STATE OF NEVADA DEPARTMENT OF EDUCATION

REVIEW OFFICER DECISION

In the matter of

STUDENT by and through his[1] PARENTS,[2]

Petitioner-Appellant

v. Perry A. Zirkel, State Review Officer

DISTRICT,

Respondent-Appellee

I. PROCEDURAL BACKGROUND[3]

On February 22, 2021, the Parents filed the complaint[4] in this matter under the Individuals with Disabilities Education Act (IDEA)[5] and Nevada's corresponding state statute and regulations.[6] After several status conferences, an amended complaint, various motions, and a prehearing order culminating in the agreed-upon issues, the hearing officer (HO) conducted five consecutive hearing sessions from November 15 to November19, 2021.[7]

On March 24, 2022,[8] the HO issued a final decision that concluded with the following order:

> 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.[9]

On April 11, 2022, the state superintendent received the Parents' appeal of the HO's

decision and appointed me as the state review officer (SRO) for it, specifying a due date of May 11 for my decision.[10]

On April 19, 2022, after a series of scheduling e-mails with the parties, I held a status conference with the parties, with an immediate follow-up e-mail summarizing the results, which included a firm deadline of May 4 for written arguments.[11]

On May 4, 2022, per this deadline, the parties submitted their written arguments.[12]

II. STANDARD OF REVIEW

The standard of review for a SRO under the IDEA is for an "independent decision" after examining the entire record.[13] The SRO finds persuasive the interpretation of the Third Circuit in *Carlisle Area School District v. Scott P.,*[14] requiring "plenary review" with one narrow exception: "[the SRO] should defer to the hearing officer's findings based on credibility judgments unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion."[15]

III. ISSUES

As a threshold matter, the scope of this SRO decision is the same as that of the original HO issues, but the analysis follows this flowchart-like sequence, which includes the threshold step that the HO did not address but was the threshold part of the first of the three issues in this case:[16]

1a. Did the District have an applicable child find obligation under the IDEA during each segment of the stipulated two-year period?

1b. If so, did the District violate its child find obligation?

2. If so, did the violation(s) result in a denial of FAPE?

3. If so, what is the appropriate remedy?

IV. FINDINGS OF FACT

Student attended grades 1–2 in a District elementary school.[17]

In grades 3 and 4 (2011-12 – 2013-14), Student was home-schooled and, on a supplementary basis, participated in the District's gifted and talented program.[18]

In grades 5–8 (2014-15 – 2017-18), Student attended a local private school, where his grade point average was in the A/A+ range.[19] However, from March 17, 2018 through July 17, 2018, Parents placed Student at the residential center of a psychiatric hospital due to self-harm and suicidal ideation.[20] During this period, Student attended the hospital's school, attaining grades ranging from B+ to A and standardized test scores at or above grade level.[21] Also, within this period, Parents met with a counselor for the District high school to explore Student's enrollment for grade 9, explaining that Student was at the psychiatric hospital due to a suicide attempt.[22]

In July 2018, Parents enrolled Student in a District high school for grade 9 (2018-19), which started in early August. Parents' e-mails to the high school counselors (a) reported the attendance at the hospital school and his visible scarring due to self-harm and (b) requested a 504 plan including a safe place for when he has panic attacks or urges to self-harm.[23] In an e-mail on July 31, 2018, one of the school counselors replied with arrangements for an "anytime pass" to see the safe schools professional, the clinic, or the counseling office, pending the formal 504 process after the school year started.[24] Parents' e-mail reply on August 1, 2018 (a) reported having an extensive discussion the previous day with the school's nurse about Student's background; (b) mentioned Student's suicidality and diagnoses of anxiety and major depressive disorder; and (c) agreed to the anytime pass arrangements without the need for a 504 plan.[25] However, Parents did not provide Student's records from the hospital placement or

other diagnostic documentation.[26]

For grade 9, Student attended the high school until September 28, 2018 with good grades and without using the anytime pass or manifesting any behavioral problems.[27] During this time, a mental health professional at the high school met periodically with Student, who reported that he was adjusting well,[28] and Parents did not provide school personnel with notice of any symptoms at home.[29]

On October 4, 2018, Parents informed the school counselors that Student had a setback during the intervening weekend, causing his placement at a local behavioral hospital.[30] Parents' October 5 e-mail reflected anticipation of Student's release from the hospital and return to school,[31] but on October 8 they reported an October 6 overdose on Tylenol and Student's impending transfer to an acute psychiatric hospital.[32] The transfer, which was to the previous residential center,[33] was effectuated on October 30.[34] In the interim, the high school counselors responsively arranged for Parents to obtain the homework assignments from Student's teachers, but Parents subsequently reported that Student's condition prevented him from doing the school work.[35]

Student remained at this residential psychiatric hospital until his discharge on March 4, 2019. During this period, Student participated in the same hospital school as previously, receiving grades of B (geometry honors) and A- (Biology, English, and Health Sciences).[36] Although without definitive clarity, on balance the District treated Student's enrollment status as continuing during this entire period.[37] Also during this period, Parents provided brief communications to counselors and other high school representatives of Student's continued stay at this residential placement.[38] These communication culminated in a meeting on February 19, 2019 in preparation for Student's discharge from said placement, in which Parents informed

school representatives of his continued suicidality and next pending treatment.[39]

On March 7, 2019, Parents withdrew Student from the District for home-schooling.[40] For the first 7–8 months, they took Student to Sacramento, California for daily transcranial magnetic stimulation (TMS) treatments on an outpatient basis.[41] In March 2020, Student was a victim of sexual assault.[42] Starting in April 2020, Parents tried a second round of TMS treatments.[43] The home-schooling, which provided online instruction in high school courses from a university in Utah, lasted until June 7, 2020, when Student made another suicide attempt.[44] During this period, with a limited exception,[45] Parents did not communicate with the District, and the District otherwise was not aware of these events.[46]

In July 2020, Parents enrolled Student in a state-sponsored charter high school but Student never attended, because they placed him at an out-of-state private clinic in August 2020 for an inpatient diagnostic evaluation, which took approximately six weeks.[47] During this period, Parents did not communicate with the District, although the charter school requested and received Student's records from the District.[48]

In September 2020, after consulting with a specialized firm that the private clinic recommended, Parent placed Student at a residential treatment center (RTC) in Utah.[49] Although putting the priority on safety from self-harm and suicidality, this RTC provided recreational therapy and included an accredited high school.[50] The record does not include any evidence of the District having any notice of Student's situation during this period.

On February 23, 2021, Parents filed a request for a due process hearing.[51] They also attempted enrollment in the District at that time, but it was unsuccessful based on state law.[52]

Soon thereafter, the District made arrangements for an IDEA eligibility evaluation of Student, contracting with a private psychologist in Utah to do it while Student was at the RTC.

The resulting private evaluator's report, issued on June 9, 2021,[53] concluded that Student "continues to require special education assistance for … emotional difficulties."[54] On June 16, 2021, the IEP team met and determined that Student was eligible for special education under the category of emotional disturbance (ED).[55] Although the team's evaluation report made recommendations upon return to a traditional academic setting, including "targeted instruction ... [for] math calculation skills,"[56] the parties failed to agree on an IEP, including resulting placement.[57]

On October 1, 2021, Parents moved student to a transitional residential placement that serves individuals aged 17–25 with relatively acute mental health issues, providing them with round-the-clock support services in a small apartment complex.[58] It does not include a school component, but provides academic support with the option of attending a nearby open-admission university.[59] As of mid-November 2021, Student had not yet started any high school or college courses, but based on completion of a GED signed up for two courses for spring 2022.[60]

V. CONCLUSIONS OF LAW

Parents' request for appeal provides a long list of alleged errors in the HO's decision that fall into two categories. The first category focuses on the HO's factual findings, challenging their selection rather than basis. More specifically, charging the HO with "cherry picking," Parents list 59 avowed facts that the HO did not include.[61] Second, overlapping with a converse long list of factual findings that the HO did include but allegedly over-emphasized, Parents embedded various legal arguments about the HO's legal conclusions. Rather than review and respond in seriatim to this multitude of items, the SRO has provided an independent set of factual findings that provides the requisite deference to the HO's credibility assessment[62]

and proceeds to a plenary legal analysis aligned with the three issues in this case.[63] The first of the three respective headings—child find, FAPE denial, and remedy—includes the threshold issue designated above as "1a."

Child Find

Child find is the ongoing obligation of school districts to identify children who are suspected of being eligible under the IDEA.[64] Its triggering standard is, in abbreviated form, reasonable suspicion.[65] The courts have understandably established that the snapshot approach applies to the determination of reasonable suspicion, i.e., based on the information that the district knew or had reason to know at each of the successive junctures during the period at issue.[66] It is also well settled that child find amounts to a procedural requirement, thus subject to the two-part analysis of (a) violation, and (b) resulting loss for denial of FAPE.[67]

Finally, the unusual series of placement changes warrants closer examination of the child find obligation of school districts for the aforementioned threshold step, designated as "1a." This examination reveals two strands under the IDEA: (1) the direct obligation that includes the district's enrolled students[68] and extends, upon parental request, to private school students regardless of the location of the private school[69] and that is tied to FAPE,[70] and (2) the equitable-services provisions for parentally placed private school students that applies to the district of location but is not tied to an individual right to FAPE.[71]

The HO's decision largely focused on whether the District had the requisite reasonable suspicion during the fall of 2018, starting with Student's brief tenure at the high school. The SRO agrees with the HO's determination for that period, although without the same reliance on the school psychologist's testimony.[72] At that time, the District had overview knowledge of Student's previous hospitalization, need for relatively limited accommodations (e.g., anytime

pass), resulting academic and behavior performance without any notable difficulties, and return to the same residential psychiatric hospital, at which Student's grades continued to be exemplary.[73] In light of the broader context of child find case law that illustrates therapeutic hospitalization as being a relevant but not controlling factor[74] and the immediate context of prevalent anxiety, including suicidality, among adolescents and the responsive mental health services of the District,[75] this combination of indicators does not amount to the requisite reasonable suspicion.

However, resolution of the child find issue warrants a fine-grained examination of each of the three segments of the two-year period stipulated for issue #1 than the HO's limited treatment for the time after Student's relatively brief stay at the District's high school. This issue encompasses the successive questions of (1a) whether this obligation applied to the District and, if so, (1b) whether the District had the requisite triggering reasonable suspicion.

(a) Feb. 23, 2019 – Mar. 4, 2019 (residential psychiatric hospital):

During this limited period, the District's child find obligation applied based on the continued effective enrollment.[76] The new information within the District's actual or contructive knowledge was the continuation of Student's severe psychological condition during the four months of residential treatment and impending change to an alternative treatment.[77] Specifically on February 23, 2019 in the wake of the February 19 meeting, the District had reason to suspect a qualifying category, such as emotional disturbance (ED)[78] or other health impairment,[79] and an impact on educational performance, via lack of attendance and slowed academic progress, sufficient to warrant determining whether Student needed special education.[80]

However, the analysis continues for the remaining segments of this two-year period due

to the fact-intensive nature of child find[81]; the unsettled case law with regard to the scope of educational performance and special education, including the role of attendance[82]; and the need for judicial economy in case of appeal.[83]

(b) Mar. 7, 2019 – July 2020 (home schooling):

Based on the change in Student's placement during this period from enrollment in the District to homeschooling and the absence of a parental request for an evaluation, the District's child find obligation was limited to that under the IDEA's equitable services provisions.[84] The District's reasonable suspicion as of February 23, 2019 continued, with confirmation if not reinforcement, in May 2019.[85] However, as the district of location for the equitable participation of parentally-placed private school children,[86] the District's applicable obligation expressly did not extend to FAPE, thus negating retrospective relief.[87] Finally, to whatever extent, if any, that the un-effectuated enrollment in the charter school at the end of this period may be relevant, the obligation was exclusive to the state public charter school authority as the responsible educational agency.[88]

(c) Aug. 2020 – Feb. 23, 2021

This segment transitionally started with the six-week out-of-state clinic diagnostic placement and culminated in the out-of-state RTC placement from late September until the filing date that marked the end of the stipulated two-year period at issue.[89] To whatever extent the District had any child find obligation during this period, which is uncertain but unlikely,[90] the District's level of knowledge did not increase with regard to reasonable suspicion. The specific information about the Student's psychological condition and its impact on educational performance during this period only surfaced upon the filing for the due process hearing.[91]

FAPE Denial

Having found, in a relatively close call, with the burden of persuasion on the District,[92] a violation of child find as of February 23, 2019, the next step is to determine whether the Student had a resulting denial of FAPE. The answer to this question warrants a determination of the Student's eligibility, which in some cases results in a conclusion that the child did not qualify under the two-part test of classification plus resulting need, thus negating denial of FAPE.[93] In this case, because the record is sufficient and remand would only prolong a case that is already well beyond the IDEA's purpose of prompt dispute resolution,[94] the SRO concludes that if the District had conducted the evaluation within the required reasonable time, it would have found Student eligible as ED and needing special education. The basis is simply but rather obviously that in June 2021 the District duly determined that Student met these requisite criteria,[95] and the record is quite clear that the Student's ED and resulting educational impact had not abated during the intervening two-year period of multiple treatments.[96] Consequently, the evidence is preponderant that the child find violation resulted in a denial of FAPE in terms of the requisite "deprivation of benefit,"[97] here being the entire lack of an IEP for Student prior to the filing date that marked the end of the period at issue. This FAPE-denial result of the child find violation during the initial segment of this period was not negated by the placement changes during its subsequent segments. If the District, upon reasonable suspicion, had fulfilled its obligation with the eligibility evaluation and resulting IEP proposal, Parents would have faced a different context for their choices. Thus, the impact of their placement actions in the absence of the District's prejudicial procedural violation only count as a background factor in the equitable formulation of the remedy.

Appropriate Remedy

Parents' original complaint requested reimbursement[98] and during the prehearing

process Parents' extended the request to include "all equitable remedies available to Student, including, but not limited to, compensatory education."[99] Thus, regardless of whether Parents are precluded from relief not specified before the hearing,[100] the District had notice of the scope of requested relief.

Reimbursement is not the appropriate remedy in this case for two reasons, with the second being conclusive. First, Parents did not provide the requisite timely notice of unilateral placement, which is the first equitable step in the IDEA's tuition reimbursement test.[101] Second, in combination with the first factor or independent of it, the Ninth Circuit has established that school districts are not responsible for reimbursement for residential placements that are "primarily for medical, i.e. psychiatric, reasons."[102] In this case, the evidence is preponderant that the successive segments of the two year period—the initial window in the psychiatric hospital, the subsequent TMS treatments during home-schooling, the six-week diagnostic placement, and the out-of-state RTF were primarily for the purpose of treating Student's acute, life-threatening psychopathology, with the educational component being a clearly secondary consideration.

However, the broad remedy of compensatory education is appropriate in this case. The Ninth Circuit has made clear that this relief is subject to creative customization to the contours of the denial of FAPE.[103] The overall aim of this remedy is to place the eligible student "in the same position [s/he] would have occupied but for the school district's violations of IDEA."[104]

In light of the particular circumstances of this case, the first step in the customized tailoring is an equitable reduction for reasonable rectification.[105] More specifically, the four months that it took for the District to complete the evaluation process in the context of the out-of-state residential placement represents a reasonable estimate of that equitable deduction in the

calculation of compensatory education.[106] Next, in the absence of expert evidence, for the remaining twenty months in the period at issue, a finite award of 20 hours per week of 1:1 professional services at a maximum of $100 per hour would appear to be equitably appropriate in relation to the aforementioned[107] aim of this remedy, the overall circumstances of this case, and the need for efficient enforceability. The resulting total of these 1:1 compensatory services, based on 36 weeks (i.e., 180 days) per school year[108] x 1.67 years (i.e., 20 months divided by 12), is 720 hours. This calculation takes into consideration the generally more powerful effect of 1:1 than group instruction and provides flexibility as to the mix of special education and related services that Student selects unless Parents continue to represent Student's educational interests per the applicable transfer-of-right provision at age 18,[109] to address Student's individual needs.[110] More specifically, these services are limited to appropriate developmental or remedial instruction and related services necessary to address the educational deficits identified in the District's evaluation toward attaining a standard academic diploma.[111]

Moreover, in light of Student's continuing psychological condition, this award shall extend for either three years from the date of this decision or Student's graduation with a standard diploma, whichever is first, and may not extend to "purely" postsecondary education instruction per applicable case law.[112] Finally, the parties have the option of mutually agreeing on a different calculation for compensatory relief, such as the actual educational, as compared with the other institutional costs of the successive placements during this period[113] or the 1:1 services until Student receives a standard diploma.[114]

IV. DECISION AND ORDER

The District shall provide Parents, within 45 days of the date of this decision, with an efficient mechanism, such as a voucher, escrow account, or reimbursement procedure, for 720

hours of compensatory education of 1:1 services at a maximum of $100 per hour, with the selection of the provider(s), timing, and location of the services in accordance with the aforementioned[115] specifications.

Dated: May 12, 2022 Perry A. Zirkel, State Review Officer

NOTICE OF APPEAL RIGHTS

The decision of this SRO is final unless a party appeals the decision. A party may appeal from the decision of this SRO by initiating a civil action in a court of competent jurisdiction within ninety (90) days after receipt of this decision (NAC § 388.315).

Endnotes

[1] The terms "he," "his," and "him" are used generically herein instead of designating the actual gender of Student or the Parent.

[2] "Parents" is also used generically herein without differentiation as to father and/or mother and, thus, as to singular or plural.

[3] The record in this matter includes four volumes of exhibits along other documents, such as the hearing officer's decision). The exhibits are labelled herein as "P" for those of the Petitioner-Parents, "R" for those of the Respondent-District, "J" for those that were joint, and "HO" for those of the hearing officer. For citations to the entire exhibit, the respective letter is followed by a hyphen, but citations to specific pages in the exhibits, due to their consecutive numbering within each binder (except that of the HO), omit the hyphen. The record also includes a transcript consisting of five volumes corresponding to the hearing sessions. Because the pagination is consecutive across the three volumes, the citations are to "Tr." generically, followed by the page number(s). Cross references in the footnotes are, per legal citation style, via "*supra*" (above) or *infra* (below).

[4] HO exhibit binder, at 21. The State received the complaint on February 23, 2021. *Id*. at 1. This second and not significantly different date was the basis for the time period in the issues and HO decision in this case. *Infra* note 7 and text accompanying note 9.

[5] 20 U.S.C. §§ 1401 *et seq*. (2018); 34 C.F.R. §§ 300.1 *et seq*. (2019).

[6] NEV. REV. STAT. §§ 388.419 *et seq*. (2018); NEV. ADMIN. CODE §§ 388.460 *et seq*. (2019). This decision refers to this corollary state statute and administrative code only to the limited extent that they add in relevant respect to the IDEA legislation and regulations.

[7] For a specific recitation of these steps, see HO Decision (in HO Binder), at 2–6. The ultimately agreed upon issues were: "1) Whether [the District] failed to identify and evaluate Student as a child suspected during the 2 year year period preceding the filing of the February 23, 2021, Request for Due Process"; (2) Whether [District'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')"; and (3) "In the event Student was denied a FAPE, what equitable remedies are appropriate." *Id*. at 6–7.

[8] The intervening period included the parties' closing briefs filed on January 30, 2022 and an extension of the decision deadline "based upon a finding of good cause." *Id*. at 6.

[9] *Id*. at 23.

[10] SRO Exhibits 1A and 1B.

[11] SRO Exhibit 2, at 2. The summary also confirmed the parties' agreement that there was no need for additional evidence and no claim that the hearing was inconsistent with the requirements of due process. *Id*.

[12] SRO Exhibit 3A and SRO 3B.

[13] 34 C.F.R. §§ 300.514(b)(2)(i) and 300.514(b)(2)(v) (2019).

[14] 62 F.3d 520 (3d Cir. 1995).

[15] *Id*. at 529. The Third Circuit explained that "beyond this rather narrow class of record-supported, credibility-based factual findings, we think that, to give the statute's language about 'independent' decisions effect, the [SRO] must have much more leeway in reviewing other non-credibility based findings of the hearing officer." *Id*. at 528–29 (citing Perry A. Zirkel, *The Standard of Review Applicable to Pennsylvania's Special Education Appeal Panel,* 3 WIDENER J. PUB. L. 871, 892 (1994). The Ninth Circuit indirectly appeared to approve of this approach. Amanda J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 888–89 (9th Cir. 2001).

[16] *Supra* note 7.

[17] *E.g.*, J2.

[18] *E.g*., Tr. at 106; J38. Student's overall IQ score on the Wechsler Abbreviated Scale of Intelligence was 132. J45.

[19] Exhibit J-2 (grades 6–8). Although not material to the issues in this case, the record was imprecise about when in grade 5 Student changed from home-schooling to the local private school. *E.g*., Tr. at 24.

[20] *E.g.,* Exhibit J-4.

[21] *E.g.*, P30 – P31. Student's standard scores (with 100 being the normed average for the grade) on the Kaufman Test of Educational Achievement II were: math - 102, written language – 127, and reading – 128. *Id*.

[22] Tr. at 594–95.

[23] J94–J95.

[24] J96.

[25] J98. The discussion with the school nurse included identification of these two diagnoses and the various prescribed medications. Tr. at 596; *see also* J31–J32.

[26] *E.g.*, Tr. at 117.

[27] *E.g.*, *id*. at 35–36. Student's grade were As in all subjects. J6.

[28] *E.g.*, Tr. at 442–48.

[29] *E.g.*, *id*. at 37.

[30] J99.

[31] *Id*.

[32] J100 and J102.

[33] *Supra* text accompanying note 20.

[34] *E.g.*, J77. Parents promptly notified Student's teachers and counselors of the effectuation of the residential placement. *E.g.*, J521. On December 4, 2018, Parents notified the counselors that Student was still at this placement. *E.g.*, J529.

[35] *E.g.*, J69–J76 and J509.

[36] Exhibit J-8.

[37] *E.g.*, J1, J23, J70, and J76–J77.

[38] *E.g.*, J118–120.

[39] *E.g.*, J122; Tr at 41.

[40] J24–27.

[41] *E.g.*, Tr. at 46–48.

[42] *E.g.*, J157. The perpetrator was a close acquaintance of Student. *Id*.

[43] *E.g.,* Tr. at 51–52 and 601.

[44] *E.g., id*. at 47–51. During this entire homeschooling period, Student earned only 1.0 course credit other than .5 credit for physical education. P179–180.

[45] On May 2, 2019, Parents informed the school nurse that "student [is] currently going to facility providing academic and support services . . . . [and] may return." J32. This conversation included the resort to TMS treatments in light of the lack of success of medication and the psychiatric hospitalization. Tr. at 597.

[46] *E.g.*, Exhibit J-5.

[47] *E.g.,* Tr. at 54–55 and 62. Although with difficulty, Student continued with on-line home-schooling during this period. *E.g., id*. at 818.

[48] *E.g., id*. at 55; J62–63. Upon seeking assistance from a private psychologist in July, Parents requested assessment information from teachers at the hospital school, because the teachers at the District high school "had only known [Student] for 6 weeks . . . [whereas] we wanted . . . someone to complete the form that had more of [Student's] history as a student." Tr. at 134.

[49] *E.g.*, Tr. at 70.

[50] *E.g., id*. at 608 and 621; P209–P217. The recreational therapy did not start until February 2021. Tr. at 613. For the educational component, Student pursued the GED route. *Id*. at 622. Although the grades at the RTC remained at the A level, Student's progress in required courses for a standard diploma continued to be limited and lagging. P179–P180.

[51] *E.g.,* Tr. at 77.

[52] *E.g.*, *id*. at 353–54.

[53] Exhibit J-11. The testing and other data were extensive, including, for example, a full-scale IQ score of 104 and standard achievement scores of 118 in basic reading, 91 in reading comprehension, 109 in reading fluency, 82 in math calculation, 103 in math problem solving, and 109/123 in writing. J158–J160.

[54] J174. Without identifying with specificity the requisite affect on educational performance or the need for special education started, the evaluator listed as the classification "Emotional Disturbance and if needed (secondary) Other Health Impairment." J175.

[55] Exhibit J-12.

[56] J217.

[57] *E.g.,* Tr. at 277, 303, and 346.

[58] *E.g., id*. at 537–39.

[59] *E.g., id*. at 553–54 and 584–85. This university includes a dual credit option, which offers high school credit for a college course. P274.

[60] Tr. at 589 and 631–32.

[61] Parents' request for appeal, at 2–16.

[62] *Supra* notes 13–15 and accompanying text.

[63] *Supra* text accompanying note 16.

[64] *E.g.,* T.B. v. Prince George's Cnty. Bd. of Educ., 897 F.3d 566, 571–72 (4th Cir. 2018); Ridley Sch. Dist. v. M.R., 680 F.3d 260, 271 (3d Cir. 2012).

[65] The specific wording of the test are variations of this same core theme. *See, e.g*., Legris v. Capistrano Unified Sch. Dist., 79 IDELR ¶ 243, at *3 (9th Cir. 2021) (when the district "is on notice of a suspected disability"); Bd. of Educ. of Fayette Cnty. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007) ("the claimant 'must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate'"); Dep't of Educ., Haw. v. Cari Rae S., 158 F. Supp. 2d 1190, 1194 (D. Haw. 2001) (when the district "'has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability'"). The overlapping other component, which in this case is only relevantwith regard to the calculation of the remedy, is whether the time between reasonable suspicion and initiation of the evaluation, via obtaining parental consent, was reasonable. *See, e.g*., Krawietz v. Galveston Indep. Sch. Dist., 900 F.3d 673, 676 (5th Cir. 2018); W.B. v. Matula, 67 F.3d 484, 501 (3d Cir. 1995); El Paso Indep. Sch. Dist. v. Richard R., 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008); *see also* Perry A. Zirkel, *Child Find: The "Reasonable Period" Requirement*, 311 EDUC. L. REP. 576 (2015) (finding that the courts' determination of the reasonable period ranged from one to two months).

[66] *E.g*., D.J.D. v. Madison City Sch. Dist., 72 IDELR ¶ 273, at *5 (N.D. Ala. 2018); J.G. v. Oakland Unified Sch. Dist., 2014 WL 12576617, at *8 (N.D. Cal. Sept. 19, 2014); Simmons v. Pittsburg Unified Sch. Dist., 63 IDELR ¶ 158, at *6 (N.D. Cal. 2014). Indeed, the determination of reasonable suspicion is intrinsically based on whether the school district has the requisite actual or constructive knowledge of suspected eligibility at a particular point in time. *See, e.g*., *Ridley School District v. M.R*., 260 F.3d at 273.

[67] *E.g*., Legris v. Capistrano Unified Sch. Dist., 79 IDELR ¶ 243, at *3 (9th Cir. 2021); Mr. P v. W. Hartford Bd of Educ., 885 F.3d 735, 750 (2d Cir. 2018); Burnett v. San Mateo Foster City Sch. Dist., 739 F. App'x 870, 872 (9th Cir. 2018); T.B. v. Prince George's Cnty. Bd. of Educ., 897 F.3d 566, 572 (4th Cir. 2018); Flour Bluff Indep. Sch. Dist., 481 F. App'x 887, 891 (5th Cir. 2012). For the codification of the applicable two-part test, see 20 U.S.C. § 1415(f)(3)(E).

[68] The framework regulation, which applies to each state, identifies two categories of students beyond enrollees—mobile, including homeless and migrant, children and children in private schools. 34 C.F.R. §§ 300.111(a)(1) and 300.111(c)(2). The application of the direct child find obligation to homeless and migrant children is not at issue in this case. The tandem two-strand analysis addresses the child find obligation to students in private schools.

[69] *E.g*., Moorestown Twp. Bd. of Educ. v. S.D., 811 F. Supp. 2d 1057, 1069 (D.N.J. 2011); District of Columbia v. Abramson, 493 F. Supp. 2d 80, 86 (D.D.C. 2007); *cf*. A.B. v. Abington Sch. Dist., 841 F. App'x 392, 396 (3d Cir. 2021); Bellflower Unified Sch. Dist. v. Lua, 832 F. App'x 493, 495–96 (9th Cir. 2020) (finding corresponding parental prerequisite for a district's obligation to offer a proposed IEP); Capistrano Unified Sch. Dist. v. S.W., 21 F.4th 1125, 1139 (9th Cir. 2022) (extending this prerequisite for an offer of FAPE to parents upon request for reimbursement).

[70] *Supra* note 67 and accompanying text.

[71] 34 C.F.R. §§ 300.131–300.144. For the allocation to the district of location, see *id*. § 300.140(b). For the lack of an individual right to FAPE, see *id*. § 300.137(a). For the jurisdictional limit of due process hearings to child find, not services, see *id*. § 300.140(b). For the underlying statutory provisions, see 20 U.S.C. § 1412(a)(10(A). The purpose of this equitable-services child find obligation is, rather than providing FAPE, "to ensure the equitable participation of parentally-placed private school children and an accurate count of those students." Letter to Eig, 52 IDELR ¶ 136 (OSEP 2009).

[72] As the high school's child find coordinator, the school psychologist provided legally questionable testimony about child find, including that it is a dual obligation (Tr. at 239); the eligibility classification of emotional disturbance (ED) requires response to intervention (RTI) (*id*. at 147–48); and a 6–9 week period is required (*id*. at 148) with the only exception being a parental request for evaluation (*id*. at 152)

[73] *Supra* notes 22–39 and accompanying text.

[74] *E.g.*, Northfield City Bd. of Educ. v. K.S., 847 F. App'x 130 (3d Cir. 2021); Mr. and Mrs. P v. W. Hartford Bd. of Educ., 885 F.3d 735 (2d Cir. 2018);

[75] *E.g.*, Tr. at 160, 434–36, and 517–21.

[76] *Supra* note 37 and accompanying text.

[77] *Supra* notes 38–39 and accompanying text

[78] *See, e.g.*, 34 C.F.R. § 300.8(b)(4) (including adverse effect on educational performance); NEV. ADMIN. CODE § 388.415 (2019) (including minimum of three-month duration).

[79] 34 C.F.R. § 300.8(b)(9) (including chronic or acute qualification); NEV. ADMIN. CODE § 388.402 (2019) (including, without limitation, difficulty concentrating or chronic fatigue "which interfere with a student's ability to be educated").

[80] *E.g.*, Indep. Sch. Dist. No. 283 v. E.M.D.H., 960 F.3d 1073, 1083 (8th Cir. 2020), *cert. denied*, 142 S. Ct. 67 (2021); R.B. v. N.E. Indep. Sch. Dist., 80 IDELR ¶ 162 (W.D. Tex. 2022); A.P v. Pasadena Unified Sch. Dist., 78 IDELR ¶ 139, at *7–9 (E.D. Cal. 2021).

[81] *E.g.*, Spring Branch Indep. Sch. Dist. v. O.W., 961 F.3d 781, 794 (5th Cir. 2020).

[82] *See, e.g.,* Perry A. Zirkel, *Through a Glass Darkly: Eligibility under the IDEA—The Blurry Boundary of the Special Education Need Prong*, 49 J.L. & EDUC. 149 (2019); Perry A. Zirkel, *School Attendance Issues in Special Education Case Law*, 379 EDUC. L. REP. 1 (2020).

[83] In considering possible appeal, the parties should recognize that if the HO was reversibly wrong about the alleged child find violation, the result would be the same as this SRO ruling for the first segment of the relevant period. Similarly, if the SRO is reversibly wrong about this reasonable-suspicion ruling, the FAPE denial and resulting remedy for the remaining segments of this period are subject to question.

[84] NEV. ADMIN. CODE § 388.219 (2019) (referencing 34 C.F.R. §§ 300.130 – 300.144).

[85] *Supra* note 45.

[86] *Supra* note 71 and accompanying text. The analysis assumes arguendo that the District is the location, without addressing the thorny issue of location or residency upon Student's receipt of instruction for a notable part of this period on-line while outside the state during the school week. Similarly, this analysis does find it necessary to address the issue of whether the homeschool was, in effect, a for-profit private school, because the district of residence is not excluded from the child find, as contrasted with the services, provision. *E.g.*, OSEP QA 22-01, 80 IDELR ¶ 197 (OSEP 2022).

[87] The IDEA remedies of both tuition reimbursement and compensatory education are predicated on a denial of FAPE. *See, e.g.*, 20 U.S.C. § 1412(a)(10)(C); Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359, 369–70 (1985) (tuition reimbursement); M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996); Student W. v. Puyallup Sch. Dist. No. 3, 31 F.3d 1489, 1497 (9th Cir. 1994) (compensatory education). Moreover, even if the equitable-services obligation were interpreted as providing partial FAPE, the District's provision of equitable services is limited to speech and language therapy, which is not one of the asserted needs of Student and, thus, not amounting to any denial. *E.g.*, Tr. at 252. Finally, although the rather toothless child find obligation is within the jurisdiction of the hearing/review officer process, the services aspect is exclusively for the state complaint process. 34 C.F.R. § 300.140(c).

[88] NEV. REV. STAT. § 388A.159 (2019) (state public charter school authority as the local education agency); *cf.* N.F. v. Antioch Unified Sch. Dist., 80 IDELR ¶ 267 (9th Cir. 2022) (ruling that district of residence was not the local education agency responsible for evaluation or FAPE for a child in a charter school that was not part of the district).

[89] *Supra* note 50 and accompanying text.

[90] The RTF's educational component was a private school. However, for the IDEA's equitable-services regulations, any child find obligation arguably would be for the district of the private school's location in the state of that RTF, and even if applicable to the District it would not support a FAPE denial. *Supra* note 71 and accompanying text. The alternative of the district's direct child find obligation is contingent upon parental request for an evaluation or offer of FAPE. *Supra* note 69 and accompanying text. The record is devoid of any such request in this case during the entire period at issue.

[91] Even if that filing time counted for purposes of reasonable suspicion, its effect would be null as the basis for any remedy in light of the remaining reasonable-time step to arrange the evaluation. *Supra* note 65 (reasonable-period component).

[92] NEV. REV. STAT. § 388.467 (2019).

[93] *E.g.*, Durbrow v. Cobb Cty. Sch., 887 F.3d 1182, 1195 (11th Cir. 2018); D.G. v. Flour Bluff Indep. Sch. Dist., 481 F. App'x 887, 892–93 (5th Cir. 2012);

[94] *E.g.*, Cory D. *ex rel.* Diane D. v. Burke Cnty. Sch. Dist., 285 F.3d 1294, 1299 (11th Cir. 2002); C.M. *ex rel.* J.M. v. Bd. of Educ. of Henderson Cnty., 241 F.3d 374, 380 (4th Cir. 2001); Muth *ex rel.* Muth v. Cent. Bucks Sch. Dist., 839 F.2d 113, 124–25 (3d Cir. 1988), *rev'd on other grounds sub nom.* Dellmuth v. Muth, 491 U.S. 223 (1989); Livingston Sch. Dist. Nos. 4 & 1 v. Keenan, 82 F.3d 912, 916–17 (9th Cir. 1996).

[95] *Supra* note 55 and accompanying text.

[96] For this limited purpose of assessing any significant change in Student's classification and its impact on educational performance and special education need, the period is from June 2019 to June 2021, because the four months that it took for the District to complete the evaluation process serves as an equitable estimate of total time from the reasonable-suspicion date until the end of the successive reasonable-time and eligibility-evaluation periods. In any event, whether it is clear that during this period, Student's psychological condition did not significantly change for the better, and its interference with Student's ability to "attend" to education in terms of amount of time and resulting rate of progress remained at the same limited level. Indeed, even six months later, after the subsequent step-down to the transitional residential placement, Student remained severely limited in the ability to progress educationally. *Supra* note 60 and accompanying text. At a broader time span only for background contact, the academic impact is reflected in standardized testing. *Supra* notes 18, 21, and 53.

[97] 20 U.S.C. § 1415(f)(3)(E)(iii).

[98] HO exhibit binder, at 21.

[99] *E.g.*, HO Pre-Hearing Conference Report and Order, Nov. 5, 2021, at 2.

[100] Letter to Zirkel, 80 IDELR ¶ __ (OSEP 2022), also available at https://sites.ed.gov/idea/idea-files/policy-letter-22-04-april-15-2022-to-zirkel/ (interpreting the IDEA as not having such a limitation on the broad equitable scope of relief).

[101] 20 U.S.C. § 1412(a)(10)(C)(iii)(I) (2018). First, this equitable factor has a potentially relevant exception, although it is unlikely that requisite notice would cause physical or emotional harm to Student. Id. § 1412(a)(10)(C)(iv). Second, adjudicators have discretion as to whether this equitable factor is a fatal consideration. *E.g.*, Ashland Sch. Dist. v. Parents of Student E.H., 587 F.3d 1175, 1184 (9th Cir. 2009) (concluding that the IDEA "expressly permitted the district court to deny relief solely because of Parents' failure to give [the district] notice of their objections to the IEP").

[102] Clovis Unified Sch. Dist. v. Cal. Off. of Admin. Hearings, 903 F.2d 635, 645 (9th Cir. 1990). For the application of this standard in subsequent Ninth Circuit cases, see Edmonds Sch. Dist. v. A.T, 780 F. App'x 491, 495 (9th Cir. 2019); Ashland Sch. Dist. v. Parents of Student E.H., 587 F.3d 1175, 1185 (9th Cir. 2009); Taylor v. Honig, 910 F.2d 627, 633 (9th Cir. 1990). Moreover, for a child find case in which, on remand from the Supreme Court, the Ninth Circuit ruled, on equitable grounds, against tuition reimbursement based on a finding that the unilateral placement was not attributable to academic reasons. Forest Grove Sch. Dist. v. T.A., 638 F.3d 1234, 1240–41 (9th Cir. 2011).

[103] *E.g.*, Park v. Anaheim Sch. Dist., 464 F.3d 1025, 1034–35 (9th Cir. 2006); Student W. v. Puyallup Sch. Dist. No. 3, 31 F.3d 1489, 1497 (9th Cir. 1994).

[104] R.P. v. Prescott Unified Sch. Dist., 631 F.3d 1117, 1125 (9th Cir. 2011).

[105] *E.g.*, M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996) ("the time reasonably required for the school district to rectify the problem").

[106] *Supra* note 96. Although homeschooled at the start of this period, Student was out-of-state for the initial months. *Supra* text accompanying note 41. Thus, the context is sufficiently comparable for this equitable estimate.

[107] *Supra* text accompanying note 104.

[108] NEV. ADMIN. CODE § 387.120(2). There is no evidence in this case of an entitlement for extended school year based on the requisite standard or factors. *E.g.*, N.B. v. Hellgate Elementary Sch. Dist., 541 F.3d 1202, 1211 (9th Cir. 2008).

[109] 34 C.F.R. § 300.520; NEV. ADMIN. CODE § 388.195. The designation of Student rather than Parents is premised on the assumption that Student already reached age 18 on April 3, 2022 based on the birthdate in the record of April 3, 2004. *E.g.*, Exhibit J-1.

[110] In light of Student's academic and psychological profile and lagging progress to date, one example of such services is specialized tutoring in math.

[111] Exhibit J-12.

[112] *See, e.g.*, Streck v. Bd. of Educ., 642 F. Supp. 2d 105 (N.D.N.Y. 2009), *revised*, 408 F. App'x 411 (2d Cir. 2010) (only for remedial reading and writing programs); Perkiomen Sch. Dist. v. R.B., 78 IDELR ¶ 222 (E.D. Pa. 2021) (for noncredit transition services at university-based program); Stapleton v. Penns Valley Area Sch.

Dist., 71 IDELR ¶ 87 (M.D. Pa. 2017) (not extending to college tuition, with implicit exception for dual-credit courses that count toward high school graduation).

[113] *E.g., Clovis Unified Sch. Dist.*, 903 F.2d at 647 (reasoning that the IDEA "does not require school districts to pay . . . the room and board costs at a hospital").

[114] *E.g.*, *Indep. Sch. Dist. No. 283*, 960 F.3d at 1085.

[115] *Supra* notes 108–114 and accompanying text. As a matter of emphasis and clarity, per these provisions, the selection of the provider(s), timing, and location is solely within the discretion of Student (or, per the IDEA transfer provision, Parents) within the specified criteria, and the District responsible for the prompt development and notice of the procedure for an efficient and enforceable mechanism for payment of these compensatory services.