

of the decision date was granted. The hearing of the matter took place on November 15th and 16th, and the decision is due by December 31, 2017.

ISSUES

The parties agreed that the issues to be determined by the due process hearing were limited to:

1. Whether the District committed the following procedural violations and, if so, whether the procedural violations impeded the Student's right to a Free Appropriate Public Education ("FAPE") by significantly impeding the Parent's opportunity to participate in the Individualized Educational Plan ("IEP") decision-making process regarding the provision of a FAPE; or caused a deprivation of educational benefit.
 - a. Whether the District prevented the Parent's meaningful participation in the May 11, 2017 IEP meeting by not considering the Parent's input on accommodations, modifications and other stated parent concerns.
 - b. Whether the District failed to provide the Parent with a complete copy of the final, operative May 11, 2017 IEP plan, including a statement of the Student's goals.
2. Whether the Student was provided a FAPE, (specifically whether the District provided the Student with an IEP reasonably calculated to enable the child to make progress in light of the child's circumstances), specifically:
 - a. Provision of basic Math and English,
 - b. The services of a one-on-one aide in the resource room and general education classes, and
 - c. Provision of Extended School Year ("ESY") services.
3. Whether the District provided an appropriate placement for the Student, specifically given the Student's failing grades and test scores and missed assignments.³

³ See transcript of the hearing, volume 1, pgs. 6-20, lines 17-4, documenting the parties' agreement to the issues to be determined.

FINDINGS OF FACT

1. The 15-year-old Student was initially enrolled both in the District, and at the subject high school, for ninth grade, in the 2016 to 2017 school year. See Exhibit D2 and testimony of Assistant Principal (“AP”), pgs. 57-58, lines 16-15.
2. The Student was held in high regard by his teachers and school administrators as a polite, kind, shy, young man, who attended school regularly. See Exhibit D3, and testimony of AP, pgs. 58-59, lines 16-7, English teacher, (“English”), pg. 70, lines 6-18, and pg. 81, lines 15-22, Teacher of Record, (“TOR”), pgs. 248-249, lines 18-12, School Psychologist (“Psych”), pgs. 161-165, lines 25-1, Math teacher, pgs. 316-317, lines 17-3, and pg. 326, lines 14-18, and ROTC teacher, (“ROTC”), pg. 129, lines 2-11.
3. Upon his enrollment with the District, the Student was evaluated, and a multidisciplinary evaluation team report (“MDT”) was prepared on November 4, 2016. See Exhibit D10, and testimony of Psych, pgs. 161-165, lines 25-1.
4. The Student’s initial District IEP Team meeting took place on November 4, 2016, and the resulting IEP documented the Student was eligible for special education services under the category of specific learning disability. See Exhibits D10 and D11A, and testimony of Psych, pgs. 164-165, lines 20-25, and English, pg. 72, lines 6-8.
5. The November 4, 2016 IEP Team determined the appropriate placement for the Student was “[r]egular class and special education class (e.g., resource) combination.” See Exhibit D11A, and testimony of special education facilitator (“Facilitator”), pgs. 335-336, lines 8-20.
6. The Parent was not familiar with the resource placement provided in the IEP, and thought the Student should be in a self-contained placement; but, ultimately, the Parent agreed to

- the resource placement specified in the November 4, 2016 IEP. See testimony of AP, pgs. 55-56, lines 6-23, Facilitator, pgs. 339-340, lines 20-17, Parent, pgs. 379-380, lines 15-23, and Nevada PEP Transition Services Coordinator (“PEP”), pgs. 23-24, lines 7-19.
7. The Parent became concerned that the Student was struggling, unable to master the school work, and was falling behind; and so the Parent requested a revision IEP Team meeting. See testimony of TOR, pgs. 254-255, lines 25-5, pgs. 257-258, lines 11-11, pgs. 258-259, lines 17-6, Parent, pgs. 374-375, lines 15-5, and pgs. 384-387, lines 19-4.
 8. The Student’s revision IEP Team meeting took place on May 11, 2017. See Exhibit D11B.
 9. The doors to the office where the IEP Team meeting was held remained open during the meeting, allowing access by school staff who were not participants in the Team meeting, which raised parental concerns regarding a lack of privacy and confidentiality. See testimony of Parent, pgs.387-389, lines 12-22, PEP, pgs. 42-43, lines 12-4, and Facilitator, pgs. 363-366, lines 1-4.
 10. The May 11, 2017 IEP Team meeting was interrupted by school staff who entered the room where the meeting was being conducted to discuss unrelated matters with the Facilitator. See testimony of PEP, pgs. 42-43, lines 12-4, and Parent, pgs. 387-389, lines 12-22.
 11. The Facilitator also removed himself from the IEP Team meeting to participate in unrelated phone calls. See testimony of Parent, pgs. 387-389, lines 12-22, and PEP, pgs. 42-43, lines 24-17.
 12. The interruptions of the IEP Team meeting created a distraction for the Parent and other Team members. See testimony of Parent, pgs. 387-389, lines 12-22, and PEP, pg. 43-44, lines 18-22, and pg. 48, lines 15-18.

13. Despite the interruptions and distractions which occurred at the May 11, 2017 IEP Team meeting, the Parent's suggestions and input on accommodations, modifications and other areas of concern regarding the Student's education were considered by the IEP Team participants. See testimony of Facilitator, pgs. 348-349, lines 1-6, and pgs. 363-366, lines 1-4, and Parent, pgs.387-389, lines 12-22.
14. A copy of the final IEP that resulted from the May 11, 2017 IEP Team meeting was provided to the Parent. However, paragraphs 2, 3 and 4 of the section of the IEP entitled "PLACEMENT" and subtitled "JUSTIFICATION FOR PLACEMENT INVOLVING REMOVAL FROM REGULAR EDUCATION ENVIRONMENTS" were not included in the copy of the final IEP provided to the Parent. See Exhibit D11B, pages 11-12. A copy of the full text of this section of the IEP form can be found at Exhibit D11A, pages 20-21, for comparison purposes. See also testimony of TOR, pgs. 281-291, lines 15-4, and Parent, pgs. 389-392, lines 21-10.
15. After receiving the incomplete copy of the IEP, the Parent made further requests to school administrators for a complete copy of the May 11, 2017 IEP, and additional copies of the final IEP were sent to the Parent by the District. See testimony of TOR, pgs. 281-291, lines 15-4, Parent, pgs. 389-392, lines 21-10, and AP, pgs. 63-66, lines 9-20.
16. Each of the copies of the final May 11, 2017 IEP provided to the Parent was incomplete in that the same three paragraphs of the section setting forth justification for the removal of the Student from the regular education environment were not included in the document sent to the Parent. See testimony of Parent, pgs. 389-392, lines 21-10, and pgs. 392-402, lines 25-15.

17. The Parent believed that the paragraphs missing from the Student's final May 11, 2017 IEP documented the Student's goals. However, this belief was the result of the Parent's misunderstanding as to the purpose of the portion of the IEP which was missing from the copy of the IEP provided to the Parent. See Exhibits D11A and Exhibit D11B, testimony of TOR, pgs. 281-291, lines 15-4, and Parent, pgs. 389-392, lines 21-10, and pgs. 392-402, lines 25-15.
18. The paragraphs missing from the copy of the final IEP provided to the Parent dealt not with the Student's goals but, rather, with the basis for the provision of special education services to the Student, and the copy of the Student's final IEP provided to the Parent did contain the Student's goals as established by the IEP Team. See Exhibits D11A and 11B, and testimony of TOR, pgs. 281-291, lines 15-4, Parent, pgs. 389-392, lines 21-10, and English, pgs. 72-78, lines 9-15.
19. Despite the Parent's multiple requests for a complete copy of the final May 11, 2017 IEP, the school's administration did not investigate the Parent's allegation that the copies of the IEP provided to her were not complete; nor was any concern shown by District staff regarding the impact on the Parent, or on the Student's education, of the Parent's allegation that she was not provided with a complete copy of the IEP. See testimony of TOR, pgs. 281-291, lines 15-4, Parent, pgs. 389-392, lines 21-10, and PEP, pg. 45, lines 5-17, and pgs. 392-402, lines 25-15.
20. The failure to provide the Parent with a complete copy of the IEP was not discovered by the District until during the due process hearing, when the District acknowledged the error. See testimony of TOR, pgs. 281-291, lines 15-4.

21. The failure to provide the Parent with a complete copy of the May 11, 2017 IEP, despite the Parent repeatedly notifying the District that she had not received a complete copy, deprived the Parent of the ability to fully participate in the IEP process, specifically her right to monitor and enforce the District's provision of special education service to the Student pursuant to the IEP. See testimony of Parent, pgs. 389-392, lines 21-10, and pgs. 392-402, lines 25-15.
22. The Student's math skills were "splintered," in that he was deficient in basic math facts such as multiplication, but was able to solve more advanced word problems, perform division in his head, and calculate six squared, an Algebra concept skill. See Exhibit D10 and testimony of TOR, pgs. 303-305, lines 6-2, and Psych, pgs. 161-165, lines 25-1.
23. The District's implementation of the May 11, 2017 IEP resulted in improvement in the Student's math skills, as evidenced by his performance on assessment testing. See testimony of TOR, pgs. 250-252, lines 15-22, and pgs. 303-305, lines 6-2, Math, pgs. 310-311, lines 5-23, and Facilitator, pgs. 342-343, lines 2-19.
24. The Student had academic deficits in basic reading, reading comprehension and fluency, and written language. See Exhibit D10 and testimony of English, pg. 70, lines 19-23, and pgs. 71-72, lines 16-2, and Psych, pgs. 161-165, lines 25-1.
25. The District's implementation of the May 11, 2017 IEP allowed the Student to make progress in English. See testimony of English, pg. 82, lines 14-18, and pgs. 84-87, lines 3-15, TOR, pgs. 295-300, lines 19-18, and Facilitator, pgs. 342-343, lines 2-19.
26. The Student's academic progress was documented by progress reports and the testimony of the TOR, who believed the Student showed great improvement overall during the school year, especially after he received his ROTC uniform, and thereafter seemed to have more

pride and improved peer interactions. See Exhibit D13, testimony of TOR, pgs. 265-266, lines 25-17, and pgs. 295-300, lines 19-18, and ROTC, pgs. 133-135, lines 6-11.

27. The Student's overall academic progress during the school year was confirmed by the fact that he obtained credit for all his freshman classes. See Exhibit D15, and testimony of English, pgs. 107-108, lines 6-2, AP, pgs. 59-60, lines 10-15, Psych, pg. 171, lines 11-22, Math, pgs. 310-311, lines 5-23, ROTC, pgs. 133-135, lines 6-11, and Facilitator, pgs. 357-360, lines 7-12.
28. The Student performed at approximately the same academic level as the other students in his general education classes, including ROTC, and his co-taught English 9 and Principles of Algebra classes, with resource support. See testimony of English, pg. 87, lines 16-21, pg. 93, lines 1-17, pgs. 94-95, lines 11-22, pgs. 101-103, lines 17-1, pgs. 107-108, lines 6-2, and pgs. 115-117, lines 21-2, Psych., pgs. 174-176, lines 17-6, Math, pgs. 308-309, lines 23-25, and pg. 327, lines 3-22, ROTC, pg. 129, lines 2-11, and pg. 158, lines 3-16, and Facilitator, pgs. 357-360, lines 7-12.
29. The Student's placement in general education classes, with resource support, including Principles of Algebra and English 9, resulted in numerous, meaningful and positive interactions with nondisabled students, which provided a social benefit to the Student which he would not have had in a self-contained placement. See testimony of ROTC teacher, pg. 137, lines 4-15, Psych, pg. 176-178, lines 16-4, TOR, pg. 259, lines 7-19, and Facilitator, pgs. 357-360, lines 7-12.
30. The Student's teachers and school administrators believed that the Student's resource placement, comprised of a combination of general education and special education classes, with resource support, was the appropriate, least restrictive environment for the Student.

See testimony of Psych, pgs. 179-180, lines 16-2, TOR, pg. 259, lines 7-19, Math, pg. 314, lines 19-22, and pg. 322, lines 2-11, Facilitator, pgs. 352-355, lines 16-17, and pgs. 357-360, lines 7-12, and English, pg. 82, lines 14-16.

31. The Student has the ability to obtain a standard high school diploma. See testimony of Facilitator, pgs. 335-338, lines 21-8, PEP, pgs. 24-25, lines 5-22, and AP, pgs. 60-61, lines 9-1.
32. Had the Student been placed in a self-contained classroom for math, as opposed to the Principles of Algebra class he was enrolled in pursuant to his IEP, his grade would not have counted toward graduation with a standard diploma. See testimony of AP, pg. 61, lines 2-23, and Math, pg. 307, lines 10-17.
33. At the May 11, 2017 IEP Team meeting, the Parent requested the services of a one-to-one aide for the Student to address remediation of his academic deficits and encourage him to take advantage of the modifications and services provided for in his IEP. See testimony of Facilitator, pgs. 349-350, lines 7-16.
34. The IEP Team considered but rejected the Parent's request for provision of a one-to-one aide for the Student, based on a determination that the Student did not require the services of a one-on-one aide as he was functioning adequately and independently in the classroom and on campus, and an aide would actual hinder the Student's development. See testimony of Facilitator, pgs. 349-350, lines 7-16, TOR, pg. 264, lines 14-21, Math, pgs. 315-316, lines 23-9, and English, pgs. 82-83, lines 19-8.
35. The Parent requested ESY services for the Student to provide remedial instruction to address his educational deficiencies. See testimony of Facilitator, pgs. 343-346, lines 20-9.

36. The IEP Team considered the Parent's request for ESY services, and the Facilitator investigated whether ESY services were available to the Student under district policies; But, ultimately, the IEP Team rejected the Parent's request for ESY on the grounds that the Student was not suffering regression in his academic skills, and the District does not provide ESY merely to address remedial instruction when a Student has passed all their classes. See Exhibit D15, and testimony of Facilitator, pgs. 343-346, lines 20-9.
37. The Student's most significant impediment to educational progress was a failure to take full advantage of the accommodations and services offered to him by the District, such as the opportunity to retake tests to improve his score, make up missing work, and use notes for assistance in taking tests. See testimony of TOR, pgs. 264-265, lines 22-6, pgs. 280-281, lines 18-7, and pgs. 303-305, lines 6-2, Math, pgs. 308-309, lines 23-25, pgs. 316-317, lines 17-3, pgs. 322-323, lines 12-3, and pgs. 324-325, lines 16-19, ROTC, pgs. 156-158, lines 20-2, and English, pgs. 112-113, lines 18-12, and pgs. 113-115, lines 18-15.
38. The Student showed more initiative in ROTC than in his other classes, voluntarily raising his hand to ask questions. See testimony of ROTC, pgs. 131-132, lines 18-17 and Math pgs. 324-325 lines 16-19.
39. The Student's failure to take full advantage of the special education services provided to him by the District in implementation of the Student's IEP is not a manifestation of his learning disability but, rather, reflects a choice made by the Student. See testimony of TOR, pg. 265, lines 9-24, ROTC, pgs. 156-158, lines 20-2, Psych, pgs. 165-166, lines 4-20, and English, pgs. 112-113, lines 18-12.
40. The Parent voluntarily removed the Student from the District at the end of the school year due to concerns that the IEP Team's placement of the Student in a combination of general

and special education classes, with resource support, was too challenging, and exceeded the Student's academic capacity, that the school was not paying appropriate attention to the Student and was just passing him despite his lack of mastery of the school work, and due to an overall lack of confidence in the District based on the failure of the District to provide the Parent with a complete copy of the May 11, 2017 IEP. See testimony of Parent, pgs. 389-392, lines 21-1, and pgs. 392-402, lines 25-15.

CONCLUSIONS OF LAW

There is no dispute between the parties as to the nature of the Student's learning disability, or eligibility for special education services. Rather, the due process complaint focused on whether in the May 11, 2017 revision IEP, the IEP Team's continued provision of a placement consisting of a combination of general and special education classes, with resource support, was the appropriate placement for the Student, and provided the Student with a FAPE. Although the Parent agreed with the placement at the time of the initial District IEP in November of 2016, following the Student's enrollment at the District for the 2016-2017 school year, she became concerned that the Student's missing assignments and failing grades and test scores indicated he was falling behind, and was not making progress toward obtaining a standard high school diploma.

At the time of the revision IEP, the Parent advocated for additional services and accommodations for the Student to address her concerns, specifically seeking ESY services and a one-on-one aide for the Student to provide with remedial instruction to address his academic deficits. The Parent was concerned that the Student was not learning, and that he was merely being passed by the District without mastering the curriculum material. Essentially, the Parent requested a more restrictive environment for the Student, in the hope that it would assist him in catching up academically. While the Plaintiff agreed with the continuation of the resource placement at the

time of the May 11, 2017 IEP, the failure of the District to provide the Parent with a complete copy of the IEP following the May 11th Team meeting undermined the Parent's confidence in the District and the services provided to the Student, and was a factor in the Parent's withdrawal of the Student from the District, and the filing of the due process complaint.

The Individuals with Disabilities Education Act ("IDEA") provides that "[t]o the maximum extent appropriate, children with disabilities...are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." See 20 U.S.C. 1412(5)(B) and 34 C.F.R. 300.114(a)(2). Nevada Administrative Code Section 388.245 provides that "[a] pupil with a disability may not be placed in a special class or in a school different than the one the pupil would normally attend, or otherwise removed from the regular educational environment, unless: (a) [t]he pupil's individualized educational program otherwise provides; and (b) [t]he nature or severity of the disability of the pupil is such that, even with the use of supplementary aids and services, the pupil cannot be educated satisfactorily in the regular educational environment."

The United States Supreme Court has not yet ruled on the issue of least restrictive environment, but a number of Circuit Courts of appeal have issued rulings. Nevada is located in the Ninth Circuit, which has determined that four factors must be balanced to determine if a student's placement is the least restrictive environment: (1) the educational benefits available to the student in a regular classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom; (2) the non-academic benefits of interaction with children who are not disabled; (3) the effect of the student's presence on the teacher

and other children in the classroom; and (4) the cost of mainstreaming the student in a regular education classroom. See *Sacramento City School District v. Rachel H.*, 14 F.3d 1398, (9th Cir. 1994).

It appears that the Student was provided by the District with a more challenging placement than had been his prior experience in other districts. The weight of the evidence offered at the hearing established that the Student was making progress, and obtained a significant educational benefit from the resource placement specified by the IEP Team. Testimony by the Student's teachers indicated they are well qualified, and were sincerely interested in the Student's educational progress. The evidence offered at the hearing indicated that rather than being ignored, or merely passed automatically, the Student was continually encouraged and challenged by his teachers to take advantage of the educational services offered through his IEP, and that he made progress commensurate with his classmates, and beyond what would have been expected in a more restrictive placement, such as a self-contained classroom. In addition to the academic benefit obtained by the Student, he obtained significant non-academic benefits, in terms of positive interactions and friendships with non-disabled classmates in his combination of general and special education classes, which would not have been available to him in a self-contained placement.

In fact, the evidence was that the more exposure the Student had to the general education environment, the more he took the initiative to participate in class. This was most clearly demonstrated by the testimony of the ROTC teacher that the Student would raise his hand to offer answers to questions in that class. He also routinely joining other ROTC classmates for lunch in the ROTC classroom. The testimony regarding the Student's participation in ROTC painted a different picture of the Student, who was otherwise described by his teachers as being reticent and reluctant to participate in class. However, another teacher noticed an improvement in the Student's

performance in her class, as well as in his social interactions, following the Student's receipt of his ROTC uniform, which apparently inspired more pride and motivation in the Student. The Student's placement in a mix of general and special education classes, with co-teachers and resource support, in no way disrupted the classes or negatively impacted other students, and cost was not a factor in the IEP Team's provision of the resource placement. Under the factors established by the Ninth Circuit Court in the *Rachel H.* case, the Student's placement as provided in the May 11, 2017 IEP was the appropriate, least restrictive, educational environment for the Student.

Further, the May 11, 2017 IEP developed by the IEP Team and implemented by the District provided the Student with FAPE as it was appropriately ambitious, and reasonably calculated to provide the Student with a meaningful educational benefit given his unique circumstances and, therefore, there was no substantive violation or deprivation of a FAPE by the District. The Student's May 11, 2017 IEP more than met the standard provided by the United States Supreme Court in the recent decision of *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, (3/22/17), wherein the Court stated that "[to] meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* The *Endrew* Court further provided that an "IEP need not aim for grade level advancement.... But [a student's] educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* The Parent was concerned about whether the Student was receiving special education services in an environment which was too accelerated and challenging for the Student. However, the evidence established that the Student made academic

progress, as documented by the bulk of the assessments performed, and the fact that he passed each of his classes. The evidence also indicated that the Student would not have achieved the same level of academic and social progress had the Student been placed in a more restrictive, self-contained classroom. Therefore, the May 11, 2017 IEP provided the Student with a FAPE striking a balance between the provision of special education services designed to address his unique needs, and setting appropriately ambitious academic goals.

While the May 11, 2017 IEP Team considered the Parent's request that the Student be provided with additional accommodations, including ESY and the provision of a one-on-one aide, these requests were rejected by the IEP Team as unnecessary. Upon investigation, it was determined by the District's Special Education Facilitator ("Facilitator") that the Student was ineligible for ESY services since he had passed all his classes, was not suffering from academic regression, and could not retake a class merely for remedial purposes. The provision of a one-to-one aide for the Student was similarly found to be unwarranted because the Student was judged to be functioning independently in the classroom, and on the campus as a whole. In fact, the evidence was that the Student was a model of good citizenship, in that he had excellent attendance, and was never a disruption to the class, or a distraction to other students. Evidence of the Student's positive interactions with non-disabled students, both in class and campus wide, indicated that the Student would have felt stigmatized and embarrassed by the assignment of a one-on-one aide. This would have been a very negative outcome for the Student, as he tended to avoid classroom participation, and was most interactive and willing to participate in his general education ROTC class, where he was evaluated by the same standards as other, non-disabled, students. For example, the ROTC teacher testified at hearing that the Student's "C" grade was truly earned through his participation, while other Students failed to pass the class. The evidence also indicated that the Student

performed at approximately the same academic level as the other students in his general education English 9 and Principles of Algebra classes, with resources support, which establishes that his placement was appropriately challenging, and that he obtained an educational benefit from these classes superior to what he would have obtained in a less challenging, self-contained placement.

Under the IDEA, a district must afford the parents of a child with a disability an opportunity to meaningfully participate in IEP meetings with respect to the identification, evaluation, and placement of the child. See 34 CFR 300.501(b). The access to the IEP Team meeting location by school staff not participating in the meeting, and the Facilitator's participation in unrelated conferences and phone calls during the meeting should not have occurred, and resulted in a lack of confidentiality, and disrupted the proceedings to a degree that undermined the Parent's confidence in the IEP Team process, and constitutes a procedural violation by the District. However, despite the lack of privacy which resulted from the District's failure to prevent access to the location of the IEP Team meeting by other school staff, and the distractions and interruptions created by the Facilitator's lack of exclusive focus on the IEP Team meeting, the evidence established that the Parent's suggestions and input on accommodations, modifications and other areas of concern regarding the Student's education were considered by the participants in the May 11, 2017 IEP Team meeting.

"The public agency must give the parent a copy of the child's IEP at no cost to the parent." See 20 USC 1414 (d)(1)(B)(i); and 34 CFR 300.322 (f). The IDEA does not require that an IEP conform to any specific format so long as the IEP meets the content requirements of 34 CFR 300.320, including "[a]n explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the extracurricular or other nonacademic activities." The District's failure to provide the Student's Parent with a complete copy of the final

May 11, 2017 IEP, including paragraphs 2, 3, and 4 of the section entitled Justification for Placement Involving Removal from Regular Education Environments, constitutes a violation of this code section, and a procedural violation by the District. The procedural violation caused by the failure to provide the Parent with a complete copy of the IEP resulted in a misunderstanding by the Parent as to the nature and importance of the missing paragraphs of the IEP, and thereby undermined the Parent's confidence in the IEP process, and the District as a whole. Further, the procedural violation substantially impacted the Parent's opportunity to participate fully in the IEP decision-making process by significantly impeding the Parent's opportunity to monitor and enforce the provisions of the IEP, and evaluate whether the special education services provided to the Student were adequate.

The very recent case of *M. C. v. Antelope Valley Union High School District*, 852 F.3d 840, (9th Cir., 12/11/17), cert. denied, involved a typographical error in documenting in an IEP the number of minutes of a service to be provided to a student. When the district realized that it had inadvertently provided that 240 minutes of a service were to be provided monthly, when the agreement reached during the IEP Team meeting was for 240 minutes to be provided weekly, the district corrected the IEP without notice to the parent. As in the subject case, the parent first learned of the correction during the due process hearing. The Ninth Circuit determined that although no substantive harm occurred due to the student receiving additional minutes of services beyond the amount documented in the IEP, the parent suffered procedural harm because the mistake necessitated the parent incurring legal fees to determine the actual level of services provided. While the Parent in the subject case was not represented by counsel at the time of the due process hearing, she suffered harm due to the error by the District in omitting three paragraphs from the Placement section of the copies of the IEP provided to the Parent, and the error was not only

undiscovered or acknowledged by the District until the hearing, but was ultimately a factor in the Parent's decision to remove the Student from the District, and the filing of the due process complaint.

Ultimately, the IEP Team provided, and the District implemented, an IEP for the Student which was reasonably calculated to enable the Student to make progress in light of the Student's unique circumstances, including the provision of basic Math and English instruction, through a placement involving a combination of general education and special education classes, with resource support, including co-teachers and various appropriate accommodations. However, the Parent's right to monitor and enforce the provision of special educational services to the Student was significantly impeded by the repeated failure of the District to provide the Parent with a complete copy of the IEP, or to recognize and explain the discrepancy in the copies of the IEP provided to the Parent and the final IEP included in the District's records, including the significance of the paragraphs missing from the copies of the IEP provided to the Parent. In the *Antelope Valley* case, the Circuit Court found that even though the District effectively increased the special educational services provided to the student by correcting an error in the documentation of the services agreed to at the IEP Team meeting, the District's change to the IEP without notice to the parent denied the parent the right to monitor the provision of special educational services pursuant to the IEP, and constituted a procedural error. *Id.* In the subject case, the District similarly failed to accurately document the final IEP. While the paragraphs missing from the final IEP sent to the Parent were unrelated to the Student's goals, the missing information caused Parent great concern, and her failure to receive a full copy of the IEP, or even an acknowledgement by the District that there was information missing from the IEP, was to a significant degree the basis for the withdrawal of the Student from the District and the filing of the due process complaint.

ORDER

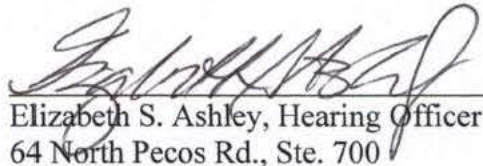
The Hearing Officer disapproves of the District's actions in connection with the May 11, 2017 IEP, including the failure to provide a private location, an IEP Team exclusively focused on the meeting and, most critically, to provide the Parent with a complete copy of the IEP, or to even acknowledge until the hearing that none of the copies of the IEP provided to the Parent were complete, or to explain the significance of the missing portions of the copies of the IEP provided to the Parent. The District's failure to provide the Parent with a complete copy of the final May 11, 2017 IEP constituted a procedural violation by the District, as it prevented the Parent from being able to fully understand and effectively utilize the IEP to monitor and enforce the special education services provided to the Student, as is her right under IDEA. The Parent and Student have been harmed by the District's failures in connection with the conduct and documentation of the May 11, 2017 IEP. However, the procedural violation by the District cannot override the evidence offered at the hearing which established that the Student made academic progress and received an educational benefit from the IEP as designed by the IEP Team, and implemented by the District, and was therefore provide with a FAPE, thus preventing an award of compensatory education to the Student.

NOTICE OF APPEAL RIGHTS

Any party aggrieved by this decision has the right to appeal within thirty (30) days of the receipt of this decision pursuant to Nevada Administrative Code Section 388.315. A party to the hearing may file a cross-appeal within ten (10) days after receiving notice of the initial appeal. If there is an appeal, a State Review Officer appointed by the Superintendent from a list of officers maintained by the Nevada Department of Education shall conduct an impartial review of the

hearing pursuant to Nevada Administrative Code Section 388.315. Since this decision is being delivered in both electronic and hard copy, receipt of a copy of this decision and order will be determined by either the date of actual delivery, or the date of the first attempt to deliver by the U.S. Postal Service.

Dated: December 31, 2017

A handwritten signature in black ink, appearing to read "Elizabeth S. Ashley", is written over a horizontal line.

Elizabeth S. Ashley, Hearing Officer
64 North Pecos Rd., Ste. 700
Henderson, Nevada 89074
Phone: (702) 837-6605
Elizabeth@elizabethashleylaw.com