expert witness had been an employee of the District for several years and left in 2010 to pursue other interests. (IHO FOF #65) The expert witness had not had any direct contact with the FLS programs since that time. (IHO FOF #77) The expert witness testified that FLS teachers were not trained in ABA and did not use ABA in their classrooms during her tenure with the District. However, the expert witness also testified she herself provided ABA assistance to the FLS classrooms during her tenure as an employee of the District though it was not the primary methodology used in those classrooms. (IHO Decision, p. 19) This contradictory testimony about the use of ABA in FLS classrooms during the expert witness's employment with the District was also noted by the IHO in the decision (IHO Decision p. 19)

While the District's witnesses were not recognized as experts by the IHO and have different qualifications, they nevertheless were qualified to give their opinions as to the District's Autism and FLS programs and the appropriateness of the change of program. (*Adams v. State of Oregon*, 195 F.3d 1141; 31 DELR 130 (9th Cir. 1999)) The testimonial evidence supports the availability of ABA resources for students as needed in the District's FLS programs and that most FLS teachers are trained in ABA (IHO Decision, p. 19), in direct contradiction to the testimony of the expert witness. Given these witnesses' current knowledge of the Autism and FLS programs and knowledge of the Student, the SRO finds these witnesses credible.

Given the length of time since the expert witness had direct contact and knowledge regarding the District's FLS program, internal inconsistency regarding the utilization of ABA during the expert witness's employment with the District and the contrary weight of the evidence, this SRO upholds the IHO's determination to accord greater weight to the testimony of the District's witnesses with regard to the FLS program. Therefore, the IHO did not err in according less weight to the expert witness's testimony with regard to the hearing issues.

4. Whether the IHO appropriately applied the burden of proof.

NRS 388.467 clearly defines who has the burden of proof and the burden of production in a due process hearing – the school district. The review of the record shows that the IHO discussed the burden of proof and the burden of production at the Pre-hearing Conference in this case. The Pre-Hearing Conference Summary states that "The parties agree as follows: ….The District has the burden of proof and the burden of production. NRS 388.507." (IHO Exh. 8, p. 2)

Under IDEA, 34 C.F.R. 300.516(c)(3), the party bearing the burden of proof must meet the preponderance of the evidence standard. A preponderance of the evidence is defined, in relevant part, as "[e]vidence which is of greater weight or more convincing that the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary, 9th 2009. In *Norton v. Orinda Union School District* (29 IDELR 1068; 168 F.3d 500 (9th Cir. 1999)), the Ninth Circuit Court expressly noted that the standard was the standard for the administrative hearing and the appeal to court.[4]

The burden of proof is the burden of persuasion. That is, the party who has the burden of persuasion must persuade the IHO that the evidence is weighted in his/her favor. ("The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties." (Black's Law Dictionary, 9th 2009)) In weighing the evidence, an IHO not only determines who has the most evidence on a given issue, but must also make determinations as to the credibility of that evidence. The IHO's decision must reflect the reasoning behind the determinations reached. There is no requirement that the IHO declare in the decision that both the burdens of proof and production have been met on each issue, but rather that the decision must demonstrate that the IHO considered whether or not those burdens have been met by the development of the Findings of Fact and the Conclusions of Law that the IHO relied upon to reach a decision on the issues.

The Findings of Fact and the Conclusions of Law put forth in the IHO's decision demonstrate that both the burden of proof and the burden of production were met by the District across all issues. The IHO did not err by the absence of a statement declaring that the District had met the burden of proof and the burden of production for each issue in the decision.

[4] *See* "The court… basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate." 20 USC 1415(i)(2)(b); 34 CFR 300.52 12(b)(3)

Therefore, the IHO appropriately applied the burden of proof.

V. DECISION AND ORDER

For the reasons stated above, the IHO's decision is upheld. It is the determination of the SRO that no procedural violations occurred during the hearing and that the Appellants were accorded an impartial due process hearing, with procedures consistent with the requirements of due process. (34 C.F.R. 300.514(b)(2))

It is so ordered.

Date: August 1, 2018

Gretchen Greiner, State Review Officer

NOTICE OF APPEAL RIGHTS

The decision of the review officer is final unless a party appeals the decision. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within 90 days after receipt of the decision. NAC 388.315.