

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

**DECISION OF THE HEARING
OFFICER**

In the Matter of

STUDENT¹, by and through Parent,

Parent,

v.

SCHOOL DISTRICT,
District.

Date: March 25, 2023

Parents: Amanda Laub. Esq

Districts: Sara Montalvo, Esq. and
Andrea L. Schulewitch, Esq.

Victoria T. Oldenburg
Hearing Officer

INTRODUCTION AND PRELIMINARY MATTERS

On December 30, 2022 the Parent² filed a due process complaint ("Complaint") on behalf of the above-captioned Student against the School District ("the District"). Hearing Officer Exhibit (HO) 1. The Nevada Department of Education, Superintendent of Public Instruction, appointed the undersigned Hearing Officer, Victoria T. Oldenburg, as the Hearing Officer for the case on January 9, 2022. HO-1. The District responded to the Complaint on January 13, 2023. HO-2. The Hearing Officer issued a Preliminary Order on January 15, 2023 setting forth the statutory time periods applicable to the proceeding as established in 34 C.F.R. §§300.510-300.515. HO-4. The parties were unable to resolve the issues during the resolution period.

On February 8, 2023 the District filed a Motion to Extend Deadlines. HO-7. The District

¹ Personally identifiable information is included in the Appendix to the final decision in this matter and will be removed prior to public distribution. *See Letter to Schad*, 105 LRP 4754 (December 23, 2004).

² The capitalized term "Parent" refers to the Parent, and collectively to the Parent and the student.

requested that the Hearing Officer (i) permit an extension of the deadlines after an amended request for due process hearing is submitted, or; (ii) order the Parent to articulate with specificity the actual cognizable issues for hearing that have not already been settled and if they cannot, should (iii) order the Parent to finalize the settlement agreement. On February 10, 2023 the Hearing Officer issued an Order Regarding Motion to Extend Deadlines. HO-8. The Hearing Officer found as follows:

1. It is clear under the IDEA³ that the hearing is limited to the allegations, issues, and relief set forth in the request for due process hearing. The hearing officer lacks authority to order a Parent to file an amended request for due process hearing. 34 CFR §300.508.
2. The Motion to Extend Deadlines is premature. At the prehearing conference the Parents will be requested to identify the issues in the request for due process hearing. Prior to the prehearing conference, for discussion purposes the Hearing Officer will provide the parties with a preliminary statement of issues and relief sought which the Hearing Officer identifies as being set forth in the request for due process hearing.
3. If the Parents wish to raise issues or seek relief that is not set forth in the Request for Due Process Hearing they can request leave to file an amended due process complaint. 34 CFR §300.508(3). If leave is granted then the time period for the resolution meeting and the time period to hold and hearing and resolve the issues begin again. 34 CFR §300.508(4).
4. The hearing officer does not have the authority to order the Parents to specifically articulate with specificity the actual cognizable issues for hearing that have not already been settled or to order the Parents to finalize the settlement agreement.
5. The Motion to Extend Deadlines is held in abeyance pending the prehearing conference. However, if the Parents wish to submit a response to the Motion they may do so by close of business February 17, 2023. However, the Parents are not required to submit a response to the Motion. A reply brief is not being ordered at this time.

Id.

On February 13, 2023 the Hearing Officer issued a Notice of Pre-Hearing Conference and

³ IDEA is the acronym for the Individual's with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §§1400-1482.

Order. HO-9. On February 15, 2023 the Hearing Officer issued a Preliminary Statement of Issues. HO-10. On February 17, 2023, the Parent filed an Opposition to District's Request for a Continuance and Declaration and Motion to Strike (HO-11). The Parent requested that all references in the Motion to Extend Deadlines and documents attached to the Motion which related to settlement negotiations be stricken from the record, arguing such communications were confidential. *Id.*

Pursuant to notice duly given the Hearing Officer convened a Pre-Hearing Conference on February 21, 2023 to, among other things, determine the precise issues to be addressed at the hearing, discuss whether pre-hearing motions or briefs were anticipated, establish deadlines for subpoenas and the exchange of documents, and confirm the date and time for the hearing and of any additional pre-hearing conferences. HO-9.

As set forth in the Pre-Hearing Conference Report and Order of February 22, 2023 (HO-12), the following issues were discussed:

- A. From December 30, 2020 to the present, was the Student evaluated and assessed in all areas of suspected disability and need, specifically by providing a new psycho-educational assessment, Functional Behavioral Assessment, and assessments to determine the Student's need for occupational therapy, physical therapy, and assistive technology? If not, was FAPE⁴ denied?
- B. Whether the IEPs developed from December 30, 2020 to the present provided the Student with a FAPE, specifically with regard to:
 - a. Providing annual goals to address the student's social and emotional, speech and language, assistive technology, situational awareness, and behavioral needs.
 - b. Providing occupational and physical therapy, transportation, and a note-taker.
 - c. Consideration of positive behavioral interventions and supports and other strategies to address the student's behavior.

⁴ FAPE is the acronym for "Free Appropriate Public Education." FAPE is an obligation under the IDEA to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. 20 U.S.C. §1400(d)(1)(A).

C. Whether the IEPs developed from December 30, 2020 to the present contain clear and measurable goals which enabled the Student to make progress in the general education curriculum in the areas of math, reading and writing, and self- regulation/concentration? If not, did the lack of clear and measurable goals result in a denial of FAPE?

D. Were the IEPs developed from December 30, 2020 to the present implemented, specifically regarding the provision of transportation to allow the Student to use the restroom every hour, and testing accommodations of extra time and allowing the Student to take tests in a small group? If not, was there a denial of FAPE?

E. Whether the District provided the parent access to the student's education record upon the parent's request on June 24, 2022 in accordance with 34 CFR §300.613, specifically by providing the parent access to inspect and review the service logs in the student's education record.

F. In the development of the Student's IEPs from December 30, 2020 to the present, were the parents significantly impeded from meaningfully participating and providing input to the IEP Team due to the IEP Team composition, specifically with regard to the absence of a speech and language therapist and assistive technology specialist? If yes, was there a denial of FAPE?

G. From December 30, 2020 to the present, did the District provide the parents with periodic reports towards meeting the annual goals in the Student's IEPs, and notice of the behavioral incidents and the transportation error? If not, was there a denial of FAPE?

HO-12.

The Parties agreed to the issues with the exception of numbers A and B; the District objected to the inclusion of occupational and physical therapy, stating the allegations were not properly alleged with sufficient facts in the Complaint. HO-12. The District's objection was overruled. *Id.* The Hearing Officer found that under 34 C.F.R. §300.508(d) a due process complaint is deemed sufficient as to the description of the nature of the problem of the proposed or refused initiation or change, including facts relating to the problem, and as to the proposed

resolution of the problem to the extent known and available to the party at the time unless the LEA notifies the hearing officer and the other party, within 15 days of receipt of the due process complaint, that the LEA believes the due process complaint does not meet the requirements in paragraph (b) of 34 C.F.R. §300.508. *See* 34 C.F.R. §300.508(a)(5) and (6). The District did not challenge the sufficiency of the due process complaint within the time period required under 34 C.F.R. §300.508(d). Therefore, the Hearing Officer ordered that the allegations in the due process complaint regarding occupational and physical therapy were deemed sufficient and the Hearing Officer had no authority to order otherwise. HO-12.

During the Pre-Hearing Conference the Hearing Officer reviewed the relief requested by the Parent as set forth in the Complaint. It was clarified that the Parent must be prepared to present evidence at the hearing on the appropriateness of the proposed resolutions. HO-12.

On February 23, 2023, the District filed a Motion for Summary Judgment and a request that the Parent's Complaint be dismissed with prejudice ("Motion"). On March 2, 2023 the Parent filed an Opposition to the Motion ("Opposition"). HO-14.

On March 3, 2023 the Hearing Officer issued an Order Denying Motion to Extend Deadlines and Order Denying Motion for Summary Judgment. HO-16. On the denial of the Motion to Extend Deadlines, the Hearing Officer found that the District did not establish good cause to extend the deadlines for the hearing to be held and a decision rendered on the Complaint. Specifically, the Hearing Officer found:

1. As to District's request that the Hearing Officer permit an extension of the deadlines after an amended request for due process hearing is submitted, the Hearing Officer found she did not have the authority to require a parent to file an amended due process complaint. *See* 34 CFR §300.508 (d)(3).
2. As to District's request to order the Parents to articulate with specificity the actual cognizable issues for hearing that have not already been settled and if they cannot, to order

the Parents to finalize the settlement agreement, the Hearing Officer found that none of the issues in the Complaint or the proposed resolutions had been officially settled as there was no settlement agreement executed by the Parties. In addition, even if certain issues and remedies had been settled in principle, under the IDEA and Nevada law the Hearing Officer does not have authority to enforce settlement of a due process complaint. *See Letter to Shaw*, 50 IDELR 78 (OSEP 2007). Nor did the Hearing Officer have the authority to intervene in the Parties resolution attempts. The Hearing Officer would have the authority to determine if an issue were resolved and outside the scope of the hearing if the parties had signed an enforceable settlement agreement.

3. The District did not challenge the sufficiency of the due process complaint within the time period required under 34 C.F.R. §300.508(d) thus the allegations in the due process complaint including the proposed resolutions were deemed sufficient.

As to the Parent's Motion to Strike the communications between the Parties referenced in the Motion to Extend Deadlines and those attached as exhibits to the Motion which pertained to a proposed resolution of the Complaint, the request was denied. The Hearing Officer found that unlike mediation pursuant to 34 CFR §300.506 (b)(8), resolution session communications are not automatically confidential unless there is an agreement in writing to make them so. *See Letter to Cohen*, 67 IDELR 217 (OSEP 2015). There was no agreement between the Parties to make the communications confidential.

In its Motion for Summary Judgment, the District asserted that the Hearing Officer lacked subject matter jurisdiction to hear the Complaint because the District admitted that it owed the Parent all the relief they requested in their Complaint, stating "effectively the District is conceding to judgment being taken against it regarding Parent's offer of resolution at the Resolution Session..." The District argued that the Hearing Officer can dismiss the complaint if there is evidence showing the District agreed to all of the requested remedies during the resolution session, stating there is no longer a case and controversy and, if there is still a question of fact after reviewing the papers, the hearing is limited to that issue and whether evidence exists that the District agreed to provide the requested relief. HO-13.

In denying the Motion for Summary Judgment, the Hearing Officer found, *inter alia*:

1. There was no legal authority under the IDEA, or reliable/relevant caselaw interpreting the IDEA, to dismiss the Complaint for lack of subject matter jurisdiction on the grounds the Complaint became moot because there was no case in controversy. The District had made a settlement offer which it believed addressed the Parents' resolution requests which the Parent declined. While the District averred that, by way of its settlement offer, it admitted it owed the Parents all the relief they requested in their Complaint, stating "effectively the District is conceding to judgment being taken against it regarding Parents' offer of resolution at the Resolution Session..." the Hearing Officer did not consider this statement to be a concession that the District denied the Student FAPE on all alleged violations set forth in the Complaint and clarified at the Pre-Hearing Conference on February 21, 2023. The Hearing Officer found there was still a case in controversy, i.e. a general issue of material fact as to the alleged violations of the IDEA and denial of FAPE set forth in the Complaint as well as the proposed resolutions and any equitable relief the Parents may be entitled to should they prevail. The Hearing Officer could not limit the hearing as to whether evidence existed that the District agreed to provide all of Parents' requested relief during the resolution session.

2. There was no legal authority under the IDEA, or reliable/relevant caselaw interpreting the IDEA, to establish that the Hearing Officer had the authority to dismiss the Complaint and/or limit the hearing to whether the District agreed to all requested remedies at the resolution session based upon congressional intent. The District argued that the congressional intent in creating the mandatory resolution session supports dismissal of the due process complaint where school districts have agreed to provide Parents with all their requested remedies at the resolution session and/or limiting a hearing to whether the district agreed to all requested remedies at the resolution session. The Hearing Officer found that even though the District strongly believed it had offered the remedies the Parents sought, the fact was an agreement was not reached during the resolution process as to the proposed resolutions. While the District was correct in their recitation of the purposes and intent of the resolution session, the Hearing Officer cannot force a resolution agreement. Nor did the Hearing Officer have any authority to dismiss the Complaint because the Parents would not agree to the District's settlement offers made during the resolution sessions, or accept an offer of judgment.

HO 16.

On March 3, 2023, prior to issuance of the order denying the Motion for Summary Judgment, because admissions, stipulations, and disclosures were due soon the Hearing Officer informed the Parties via electronic mail that she would be issuing an order denying the Motion for Summary Judgment by 12:00 p.m. that day. HO-15. The District replied in a subsequent email,

in a section titled “District Admission of Liability on the Merits,” that it was clarifying it had admitted to allow judgment to be taken against it based on the Parent’s requested remedies and, because of their admission, would only be presenting evidence at the hearing regarding the appropriate remedies to award the Student since those were the only outstanding issues, would not be presenting evidence it already conceded to, and that the District’s presentation of evidence regarding appropriate remedies will be what was requested by the Parent’s at the resolution period and agreed to by the District as that was the only notice the District had regarding the requested remedies. HO-15. The District further requested that the order denying the Motion for Summary Judgment clearly delineate what material issues of fact remain regarding the outstanding remedies that were not agreed to by the District during the resolution period in order to justify the denial of the Motion for Summary Judgment. *Id.* The District stated that without a clarification it was not on notice of the specific remedies the Parent claimed are outstanding that were pled under the Complaint and already agreed to by the District during the resolution period, and therefore was denied its due process rights to properly defend itself at the hearing, of *Id.* Finally, the District requested the issuance of three subpoenas; one to the Parent’s attorney Ms. Laub, one to the Parent’s attorney Ms. Ferris, and one to the Parent.⁵ HO-15. The Parent responded by objecting to the issuance of subpoenas to the attorneys and requested additional time to respond to the District’s requests. *Id.*

On March 6, 2023 the Hearing Officer issued an order in response to the District’s March 3, 2023 email and related matters. HO-17. In the Order the Hearing Officer found the District admitted to liability of the issues on the merits of the case (issues A-G as identified in the Pre-

⁵ The deadline for subpoena requests was March 4, 2023. HO-12.

Hearing Report and Order) including the denial of FAPE. *Id.* The Hearing Officer ordered that the hearing would be limited to evidence regarding the appropriate remedy for the District's denial of FAPE, and which set forth the Parent's requested resolutions stated in the Complaint. *Id.* The Hearing Officer also found and ordered:

1. At the hearing the Parents will present evidence on the appropriate remedies to compensate the Student for the violations of FAPE. The evidence shall be specific as to type of remedy, scope, and duration. For example, for speech and language therapy, evidence from a speech and language therapist on what is needed to compensate for the denial of FAPE, or documentary evidence of what is needed to compensate the Student. The District may offer rebuttal evidence on the appropriateness of the remedies and/or evidence on alternative remedies. The Hearing Officer will rule on the admissibility of evidence as it is presented. The parties can stipulate to any remedy prior to the hearing or during the hearing.
2. Whether Parents are entitled to attorneys' fees, or whether the relief Parents have requested or may receive was or was not more favorable than any settlement proposal or offer of judgment made by the District are not issues before the Hearing Officer. Settlement offers made, accepted, or rejected during a resolution session, or subsequent offers of judgment, are not evidence of the appropriateness of a remedy. The hearing will be limited to evidence regarding the appropriate remedies for the District's denial of FAPE.
3. Because the Parties never reached a final settlement agreement on any of the remedies, the District's request that the Hearing Officer specifically delineate what material issues of fact remain regarding the outstanding remedies that were not agreed to by the Parties is denied.
4. As to the District's request that a subpoena issue to Ms. Laub, the District supported its request for a subpoena based upon an allegation that in Ms. Laub's Declaration (submitted with the Opposition to the Motion for Summary Judgment), she made a statement that created a genuine issue of material fact which prevented the Motion for Summary Judgment from being granted and that Ms. Laub's testimony is needed in order to cross examine her on her Declaration. However, the Motion for Summary Judgment was denied based upon the law. In addition, the District stated that Ms. Laub's testimony as a witness/participant in the resolution session is central to the issue of appropriate remedies. Whether a remedy is appropriate is dependent on the proven needs of the Student as a result of the denial of FAPE. Whether a proposed remedy is accepted or rejected does not pertain to whether a remedy is appropriate. Under NRS 388.469 District has not established that Ms. Laub's testimony is relevant to the hearing which sole purpose is to receive evidence regarding the appropriate remedy for the District's denial of FAPE. In addition, the District did not establish that testimony on remedies

cannot be provided by another witness. The District's request that a subpoena be issued to Ms. Laub is denied.

5. As to the District's request that a subpoena issue to the Parent and Ms. Ferris to testify as to what occurred during the Resolution Session, whether a remedy is appropriate is dependent on the proven needs of the Student as a result of the denial of FAPE. In addition, whether a proposed remedy is accepted or rejected does not pertain to whether a remedy is appropriate. Under NRS 388.469, the District has not established that the Parent or Ms. Ferris's testimony as to what occurred during the resolution session is relevant to the hearing which sole purpose is to receive evidence regarding the appropriate remedy for the District's denial of FAPE. In addition, the District has not established that testimony on the remedies cannot be provided by another witness. Therefore, the District's request that a subpoena be issued for the Parent and Ms. Ferris is denied.

HO-17.

On March 8, 2023 a Second Pre-Hearing Conference was held. At the Second Pre-Hearing Conference counsel for the Parent stated it was her position that the District was required to put forth evidence on the specific denial of FAPE. *See* HO-20 (March 10, 2023 Second Pre-Hearing Conference Report). As set forth in the March 10, 2023 Pre-Hearing Conference Report, in an email to the Hearing Officer on March 6, 2023, after the March 6, 2023 order was issued, the Parent provided a list of proposed witnesses and stated they still needed to determine which services were provided, which services should have been provided, where the Student is academically, and whether the student has regressed due to the lack of services. *Id.* HO-21. During the Second Pre-Hearing Conference counsel for the Parent stated they were prejudiced by the March 6, 2023 Order which states that the Parent is required to present evidence on the appropriate remedies to compensate the Student for the District's conceded denial of FAPE. HO-20. The Parties were reminded that it has always been the expectation that the Parent would present evidence on the remedies they are requesting, which is standard practice. The Hearing Officer stated that regardless of which party presents evidence on the remedies it is ultimately

the responsibility of the Hearing Officer to determine the equitable remedies to compensate the Student for the District's denial of FAPE. *Id.*

The Parent also raised the issue that they did not have an opportunity to respond to the District's March 3, 2023 email. *Id.* The Hearing Officer explained that she did not require an additional response to the District's March 3, 2023 email and, due to the urgency of issuing the March 6, 2023 Order (given the impending time to issue subpoenas and submit disclosures) she proceeded with the Order without additional responses from either party. The Parties also discussed the Parent's proposed witness list which listed 21 witnesses, 19 of which are, or who were, members of the District's staff. *Id.* The Hearing Officer reminded the Parties that the time for issuing subpoenas had passed and the District had no statutory obligation to produce the Parent's witnesses at the Hearing. HO-20. The Parent did not request a continuance of the Hearing in order to obtain subpoenas or other evidence to present in support of appropriate remedies for the District's denial of FAPE.

Finally, the Hearing Officer clarified her statement in the Pre-Hearing Conference Report and Order on training as an appropriate remedy, and that it could be considered under certain circumstances and if supported by the evidence. *Id.*

The Hearing Officer convened and presided over the virtual hearing on March 15 and March 17, 2023. Present at the hearing were the Parent and the Parent's attorney Ms. Amanda Laub. Present on behalf of the District were Sara Montalvo, Esq. and Andrea L. Schulewitch, Esq.

At the hearing, Hearing Officer Exhibits 1 through 21 were admitted. Also admitted at the hearing were: Joint Exhibits J-1 and J-2; the District's witness list and Exhibits R1 through R-4,

R-7, and R-26⁶ through R-29 as contained in the District's disclosures, and; the Parent's witness list and Exhibits P-7, P-14, P-16, P-25, P-26, P-38, P-75, P-86, and P-88 as contained in Parent's disclosures. The decision in this matter is due on March 29, 2023 pursuant to a stipulation to continue the decision due date for an additional 10 days. HO-6.

The Parent objected to the admission of HO-21, which are emails among the Hearing Officer and the Parties, on the grounds certain emails referenced discussions of the Parties during the resolution period. The objection was overruled. The Parent also objected to presenting their evidence first, stating they did not have the burden of proof on the requested remedies. The Hearing Officer explained to the Parties that the Parent did not have the burden of proof but it was expected they would present their evidence first because they were the party requesting remedies. The Parent asked to call as their first witness a witness which was listed on the District's witness list. The District objected on the grounds the witness was not listed in the Parent's witness list, and in any event the witness was not available to testify at that time as the District had intended to call the witness as a rebuttal witness to the Parent's case on their requested remedies. The District's objection was sustained.

The Parent next asked to call the Parent as a witness. The District objected on the grounds that, as set forth in the Parent's witness list, the Parent was expected to testify regarding the Student's disability, its impact on the Student's education, facts regarding the Parent's ability to participate at IEP/eligibility meetings, and facts regarding the meetings. The District argued this testimony was not evidence on the appropriateness of the remedies but rather went to the merits of the Complaint which were conceded, and the Parent was not qualified to testify as to educational

⁶ R-26 is HO-17. R-26 was admitted for the purpose of providing a reference document for District's witnesses.

needs and the appropriateness of the remedies. The Parent argued the Parent had a right to testify as a percipient witness and that the Parent has a background in IEP training but did not present specifics as to the training. The Hearing Officer made a preliminary ruling to sustain the District's objection but that the Hearing Officer would revisit the issue of the Parent's testimony as the evidence on remedies developed.⁷

The Parent did not have any other witnesses to present. The Parent then moved to introduce all of their exhibits, numbers 1-88. The District objected on the grounds of relevancy and that exhibits needed to be introduced through witnesses. The Hearing Officer sustained the objection, informing the Parent that although the documentary evidence could be submitted without a witness, as previously stated during the Second Pre-Hearing Conference, they would need to introduce their exhibits one at a time, stating the relevancy of each proposed exhibit. The Parent did not wish to introduce each exhibit at that time. The Parent then presented their resolutions on the record and deferred to the District for the presentation of their case on appropriate remedies for the conceded denial of FAPE.

ISSUES

Because the District conceded that it denied the Student a FAPE on issues A through G set forth in the February 22, 2023 Pre-Hearing Conference Report and Order, the parties agreed at the beginning of the due process hearing that the requested remedies set forth in the Complaint would be addressed pertaining to the Hearing Officer's determination on the appropriate remedies to compensate the Student for District's denial of FAPE. The requested remedies are:

1. The District shall conduct and/or fund Independent Educational Evaluations

⁷ On the second day of the hearing the Parent testified and was the only witness called by the Parent.

(IEE's) in the following areas, including the assessor's participation at an IEP to review his/her report: psychoeducational evaluation, educationally related mental health services, speech and language therapy, occupational therapy, physical therapy, assistive technology and a functional behavioral analysis. The Student's school of attendance shall review any independent assessments within 15 days of the receipt of the reports.

2. The District shall provide the Student with compensatory services in all areas of need, including but not limited to speech and language therapy, specialized academic instruction, physical therapy, social and emotional skills, counseling, occupational therapy, and any other services of need shown by any new assessment provided through a non-public agency with transportation.

3. The District shall provide the Student additional supports such as a note taker to assist in the Student's inability to focus and keep up with academic instruction.

4. The District shall immediately provide a complete copy of the Student's educational records, including any service logs.

5. The Nevada Department of Education shall award Parents any other relief deemed fair and just.

6. The District shall provide a six-hour training to the Special Education Director and staff who were previously (during the statutory period), or are currently working with the Student at their school, including related services providers, special and general education teachers, and all members of the Student's IEP team including staff who served or who may be required to serve as District representatives as well as all administrative staff who were or are responsible for supervising the program regarding the legal requirements of special education in speech and language services, transportation, assistive technology, and any other services the Student received from the District. This training shall be provided by outside special education counsel who do not represent the District. Within 10 days of completion of the training the District shall provide the Student's attorney and Parents with a copy of the training agenda, curriculum vita of the trainer(s), training materials, and the roster of attendees who participated at the training.

HO-1.

FINDINGS OF FACT

After considering all the evidence, this Hearing Officer's Findings of Facts are as follows:

1. The testimony from the District's witnesses regarding appropriate remedies for the denial of FAPE is found to be credible based upon their credentials and experience with the District. R-

27-29.

2. The Student was born on November 25, 2009 and is currently in the seventh grade. R-4.

3. The Student transferred to the District at the beginning of the 2017-2018 school year and was previously receiving special education support and services under the category of Other Health Impairment. R-1. Since September 30, 2020, the Student has been receiving special education services under the category of Autism Spectrum Disorder. R-3.

4. The District conceded it denied the Student a FAPE on issues A-G set forth in the Pre-Hearing Conference Report and Order of February 22, 2023 (HO-12).

5. The Student is making progress on his goals and objectives. P-7, P-25. The Student's low grades are a reflection of the Student's inability to stay on task and complete assignments. When the Student completes assignments and turns in the work the grades look good and without the missed assignments the Student would be a B-C student. (Testimony of Special Education Director of Operations for the District; Testimony of Associate Chief of Specialized Instruction for the District); P-86, R-4 at R062-064; R-4 at R066; R-7.

6. A psychoeducational evaluation will review the Student's cognitive assessments which measure the Student's ability in math, reading, writing, and social/emotional skills, and will evaluate social and emotional skills, and executive functioning. (Testimony of Special Education Director of Operations for the District)

7. The speech and language assessment will cover both expressive and receptive language. (Testimony of Associate Chief of Specialized Instruction for the District)

8. An occupational therapy assessment will assess the Student's present levels of performance and the concerns of the IEP Team and the Parent. (Testimony of Special Education Director of Operations for the District)

9. The physical therapy evaluation assessment is part of the psychoeducational assessment in the area on health assessments. (Testimony of physical therapist for the District)
10. An assistive technology (AT) evaluation will address how the Student is accessing their environment and education in the school setting. (Testimony of Special Education Director of Operations for the District)
11. The Student's behaviors impede the Student's learning. R3, page R046; R-4 at R066; P-16; P26.
12. The Functional Behavioral Assessment (FBA) will assess behaviors which could result in a Behavior Intervention Plan ("BIP"). An FBA will include a Behavior Rating Inventory of Executive Functioning (BRIEF) which could address the teachers' assessment that the Student has issues with completing tasks and assignments. (Testimony of Special Education Director of Operations for the District); P-86, R-4 at R062-064; R-4 at R066; R-7.
13. Speech and language therapy for the remainder of the school year in the social pragmatic areas of speech would address the Student's interactions with peers and peer relationships. (Testimony of Associate Chief of Specialized Instruction for the District)
14. Academic tutoring for the remainder of the school year would address the Student's needs for work completion and submission and will address any gaps in the current IEP. (Testimony of Special Education Director of Operations for the District; Testimony of Associate Chief of Specialized Instruction for the District)
15. The Student's current supplementary aids and services are: multiplication table and use of a calculator when math/science assignments are given; shortened assignments based on mastery of key concepts; copies of class notes provided after notes are taken; small group testing during all classes for all classroom assessments and state testing; repeat item audio; manual control of item

audio; extended speaking test response time for access testing and; preferential seating, (near teacher and away from distractions). R-4 at R076.

16. The parent has access to the Student's education records through Infinite Campus. (Testimony of Parent)

17. Additional targeted training in the areas identified in the Complaint, and procedures to monitor those areas, is one way to prevent any reoccurrence in the provision of the Students identified special education and related services and denial of FAPE. (Testimony of Special Education Director of Operations for the District)

18. The Student's morning bus route was adjusted effective January 23, 2023 and changed to ensure the Student was picked up outside the Student's home as requested by the Parent (P-88) and to ensure the Student was able to use the restroom every hour by reducing the bus time on the morning route to 22 minutes. The afternoon bus route is 33 minutes. (Testimony of District Transportation Special & Needs Programs Administrator)

19. The only related service the Student is receiving is transportation via the District school bus. R4 at R077.

20. It would enhance the Parent's participation during IEP meetings if the IEP Team included a speech and language therapist, board-certified behavioral analyst, and an assistive technology specialist. (Testimony of Parent)

21. The Parent would be able to assist at home with the Student's education if the Parent received bi-weekly status report informing the Parent of any testing accommodations provided to the Student. (Testimony of Parent)

22. If a BIP is prepared it would assist the Student if the parent received training on the BIP as applied to the home setting. (Testimony of Parent)

23. Based upon the denial of FAPE and the resulting need for additional data on the Student a psychoeducational evaluation, which will include a review of executive functioning and social emotions skills, a speech and language evaluation, which will include a pragmatic assessment, a functional behavior assessment (FBA) by a Board-Certified Behavior Analyst (BCBA), an occupational therapy (OT) evaluation, a physical therapy (PT) evaluation, and an assistive technology (AT) needs assessment should be performed on the Student. (Testimony of Associate Chief of Specialized Instruction for the District)

24. The District has qualified personnel to perform the evaluations. (Testimony of Associate Chief of Specialized Instruction for the District, testimony of Special Education Director of Operations for the District)

CONCLUSIONS OF LAW AND ORDER

In any proceeding brought under the IDEA the Hearing Officer has the authority to order any relief necessary to ensure the Student receives a FAPE. *Letter to Armstrong*, 28 IDELR 3030 (OSEP) 1997.

In *Park v. Anaheim Union School District*, 464 F.3d 1025 (9th Cir. 2006) the court noted that compensatory education services can be awarded as appropriate equitable relief, citing 20 U.S.C. 1415 (i)(2)(B)(iii) (“shall grant such relief as the court determines appropriate”); *Parents of Student W. v Puyallup Sch. Dist.*, 31 F.3d 1489, 1496-97 (9th Cir. 1994) (appropriate relief is relief designed to ensure the student is appropriately educated within the meaning of the IDEA). The court has the discretion on crafting the

relief and there is no obligation to provide a day-for-day compensation for time missed. *Id.* at 1446. The basis of compensatory services remedies is the past denial of educational and related services that were not originally provided. *Letter to Riffel*, 34 IDELR 292 (OSEP 2000).

There is no evidence to support compensatory services, social/emotional skills services, physical therapy services, counseling services, or occupational therapy services as appropriate remedies for the denial of FAPE. There was no evidence to support compensatory services for the Student's behaviors as an appropriate remedy for the denial of FAPE. In addition, there is no evidence to support that the alternative remedies requested by the Parent in its closing argument are appropriate remedies for the denial of FAPE.⁸

⁸ Compensatory education services in the form of tutoring of 150 minutes of tutoring for the 83 educational weeks of statutory time to the present equaling 207.5 hours of compensatory education to be used at Parent's discretion over a two-year time period, expiring April 1, 2025; compensatory education services in the form of speech and language services of 30 minutes per week for the 83 educational weeks of statutory time to the present equaling 41.5 hours of compensatory education to be used at Parent's discretion over a two-year time period, expiring April 1, 2025; compensatory education services in the form of physical therapy of 30 minutes per week for the 83 educational weeks of statutory time equaling 41.5 hours of compensatory education to be used at Parent's discretion over a two-year time period, expiring April 1, 2025; based upon the results of the OT and PT evaluations, compensatory education for the statutory period through an hour for hour calculation based on the assessments, to be provided by a qualified provider of Parent's choosing; social and emotional skills training in the form of compensatory education services of 30 minutes per week for the 83 educational weeks of statutory time to the present equaling 41.5 hours of compensatory education to be used at Parent's discretion over a two-year time period, expiring April 1, 2025; weekly reports to the Parent regarding which classes have provided notes for the week; an ABA trained 1:1 aid to assist the Student with staying on track in class or, in the alternative, a classroom aid; enroll the Student in the Social Resources Program as a replacement to the Student's enrichment class until and IEP Team meeting can be held; create a BIP using ABA techniques; provide all other logs and notes not previously provided to Parent, including but not limited to school nurse logs, school clinic logs, internal messages, and testing accommodation logs regarding the Student; provide all report cards and transcripts from December 30, 2020 to the present; provide the Parent with quarterly progress reports detailing why the Student was given a rating from one through five and how it helps the Student's overall academic achievement and; provide the Parent with weekly updates as to the Student's behaviors.

Based upon the credible evidence presented and the applicable law, the Hearing Officer finds that the following remedies are appropriate to address the District's denial of FAPE to the Student, and Orders that:

1. Within 30 days of the date of this Order, the District shall conduct evaluations using qualified District staff in the following areas: psychoeducational evaluation which will include a review of executive functioning and social emotional skills; speech and language evaluation which will include a pragmatic assessment; a functional behavior assessment (FBA) by a Board-Certified Behavior Analyst (BCBA); an occupational therapy (OT) evaluation; a physical therapy (PT) evaluation, and; assistive technology (AT) needs assessment.

2. If the FBA results in a BIP for the Student, the District shall, within 10 days of the development of the BIP, train the Parent on the BIP as applied to the home setting.

3. Within 15 calendar days upon completion of the last evaluation, and upon the availability of the parent, the Student's IEP Team will convene to consider the evaluations for the Student's IEP programming needs. At this meeting the IEP team shall include the required members of the Team, the District's speech and language therapist, the District's board-certified behavioral analyst, the District's assistive technology specialist, the District's occupational therapist, and the District's physical therapist, subject to the exclusions in NAC 388.281(5).⁹

⁹ The individualized educational program for a pupil must be developed, reviewed and revised by a committee which includes at least:

- (a) One representative of the public agency who is:
 - (1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities;
 - (2) Knowledgeable about the general education curriculum of the public agency; and
 - (3) Knowledgeable about the availability of resources of the public agency;
- (b) If the pupil participates in a regular educational environment, one regular classroom teacher of the pupil or, if the pupil may participate in a regular educational environment, one regular classroom teacher;
- (c) One special education teacher of the pupil or, if appropriate, one person who provides special education and related services to the pupil;
- (d) One or both of the pupil's parents;

4. Upon the Student's return from the current semester spring break, the Student shall be given 15 hours of academic tutoring for the remainder of the semester. The tutoring shall be spread equally over the remaining weeks of the semester. However, if the Student cannot complete the tutoring it shall continue during the summer break to be completed by the beginning of the fall semester.

5. Upon the Student's return from the current semester spring break, the Student shall be given 20 hours of speech and language therapy with a focus on pragmatics for the remainder of the semester. The therapy shall be spread equally over the remaining weeks of the semester. However, if the Student cannot complete the therapy it shall continue during the summer break to be completed by the beginning of the fall semester.

6. A qualified individual, as determined by the District, shall provide targeted training on the specific conceded issues of the denial of FAPE to all school staff who directly work with the Student in the academic setting. The training shall be completed prior to the end of the 2022-2023 school year. The individualized training shall be monitored by the person doing the training and the Parent shall receive a copy of the training agenda or other document that informs the Parent

(e) If not otherwise a member of the committee, a person who is familiar with tests and other assessments performed on the pupil and their results, and who can interpret the instructional implications of the results of the evaluation;

(h) One member who has personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

NAC 388.281(2) (a-c, h).

A member of a committee to develop an individualized educational program for a pupil with a disability may be excused from attending a meeting of the committee, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if:

(a) The parent of the pupil with a disability consents in writing to the absence of the member;

(b) The authorized representative of the public agency consents to the absence; and

(c) Before the meeting, the member submits, in writing, to the parent and the committee the member's input concerning the development of the individualized educational program.

NAC 388.281(5).

of the specific training given to school staff and the date(s) the training was given. The agenda or other document shall not contain the names of the persons who attended the training or any other personally identifiable information.

7. Any transportation records from December 30, 2020 to the date of this order which contain personally identified information for the Student, and no other students, shall be provided to the parent within 10 school days from the date of this order. Thereafter, any transportation records which only identify the Student shall be provided to the Parent on a weekly basis so long as transportation is a related service for the Student.

8. From the date of this order, throughout the duration of this semester the District shall provide a bi-weekly status report informing parent of any testing accommodations provided to the Student.

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision 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 District Superintendent from a list of officers maintained by the Nevada Department of Education shall conduct an impartial review of the hearing pursuant to NAC §388.315.



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