

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

In the Matter of

**DECISION AND ORDER OF THE
HEARING OFFICER**

Decision Date: March 24, 2022.

STUDENT¹, by and through
STUDENT'S Parents,

Hearing Officer:

Petitioner,
v.

Kevin P. Ryan, Esq.

SCHOOL DISTRICT,

Parties and Representatives:

Respondent.

Student's parents appeared on behalf of
Petitioner.²

Gina C. Session, Esq., appeared on behalf of
Respondent.

I.

INTRODUCTION³

1. The parties to the present action are Petitioner ("Student" or "Petitioner"), and Respondent, School District ("Respondent"). Petitioner is represented by Petitioner's parents. Respondent is represented by Gina C. Session, Esq. The presiding hearing officer is Kevin P. Ryan, Esq. ("IHO").

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

²Both of Student's parents are Nevada licensed attorneys.

³This Section I sets forth the chronology of the hearing process. Section II addresses certain pre-hearing orders.

2. Petitioner's Due Process Complaint was received by Respondent on February 23, 2021. The IHO was appointed to the matter on February 26, 2021. On March 1, 2021, the IHO entered the Preliminary Order.⁴ Respondent's Response to Due Process Complaint was filed on March 5, 2021.
3. Following the initial Status Conference that occurred on March 12, 2021, a Status Conference Report and Order was entered the same day.
4. Following a second Status Conference that occurred on April 14, 2021, a Status Conference Report and Order was entered the same day.
5. Following a third Status Conference that occurred on April 28, 2021, a Status Conference Report and Order was entered the same day.
6. On April 30, 2021, the First Amended Due Process Complaint was filed by Petitioner ("DPC"). On May 10, 2021, the Amended Preliminary Order was entered.
7. Following a Status Conference on May 20, 2021, pertaining to the DPC, a Status Conference Report and Order was entered the same day.
8. Respondent filed its Response to Amended Due Process Complaint on May 27, 2021.
9. Following a second Status Conference on August 4, 2021, a Status Conference Report and Order was entered the same day.
10. The Notice of Pre-Hearing Conference was entered on November 1, 2021. Pursuant to same, the Pre-Hearing Conference was to occur on November 4,

⁴The Preliminary Order incorrectly provides that the Due Process Complaint was received by Respondent on February 24, 2021.

2021. The Pre-Hearing Conference Report and Order was entered on November 5, 2021.

11. On November 8, 2021, Petitioner filed: (1) Petitioner's Motion in Limine to Limit the Testimony of the School District's Employees;⁵ (2) Petitioner's Motion in Limine to Limit Testimony and Evidence as to School District's Alternative Placements for Student; (3) Petitioner's Motion in Limine to Exclude the Testimony of [Student's] Teachers; and, (4) Petitioner's Witness List.
12. On November 10, 2021, Petitioner filed Petitioner's Trial Brief. This brief included points and authorities and argument in favor of Petitioner's position.
13. On November 11, 2021, Petitioner filed Petitioner's Objections to November 5, 2021, Pre-Hearing Order.
14. On November 11, 2021, Respondent filed its: (1) Response to Petitioner's Objections to November 5, 2021, Pre-Hearing Order; (2) Motion to Strike Petitioner's Motion in Limine to Exclude the Testimony of [Student's] Teachers; (3) Opposition to Petitioner's Motion in Limine to Limit Testimony and Evidence as to School District's Alternate Placements for Student; (4) Motion in Opposition to Petitioner's Motion in Limine to Limit the Testimony of School District's Employees; and, (5) School District's Witness List.⁶
15. On November 12, 2021, Respondent filed School District's Admissions to [Petitioner's] First Amended Due Process Complaint.

⁵This document is not dated, but was received by the IHO on November 8, 2021, the same date as the other documents that were filed by Petitioner.

⁶This document is not dated, but was received by the IHO on November 11, 2021.

16. On November 12, 2021, Petitioner filed: (1) Petitioner's Reply to School District's Opposition to Petitioner's Motion in Limine to Limit Testimony and Evidence as to School District's Alternative Placements for Student was filed on November 12, 2021; (2) Petitioner's Reply to School District's Opposition to Petitioner's Objections to November 5, 2021, Pre-Hearing Order; (3) Petitioner's Opposition and Reply in Opposition to Petitioner's Motion in Limine to Limit the Testimony of School District's Employees; and, (4) Petitioner's Opposition to School District's Motion to Strike Petitioner's Motion in Limine to Exclude the Testimony of [Student's] Teachers.
17. On November 13, 2021, Respondent filed Respondent's Hearing Brief. This brief included points and authorities and argument in support of Respondent's position.
18. On November 14, 2021, Petitioner filed Petitioner's Document Index. The exhibits in this matter were timely exchanged by the parties, 5 business days in advance of the hearing.
19. On November 14, 2021, the IHO entered the Pre-Hearing Order.
20. On November 14, 2021, Petitioner filed Petitioner's Objection to School District's Hearing Brief.
21. The 5 day hearing commenced on November 15, 2021, and concluded on November 19, 2021.
22. On November 21, 2021, the IHO entered its Order Incident to Hearing.
23. On January 31, 2022, Petitioner filed Petitioner's Post-Hearing Brief. On the same day, Respondent filed School District's Closing Brief.

24. The basis for jurisdiction in this matter is the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C §1400 et seq., 34 C.F.R. 300.100 et seq., and Chapters 388 of the Nevada Revised Statutes (“NRS”) and Nevada Administrative Code (“NAC”).

II.

PRELIMINARY MATTERS

The initial decision deadline in this case was May 9, 2021.

On March 12, 2021, at the Status Conference, the parties informed the IHO that they agreed to participate in mediation which was to occur on April 2, 2021, and April 7, 2021, if necessary. Pursuant to the March 12, 2021, Status Conference Report and Order, the parties scheduled a second Status Conference to occur on April 12, 2021. In the event the parties did not resolve this matter in mediation, it was agreed that extension of the decision deadline would be discussed at the second Status Conference.

On April 14, 2021, the second Status Conference occurred.⁷ At the second Status Conference the parties indicated that they had participated in mediation and that as a result of same, Respondent agreed to evaluate Student for a disability. The parties were unclear as to when Student’s evaluation would be completed, but indicated that after receiving the results they desired to return to mediation. Pursuant to the April 14, 2021, Status Conference Report and Order, and based upon the foregoing stipulated protocol, a third Status Conference was scheduled to occur on April 28, 2021.

On April 28, 2021, a third Status Conference occurred. At that time the parties confirmed that Student’s evaluation would not be completed until early June, 2021, at which time an

⁷The parties agreed to move the second Status Conference from April 12, 2021, to April 14, 2021.

eligibility meeting would take place. Following this meeting, it remained the parties' intent to return to mediation. Moreover, at this Status Conference, Petitioner indicated the desire to file an Amended Due Process Complaint; Respondent had no objection. Pursuant to the April 28, 2021, Status Conference Report and Order, the IHO approved the filing of the amended pleading and based upon Petitioner's representation, expected the document to be filed on or about April 30, 2021.

On April 30, 2021, the First Amended Due Process Complaint was filed ("DPC").⁸ Based upon the filing of the DPC, an Amended Preliminary Order was entered on May 10, 2021. In this Order the new decision deadline was confirmed to be July 14, 2021.

On May 20, 2021, a Status Conference took place. At the Status Conference the parties explained that further mediation had been scheduled to take place on July 15, 2021. Pursuant to the May 20, 2021, Status Conference Report and Order, based upon the stipulation of the parties and a finding of good cause, the decision deadline was extended to August 27, 2021.

On August 4, 2021, a Status Conference was held. At this conference the parties confirmed that they did participate in mediation and that they had scheduled a continued mediation to take place on October 25, 2021. Pursuant to the August 4, 2021, Status Conference Report and Order, the parties' five (5) day hearing was scheduled to commence on November 15, 2021, and to conclude on November 19, 2021. In addition, based upon the stipulation of the parties and a finding of good cause, the decision deadline was continued to December 13, 2021.

On November 4, 2021, the Pre-Hearing Conference took place. On November 5, 2021, the Pre-Hearing Conference Report and Order was issued. Contained therein is the IHO's statement

⁸As a result of the filing of the DPC, the applicable deadlines began anew.

of the 3 Issues to be adjudicated at the parties' hearing. On November 11, 2021, Petitioner filed their Objections to the November 5, 2021, Pre-Hearing Conference Report and Order.

On November 14, 2021, a Pre-Hearing Order was entered. Pursuant to this Order, and based upon agreement of the parties, Hearing Issues 1 and 2 were amended, resolving Petitioner's Objections to November 5, 2021 Pre-Hearing Order. This Order also includes the IHO's decisions denying Petitioner's three (3) Motions in Limine.

The hearing was held as scheduled, for 5 days, November 15, 2021, through November 19, 2021. At the hearing, Respondent offered the testimony of 9 witnesses and Petitioner offered the testimony of 4 witnesses. Additionally, Petitioner's Exhibits numbered 1-38 (pp. 1-848), Respondent's Exhibits 1-3 (pp. 1-382), Hearing Officer Exhibits 1-2, and Joint Exhibits 1-14 (pp. 1-569) were admitted into evidence.

On November 21, 2021, the Order Incident to Hearing was entered. In this Order the IHO noted that the parties' hearing concluded on November 19, 2021, and that after the close of evidence the parties agreed upon certain deadlines and procedures. Of relevance, the parties agreed to prepare closing briefs **after** receipt of the hearing transcripts. The closing briefs were due on January 31, 2022. In addition, and based upon a finding of good cause, the decision deadline was extended to March 31, 2022.

Based upon the date Petitioner filed the Due Process Complaint the relevant time period in this case is February 23, 2019, through February 23, 2021.

III.

HEARING ISSUES

As amended pursuant to November 14, 2021, Pre-Hearing Order, the issues to be decided by the IHO include:

Issue No. 1: Whether Respondent failed to identify and evaluate Student as a child suspected of having a disability in need of special education and related services under the IDEA during the 2 year period preceding the filing of the February 23, 2021, Request for Due Process.

Issue No. 2: Whether Respondent's alleged failure to identify and evaluate Student for special education eligibility during the 2 year period preceding the filing of the February 23, 2021, Request for Due Process denied Student meaningful educational progress ("FAPE").

Issue No. 3: In the event Student was denied a FAPE, what equitable remedies are appropriate.

In the DPC, Petitioner's "Prayer for Relief" provided, "Parents request reimbursement for the costs of Student's education (including residential placement) for the two year period preceding the filing of the Due Process Complaint and continuing."

IV.

FINDINGS OF FACT

1. Student's Mother and Father are Nevada licensed attorneys. One of Student's parents has knowledge and experience in special education law and is familiar with the legal requirements for disability evaluations and eligibility for SPED. (VOL. I, pp. 12-17)⁹
2. Student is 17 years of age. Throughout Student's life, Student was educationally gifted. In third and fourth grade Student was home-schooled, and participated in the gifted and talented program offered by School District. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint).

⁹All references to "Vol" pertain to the official hearing transcripts, Volumes I-V.

3. Student attended fifth through eighth grade at Private School in Nevada. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint) According to Student's Cumulative Grade Report from Private School, during the 2017-2018 school year, Student's cumulative GPA was 4.23. The grade report indicates that while attending Private School, Student received one "B" and the remainder of her letter grades were "A" or "A+". (EX J2)
4. From March 17, 2018, through July 17, 2018, Student was a patient at Psychiatric Hospital. Student was placed at this facility as a result of suicidal ideation. (EX J4) During Student's stay, Student took classes at Hospital School. Hospital School is a private, accredited school licensed by the Nevada Department of Education, located within Psychiatric Hospital. During Student's initial time at Hospital School, Student's letter grades were B+, A, A- and A-; Student's KTEA¹⁰ II scores were all at grade level, but the math score was low; and, the comments about Student at discharge were, "Student is very capable, attempts & completes assignments consistently, works @ grade level." (EX P4)
5. In July, 2018, Student was enrolled for the 2018-2019 academic year at High School. High School is a public high school and is part of School District. The school year commenced on August 6, 2018. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint)(EX J1, p. 23)

¹⁰"Kaufman Test of Educational Achievement."

6. Prior to Student's 2018 enrollment at High School, Student was never on an IEP under the IDEA or the NAC. In addition, Student was never on a 504 plan.¹¹
(VOL. I, p. 19)
7. Prior to Student starting classes at High School, emails were exchanged whereby High School counselors and teachers were made aware that Student faced certain mental health challenges. These written communications provided: (1) pursuant to a July 5, 2018, email from Student's Mother, Student had been at Psychiatric Hospital since March 17, 2018, Student was showing signs of improvement, and due to Student's extensive self-harm scars Student was self-conscious whereby Student's Mother requested that Student not be placed in a PE class, but instead be placed in choir as PE will "cause [Student] too much anxiety and stress" (EX J5, p. 94); (2) pursuant to a July 31, 2018, email from Student's Mother, she was no longer requesting that Student be taken out of PE because Student already had a class schedule, Student's Mother confirmed her desire to start the process for getting Student a 504 plan, and she requested that a protocol be put in place whereby Student had a "safe place" to go when Student had panic attacks and/or urges to self-harm; Student's Mother also wanted High School's teachers to know that Student was prone to panic attacks (EX J5, p. 95); and, (3) pursuant to a July 31, 2018, email from Student's Father, he confirmed that he wanted a 504 plan set up for Student. (EX J5, p. 95)

¹¹A 504 plan is one developed under Section 504 of the Rehabilitation Act of 1973 to provide supports for students with disabilities.

8. Prior to the filing of this matter by Petitioner in 2021, Student's Mother confirmed that Student's 2018 discharge papers and other records from Psychiatric Hospital were not provided to High School. (VOL. I, p. 117)
9. On July 31, 2018, Counselor 1, wrote to Student's parents and confirmed the following: (1) the school was prepared to move forward with the requested 504 plan; (2) all of Student's 7 teachers were aware of Student being prone to panic attacks and needing a safe place to go if Student had a panic attack or self-harm urges; and, (3) Student would be provided with an "anytime pass" whereby all of Student's teachers would release Student upon request and that this pass would be given to Student whether or not Student had a 504 plan. (EX J5, p. 96)
10. Pursuant to an August 1, 2018, email from Student's Mother in response to Counselor 1's email, High School counselors and teachers were on notice that: (1) Student was fine with taking PE; (2) Student was recently released from Psychiatric Hospital after a 4 month stay; (3) Student did transition well and was doing well; (4) Student was diagnosed with anxiety and MDD¹², and Student had been admitted to Psychiatric Hospital due to suicidality; (5) High School's suggestion of an "anytime pass" for Student was ideal; and, (6) in light of Student's Mother's conversation with the school nurse and the receipt of the "anytime pass" it was not necessary that Student have a formalized 504 Plan. (EX J5, p. 98)
11. High School provided every accommodation to Student that Student's parents requested. (VOL. I, p. 31)

¹²"MDD" is an acronym for Major Depressive Disorder.

12. While attending school from August 6, 2018, through September 28, 2018, Student attended classes, received good grades, behaved respectfully in the classroom, was exemplary, and never used the “anytime pass” for any reason, including self-harm or anxiety attacks. (VOL. I, pp. 35-36) Regarding Student’s short tenure at High School, Respondent presented 3 credible witnesses.

School Psychologist testified that if a Student may be struggling at school, he uses a tiered approach to addressing the matter. Regarding the identification of a student who may have a disability, High School usually gathers and reviews data over a 6-9 week period of time. If he believes a student may be struggling, under the tiered approach High School often starts with implementation of 504 accommodations, before evaluating for a disability and potentially SPED. A goal is to provide the least restrictive environment for the student. When analyzing whether any intervention is necessary, a student’s academic performance is the primary consideration. School Psychologist also testified that most evaluations are at parent request. Parents are pivotal in the evaluation process because they participate in determining the scope of the evaluation and typically provide background information that a school would not otherwise have. School Psychologist further testified that in order to evaluate a child, a school needs access and exposure to the student. In the present case, Student was never brought to his attention during Student’s tenure at High School; he had no contact with Student. Further, despite High School’s knowledge of Student’s anxiety, panic attacks and potential to self-harm, Student had no behavior incidents at High School, and there was no reason to believe Student was struggling. After Student withdrew from High School, school personnel had no access to Student. (VOL I, pp. 141-210; VOL II, pp. 217-229)

Counselor 1, at Parents' request told all of Student's teachers about Student's potential panic attacks. Counselor 1 facilitated Student's "anytime pass". Counselor 1 was given limited information from Student's parents about Student's mental health. She was made aware of Student's potential panic attacks, anxiety and Student's potential to self harm, but was not provided with the records from Psychiatric Hospital. While attending High School, Student's grades were above average and Counselor 1 had no reason to believe Student was struggling academically. On behalf of High School, Counselor 1 was always willing to provide necessary or requested services to Student. Yet, despite offering twice to set up a 504 Plan for Student, Student's parents declined. Moreover, at no time did Student use her "anytime pass." After leaving High School in September, 2018, Student never returned to the school. (VOL II, pp. 356-414)

School Professional¹³ had spoken to Student's parents before the commencement of the school year. The focus of the conversation was Student's potential panic attacks. School Professional met with Student on 3 occasions at High School. At each of the 3 meetings, Student confirmed that things were "good." At the first meeting Student confirmed that Student received the "anytime pass" and that Student was making friends. At the second meeting, Student confirmed that everything was good at school and at home, and that Student continued to make friends. At the third meeting, the day before Student's September 29, 2018, suicide attempt, Student reported that Student had made friends and was adjusting well at school. School professional saw no signs that Student was struggling or that Student should be evaluated for a disability. (VOL III, pp. 432-473)

¹³School Professional's actual title at High School is "Safe School Professional". School Professional is a mental health professional who is a licensed MFT and a licensed clinical professional counselor. She is part of the counseling staff at High School.

13. Despite claiming that in August and September, 2018¹⁴, Student was sad and having suicidal ideations, Student's Father did not request that Student be evaluated for a disability, and did not report Student's issues to High School. (Transcript, VOL. I, pp. 36-37)
14. On Saturday, September 29, 2018, Student attempted suicide at home and was hospitalized for several days before being transferred to a Behavioral Facility for the month of October, 2018. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint).
15. Student attended classes, in-person, at High School from August 6, 2018 through September 28, 2018. After Student's September, 2018, suicide attempt, Student never returned to High School to further Student's education. (VOL. I, p. 39)
16. After High School was made aware of Student's suicide attempt and placement at Behavioral Facility, during the time period October 2, 2018, through October 29, 2018, Student's parents made arrangements with High School teachers to pick up school work for Student while Student remained in Behavioral Facility. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint)
17. On October 29, 2018, Student returned to a residential placement at Psychiatric Hospital and remained there through March 4, 2019. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint)
18. While Student resided at Psychiatric Hospital from October 29, 2018, through March 4, 2019, Student continued their high school education through Hospital

¹⁴This finding pre-dated Student's suicide attempt at the end of September, 2018.

School. Commencing October 30, 2018, Student's parents did inform High School counselors and teachers of Student's hospitalizations and residential placement. (Respondent's November 12, 2021, Admissions to First Amended Due Process Complaint)(EX J5)

19. When Student withdrew from Hospital School in March, 2019, Student's letter grades were B, A-, A-, A-. Moreover, Hospital School's recommendation at discharge was that Student return to "zoned school, regular education." (EX J8, pp. 133-136)
20. On March 7, 2019, via Notice of Intent to Home-School, Student was withdrawn from High School, to be home-schooled. (EX J1, J23-J28) The attached Educational Health Plan for Student, which was selected by Student's parents, included no SPED and only pertained to general online education. (EX J1, J24-J28)
21. From March, 2019 to October, 2019, Student received transcranial magnetic stimulation ("TMS") in Sacramento, CA. The treatments would occur Monday - Friday. During this period of time, Student was taking and completed some high school level educational courses through Brigham Young University (VOL. I, pp. 47-48)
22. From October 2019, through June 7, 2020, Student was home-schooled. (VOL. I, p.51) During this period of time there were no emails between High School and Student's parents. (EX J5)
23. In March, 2020, Student was the victim of a sexual assault. (VOL. I, p. 52) Following the sexual assault, Student briefly abused alcohol. (VOL. I, p. 53)

24. On or about June 7, 2020, Student attempted suicide. (VOL. I, p. 51)
25. In July, 2020, Student was enrolled at Charter School. Student's parents did not specifically notify High School of Student's enrollment. (VOL. I, p. 54-55)
However, High School did get a record request from Charter School for Student's education records. (EX J1, pp. 62-63) (VOL. II, pp. 242 - 354) Student's Father confirmed that despite visiting Charter School's campus and being enrolled, Student was never able to attend any classes at Charter School. (VOL V, pp. 830-866)
26. In July, 2020, when Student's parents were trying to find a new psychologist for Student, and they needed a teacher assessment filled out, they requested the assessments from Private School, not High School because, "they had only known [Student] for 6 weeks...we wanted an evaluation - - not an evaluation, someone to complete the form that had more of [Student's] history as a student." (EX J3, pp. 83-84; VOL. I, pp. 132- 136)
27. In August, 2020, Student was taken to Private Clinic for evaluation. (Transcript, VOL. I, p. 55) Student's inpatient evaluation included numerous assessments and interventions. (EX J9, p. 137) The evaluation took approximately 6 weeks. (VOL. I, p. 60) School District was not aware of and did not participate in the evaluation. (VOL. I, p. 60) According to the Private Clinic report, Student is a bright individual who does well academically. (EX J9, p. 139)
28. During Student's voluntary evaluation at Private Clinic, and based upon Private Clinic's recommendation, Student's parents hired Company to assist them in locating a placement for Student that included both therapy and education. (VOL.

I, pp. 63-64) Student's parents did not contact School District about conducting an evaluation of Student or to collaborate regarding a placement for Student. (VOL. I, p. 64) Regarding all consulting activities pertaining to Student's placement, School District was not included. (VOL. I, p. 69)

29. Regarding a placement for Student, Company recommended 3 options located outside the State of Nevada. (VOL. I, p. 70) Student's parents selected Therapy Facility for Student's care, education and treatment. Student began residing at Therapy Facility in September, 2020. School District was not involved with or informed of this placement. (VOL. I, pp. 70-72) Pursuant to a letter dated February 16, 2021, from Therapy Facility staff, "[Student is also able to attend school at [Therapy Facility], being behind a grade level because of frequent hospitalization. Since admission, [Student] has been able to get caught up and manage [] academics appropriately." (EX J10) Student did not receive SPED pursuant to an IEP while at Therapy Facility. (VOL. I, p. 71)
30. On February 23, 2021, Student's Parents attempted to re-enroll Student at High School, however no classes were selected whereby Student was not actually enrolled.
31. After Student's Parents filed the Due Process Complaint on February 23, 2021, School District offered to and did evaluate Student for a disability under the IDEA. (VOL. I, pp. 77-78)
32. In Spring, 2021, Clinical Psychologist was retained by School District to conduct a psycho-educational evaluation of Student. Her report is part of the record. (EX J11) Thereafter, Clinical Psychologist was retained by Student's Parents to be

their expert in the present case. Clinical Psychologist was a credible witness, but certain testimony offered by her during cross-examination supported School District's position. According to the testimony of Clinical Psychologist, at the time of Student's evaluation, Student had significant mental health concerns; Student was experiencing severe depression and anxiety. Based upon her evaluation Student met the disability definition for emotional disturbance. Clinical Psychologist further concluded that Student's disability adversely impacted their educational functioning and that SPED was necessary. In addition, Clinical Psychologist opined that Student has shown severe emotional depression and anxiety that dates back to March, 2018 and that for approximately 3.5 years there has been a long standing chronic pattern of severe mental health concerns. It was the further opinion of Clinical Psychologist that after Student's discharge from Psychiatric Hospital July, 2018, Student's mental health concerns were severe and chronic. She believed that at that time, a reasonable psychologist would have concluded that Student required specific observations and services. Clinical Psychologist testified that a suicide attempt followed by hospitalization in an ICU would be for her enough evidence to trigger a discussion about an evaluation and services; at a minimum, "it would trigger a discussion." (VOL. IV, pp. 640-811)

On cross-examination, Clinical Psychologist admitted that regarding her evaluation she did not request any teacher assessments from High School. Moreover, other than School Psychologist, she did not talk to any counselors or other school personnel regarding her evaluation because Student was not there very long before Student moved to one of the

hospitalizations or treatment centers. When Clinical Psychologist was asked whether her opinion 3.5 years after Student was discharged from Psychiatric Hospital outweighs the opinion of Psychiatric Hospital that Student should return to “zoned school, regular education” upon discharge, Clinical Psychologist indicated that she did not have full knowledge of what happened in Student’s education at that placement. Clinical Psychologist was unaware that High School had offered Student 504 accommodations both in August and October, 2018, and was also not told that Student’s Parents declined both offers. Clinical Psychologist testified that in October, 2018, after Student’s suicide attempt, she believed that High School’s offer of a 504 Plan was a proper response in that it was the beginning of scheduling a “discussion” about Student’s needs.^{15 16} Finally, Clinical Psychologist confirmed that while Student was attending classes at High School, Student did not demonstrate external behaviors including acting out, violence, aggression, fighting or rule breaking. Student did not engage in chronic absenteeism, did not have failing grades, and was not anti-social. She further conceded that regarding Student’s potential panic attacks, High School did have an appropriate accommodation in place for Student. (VOL. IV, pp. 640-811)

33. In June, 2021, after the evaluation, Student was determined eligible for SPED under the category “emotional disturbance.” An IEP team was timely created and despite a number of meetings, no IEP was developed. As of November 15, 2021,

¹⁵This testimony was significant to the IHO in that it was consistent with that of School Psychologist who indicated that on a tiered approach you can start with 504 accommodations and if they are insufficient and a Student requires more help, they can lead to a disability evaluation and SPED.

¹⁶An evaluation for SPED under the IDEA or the NAC does not require that a student first receive supports / accommodations under a Section 504 plan.

Student's Father did not believe it was feasible for Student to be enrolled in any SPED program within School District. (VOL. I, pp. 82-83)

34. Student commenced residential treatment at Therapy Facility 2 on October 1, 2021. Therapy Facility 2 is a for profit residential placement. Therapy Facility 2 operates an apartment complex for clients and provides therapy. Therapy Facility 2 does not offer special education services, does not offer academic classes, and has no ability to implement an IEP with special education teachers. (VOL. III, p. 529-590) Student obtained her GED while living at Therapy Facility 2, and is currently taking college courses at a university in Utah. (VOL. III, pp. 594-634)

V.

CONCLUSIONS OF LAW / DISCUSSION

1. The applicable statute of limitations for alleged violations of IDEA rights is two (2) years from the date petitioner knew or should have known of the alleged action that forms the basis of the complaint, to the time of filing. (*See* NAC 388.306(15); 20 U.S.C. § 1415(f)(3)(c) and (d)(2)(E)(I)).¹⁷ The IDEA's statute of limitations incorporates the "discovery rule" to commence the running of the two-

¹⁷NAC § 388.306(15) provides: A parent or a public agency shall file a complaint pursuant to this section within 2 years after the date on which the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint. The time limit for filing a complaint does not apply to a parent if: (a) The parent was prevented from requesting a hearing due to specific misrepresentations by the public agency that it had resolved the problem forming the basis of the request for the hearing; or (b) The public agency withheld information from the parent that the public agency was required to provide to the parent pursuant to 20 U.S.C. § § 1400 *et seq.*

year statute of limitations. Pursuant to the case, *Avila v. Spokane Sch. Dist.* 81, 852 F.3d 936 (9th Cir. 2017), claims that fall outside the 2 year statute of limitations are time barred if the parent knew or should have known about the alleged actions that formed the basis of their due process complaint.

Regarding Petitioner's claim that Respondent failed in its "child find" duty, the applicable period of time is from February 23, 2019 through February 23, 2021.

2. NRS 388.467 provides that whenever a due process hearing is held pursuant to the IDEA, 20 U.S.C. 1400 et seq., and a school district is a party, the school district has the burden of proof and the burden of production.

In the present case, Respondent bears the burden of proof and the burden of production. Based upon the foregoing findings of fact, Respondent met its burden of proof and production.

3. Regarding Respondent's alleged failure to identify and evaluate Student as suspected of having a disability and in need of SPED, 20 U.S.C. 1412 (a)(3)(A) provides, "[all] children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services." (*See also* 34CFR300.111(a)(I))

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This

duty is commonly referred to as "child find." Child find encapsulates a school district's duty to assess whether a child is eligible for special education once the school district is on notice of a suspected disability. (See, e.g., *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016); See also 20 U.S.C. § 1412(a)(3)(A))

A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae S.*, 158 F.Supp. 2d 1190, 1194 (D. Hawaii 2001)) A disability is "suspected," and a child must be assessed, when the school district is on notice that the child has displayed symptoms of that disability or that the child may have a particular disorder. (*Timothy O. v. Paso Robles Unified School Dist.*, 822 F.3d 1105, 1120-21 (9th Cir. 2016)) That notice may come in the form of concerns expressed by parents about a child's symptoms, opinions expressed by informed professionals, or other less formal indicators, such as the child's behavior. (*N.B. v. Hellgate Elementary School Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008))

The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). To establish a child find violation under the IDEA, it must be demonstrated that the school district overlooked clear signs of disability and were negligent in failing to order testing or an evaluation that may include testing, or that there was no rational justification for not deciding to evaluate. *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942-43 (E.D. Va. 2010). Further, in *Dubrow v. Cobb Cty. Sch. Dist.*, 887 F.3d 1182 (11th Cir. 2018), the court held that to trigger a child find obligation and

potential determination for eligibility, the petitioner had to establish that his disability had an adverse impact on his education and that the student needed special education as a result of that impact. The court also held that a student is unlikely to need special education services if: (1) the student meets academic standards; (2) teachers do not recommend special education for the student; (3) the student does not exhibit significant unusual or alarming conduct warranting special education; and, (4) the student demonstrates the capacity to understand course material. *Id.*

If there is no reason to suspect that a student is a "child with a disability" under the IDEA, there is no need for the school district to evaluate the child. (*See, e.g., Hoffman v. East Troy Cmty. Sch. Dist.*, 38 F. Supp. 2d 750, 766 (E.D. Wisc. 1999)(citing cases); *McMullen County Independent School District*, 49 IDELR 118 (Texas SEA 2007)("The IDEA requires a two-prong analysis for determining whether a child should be identified and referred for special education services. First, the student must have a specific physical or mental impairment identified through an appropriate evaluation. Identifying an impairment does not alone satisfy the eligibility test under Part B of the IDEA. Second, the district must have reason to suspect the student is in need of special education services. This is usually determined by the student's inability to progress in a regular education program."); (*See also, Legris v. Capistrano Unified School District*, 79 IDELR 243 (9th Cir. 2021)(A student's good grades in her general education classes with the assistance of 504 accommodations supported school district's decision not to evaluate Student for a disability). "Knowledge of a disability may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation." (*Weisenberg v. Salt Lake City Sch. Dist.*, 181 F.Supp. 2d 1307, 1310 (D. Utah 2002)

In the present case, School District bore the child find duty, not Student's parents. That is, School District had a duty to assess whether Student was eligible for special education if it had notice of a suspected disability and reason to suspect that special education services may be needed to address that disability. During the relevant period of time, School District had no notice that Student may have had a disability and therefore it had no duty to assess Student for SPED. The information provided to High School by Student's parents focused on Student's anxiety and potential for self-harm. In response, High School put certain accommodations in place for Student. Those accommodations were never exercised by Student during Student's short tenure at High School. In addition, High School twice offered to work with Student's parents to devise a 504 plan for Student. On both occasions, Student's parents declined High School's offer.

During the period of time that Student actually attended High School, Student did well in academics, got good grades, attended classes, did not exhibit external signs that Student was struggling in any way, self-reported to High School personnel that Student was "doing fine and making friends", had no panic attacks or self-harm incidents, and never used the "any-time pass." The facts indicate that Student was not on the School Psychologist's radar. Student did not demonstrate any symptoms of a disability and Student's behavior and performance at High School were exemplary.

Subsequent to Student's departure from High School in September 2018, High School had no further access to Student, was not provided with consistent updates regarding Student's condition, and was not provided with Student's mental health and other records. However, in October, 2018, when the parties still anticipated that Student would return to High School, a 504 plan was offered to and declined by Student's parents. As confirmed by Clinical Psychologist, at

the time this accommodation offer was made by High School, it was an appropriate response by High School and may have gotten the “discussion” started regarding whether Student required additional, or more intense accommodations. It is also notable, that during the entire period of time from February 23, 2019, through February 23, 2021, and while having significantly more knowledge and information about Student’s ongoing condition than High School, Student’s parents never requested that Student be evaluated for a disability. Despite the fact that the child find duty lies with School District, the IHO found School Psychologist’s testimony compelling. School Psychologist indicated that unlike the facts in the present case, where a student may be struggling and is not performing academically, High School typically gathers data over a 6-9 week period. The point being, that in order to evaluate a student, a school needs access and exposure to the student for a reasonable period of time. And, in the event an evaluation occurs, the student’s parents are pivotal in the evaluation process because they participate in determining the scope of the evaluation and typically provide background information that a school would not otherwise have. Student attended High School for a very short period of time. During that period of time High School had no knowledge of or reason to suspect Student had a disability. Thereafter, Student’s parents provided High School limited information and did not include High School in any placement decisions or share reports, evaluations, and records that were being developed during the relevant period of time. It was not until after the DCP was filed that all of the information about Student was provided to School District. And, consistent with the Conclusions of Law set forth above, hindsight is not a legal basis for finding School District liable for a child find violation. When considering what School District knew or should have known during the relevant period of time, it had no reason to suspect that Student had a disability.

In addition, Student spent more time attending school at Hospital School than she did attending class at High School.¹⁸ During Student's first stay before starting High School, Student's grades at Hospital School were primarily As and she was working at grade level with no specially designed instruction. Thereafter, Student attended Hospital School from late October, 2018, until March, 2019. When Student withdrew from Hospital School in March, 2019, Student's letter grades were B, A-, A-, A-. At that time, Hospital School's discharge recommendation was that Student return to "zoned school, regular education." That is, despite being placed in a residential facility, Hospital School did not conclude that there was a need to have Student evaluated for a disability. During the period of time that School District had first hand knowledge about Student's educational progress and during the period of time that Student's parents kept School District informed about Student's condition, Student continued to advance in regular education programs.

Student was withdrawn from High School in March, 2019, to be home schooled.¹⁹ The education plan submitted by Student's parents did not include SPED and pertained only to general online education. Thereafter, many intervening events in Student's life occurred that School District had no knowledge of and/or was not included in. For instance, Student began receiving TMS 5 days a week in California, while attending on-line classes. Then, in March, 2020, Student was the victim of a sexual assault and began abusing alcohol. In June, 2020,

¹⁸Regarding Student's short duration attending High School, both Student's parents and Clinical Psychologist acknowledged its relevance. When Student's parents needed a school assessment filled out, they requested the assessment be completed by Private School instead of High School because Student only attended High School for 6 weeks and they wanted someone to complete the form that knew more of Student's history as a student. Moreover, Clinical Psychologist did not interview High School personnel when completing her evaluation because Student was not there very long.

¹⁹The IHO acknowledges that despite being home schooled, School District continued to have the child find duty regarding Student.

Student again attempted suicide. In July, 2020, absent any input from High School, Student was enrolled at Charter School. Then, in August, 2020, Student was removed from Student's home and was taken to Private Clinic for a 6-7 week residential evaluation. Student has resided outside Student's home State of Nevada at 2 different residential treatment centers ever since. When considering the "snap shot" of information that School District had when it actually had access to Student, and during the period from February 23, 2019 through February 23, 2021, it had no reason to suspect Student had a disability.

In conclusion, during the relevant period of time School District did not fail to identify and evaluate Student as suspected of having a disability and in need of SPED. The Student who was recently evaluated by Clinical Psychologist and who was found to have a disability is not the same Student who School District observed and educated for a short period of time.

5. Based upon the IHO's decision with regard to Hearing Issue No. 1, Petitioner is not entitled to any relief regarding Hearing Issues 2 and 3. During the relevant period of time, Student was not denied a free appropriate public education and therefore Petitioner is not entitled to any equitable remedies.

VI.

ORDER

Based upon the above Findings of Fact and Conclusions of Law and good cause appearing, it is hereby ordered:

During the 2 year period of time from February 23, 2019, through February 23, 2021, School District did not fail in its duty to identify and evaluate Student as a child suspected of having a disability in need of special education. Petitioner is not entitled to any remedy as a result of this action.

VII.

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 NAC §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 Department shall conduct an impartial review of the hearing pursuant to NAC §388.315.

Dated: March 24, 2022.

//ss// Kevin P. Ryan
Hearing Officer
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