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

In the Matter of

**DECISION OF THE HEARING OFFICER**  
**Date:** May 31, 2024

STUDENT<sup>1</sup>, by and through Parent  
  
Petitioners,

**Representatives:**  
[ ], Pro Per Parent, on  
behalf of Petitioner

SCHOOL DISTRICT

Daniel Ebihara, Esq., on behalf of School  
District, Respondent

Respondent,

**Hearing Officer:** Lucinda L. Coumou

**I.  
INTRODUCTION**

The Petitioner filed a Due Process Complaint on March 6, 2024, (*HO Ex. 1*). The Due Process Complaint was received by the School District on March 8, 2024, (*HO Ex. 2*), and by the Nevada Department of Education on March 18, 2024, (*HO Ex. 3*). The Nevada Department of Education appointed the undersigned to serve as hearing officer by letter, dated March 18, 2024, (*HO Ex. 4*). This Hearing Officer received the School District's Response to the Due Process Complaint, dated March 11, 2024, (*HO Ex. 5*).

The undersigned Hearing Officer's jurisdiction to render this Decision, following a Due Process Hearing addressing the Petitioner's Due Process Complaint, arises pursuant to the *Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C. §1400 et. seq.)*, *Part B, Title 34 C.F.R. Part 300 (Part B)*; *Nevada Revised Statutes 388.417-5243*; and the *Nevada Administrative Codes 388.001-488*.

<sup>1</sup> Personally identifiable information is attached as Appendix A to this Decision and must be removed prior to public distribution. See *Letter to Chad* (FPCO 12/23/04)

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Pursuant to *Nevada Revised Statute 388.467*, whenever a Due Process Hearing is held pursuant to the *Individuals with Disabilities Education Act, 20 U.S.C. §1400 et. Seq.*, and a School District is a party, the School District has the burden of proof and burden of production concerning all issues.

## II. PROCEDURAL BACKGROUND

On April 4, 2024, this Hearing Officer sent a Notice of Status Conference and Agenda to the Parties (*HO Ex. 9*), and a Preliminary Order (*HO Ex. 6*), along with Hearing Process Guidelines (*HO Ex. 7*) and Rights of Parties Related to Hearings (*HO Ex. 8*). The Parties engaged in a 30-day resolution process, so the 45-day timeline began after the 30-day resolution period.

The Status Conference in this case was held on April 8, 2024, and it was determined that there would be a Second Status Conference. This Hearing Officer sent a Notice of Second Status Conference, with an additional Agenda for the Parties' convenience on April 14, 2024, (*HO Ex. 10*). A Second Status Conference was held on April 15, 2024. The School District submitted a Motion to Continue the Decision Deadline, with no opposition from Petitioner, on April 15, 2024, (*HO Ex. 11*). This Hearing Officer issued an Order on Motion for Continuance on April 30, 2024, finding that good cause existed for extending the 45-day timeline to May 31, 2024. The Parties agreed to the dates of May 20 and 21, 2024, for the Due Process Hearing ("Hearing") (*HO Ex. 12*).

A Notice of Pre-Hearing Conference was issued on May 2, 2024, wherein the expectations for the meeting were outlined (*HO Ex 13*). The Pre-Hearing Conference in this matter was held on May 3, 2024. The issues raised in the Due Process Complaint were discussed. It was decided that the Parties would need two days for the Hearing, and it was scheduled for the dates of May 20 and 21, 2024. It was decided that the Hearing would be held virtually. The date for the 5-business-day disclosure of proposed exhibits and witness lists was set for May 13, 2024. A copy of the proposed exhibits was to be provided to this Hearing Officer.

This Hearing Officer Issued a Pre-Hearing Report and Order on May 7, 2024, wherein the issue that was to be the subject of the Hearing was identified (*HO Ex. 14*).<sup>2</sup> (That issue is stated in Section IV of this Decision.). The Pre-Hearing Report and Order also stated that if either Party believed that this Hearing Officer had overlooked or misstated any item, that Party was to advise this Hearing Officer of the omission or misstatement by 5:00 p.m. on May 9, 2024. No objections to the Pre-Hearing Report and Order were received by this Hearing Officer prior to the Hearing.

The School District submitted its disclosure of potential witnesses and copies of potential exhibits on May 13, 2024, (*HO Ex. 15*). On May 13, 2024, this Hearing Officer received an email from Parent on behalf of Petitioner, asking if Petitioner could submit three witness statements in lieu of live testimony. Additionally, Parent indicated that Parent would be

<sup>2</sup> At the conclusion of the Hearing, the statement of the Issue was changed to reflect the testimony given.

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disclosing Student's current treatment plans and progress notes. (*HO Ex. 16*). This Hearing Officer responded to Parent and explained that only live testimony could be considered. Petitioner submitted no documents, nor a witness list, by the deadline to do so. On May 14, 2024, this Hearing Officer inquired about whether the School District had received any exhibits or a witness list from Petitioner (*HO Ex. 17*). Parent responded that Petitioner had no witnesses to identify and that Petitioner would be relying on the documents that the School District disclosed.

On May 17, 2024, this Hearing Officer sent an email to the Parties, addressing four items: first, noting that the Hearing would be limited to the documents disclosed prior to the 5-business day disclosure timeframe; second, inquiring as to whether the School District had an objection to Parent testifying at the Hearing since Petitioner had not disclosed Parent as a witness; third, explaining that any statements made at the Hearing, outside of sworn testimony, would not be considered evidence; and fourth, clarifying that Petitioner had never expressed difficulty with witness schedules at the Pre-Hearing Conference or at any time prior to that. (*HO Ex. 18*.) Parent acknowledged the points in a responsive email on May 17, 2024 (*HO Ex. 19*).

The Due Process Hearing in this matter was held virtually on May 20, 2024. Petitioner was represented by Pro Per Parent,[ ], and the School District was represented by Daniel Ebihara, Esq. This Hearing Officer gave an Opening Statement that included a recitation of the issue to be decided. The Hearing was closed to the public, with the exception of the School District's paralegals, Joseph Fragiadakis and Barbara Fair, and Compliance Monitor, Kimberly Caris, assisting Mr. Ebihara. Testimony was taken and documentary evidence was admitted throughout the day of the Hearing. At the conclusion of testimony, both the School District and Pro Per Parent, [ ] gave oral closing arguments. The statement of the issue was reframed to comport with the evidence presented during the Hearing, and then the record was closed.

### III. PRELIMINARY MATTERS

#### A. PETITIONER'S REQUEST TO USE WITNESS STATEMENTS IN LIEU OF LIVE TESTIMONY AND ULTIMATE FAILURE TO DISCLOSE A WITNESS LIST OR ANY DOCUMENTS.

The 5-business-day disclosure deadline of proposed exhibits and witness lists in this case was May 13, 2024. The School District disclosed their witness list and documents on that date (*HO Ex. 15*). On May 13, 2024, this Hearing Officer received an email from Parent on behalf of Petitioner, asking if Parent could submit three witness statements in lieu of live testimony. Parent explained that these witnesses were unable to be present at the Hearing. Additionally, Parent indicated that Parent would be disclosing Student's current treatment plans and progress notes. This Hearing Officer explained that the Parties to a Due Process Hearing have a right to confront and cross-examine witnesses, thus requiring live testimony. Therefore, witness statements are not acceptable. This Hearing Officer also explained that Parent was free to disclose whatever documents Parent wanted to utilize at the Hearing. Any objections to documents disclosed would be addressed prior to the Hearing. (*HO Ex. 16*). Parent ultimately

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did not disclose a witness list or any documents on behalf of Petitioner, however. In a follow-up email, dated May 14, 2024, Parent again reiterated that witnesses could not be present at the Hearing because they had to work. Parent also stated that Parent believed that the School District's documents contained enough evidence to support Petitioner's case. (*HO Ex. 17*).

On May 17, 2024, this Hearing Officer sent an email to the Parties in which four items were addressed (*HO Ex. 18*): First, this Hearing Officer made clear that the documents to be considered at the Hearing would be limited to the ones that were disclosed within the 5-business day disclosure timeframe. Petitioner had not disclosed any documents, so this Hearing Officer would only be considering the ones offered by the School District. The Petitioner was free to utilize those documents in Petitioner's case. Second, this Hearing Officer noted that Petitioner did not disclose any witnesses. If Parent wanted to testify on Petitioner's behalf, this Hearing Officer wanted to know if the School District was going to object. Third, this Hearing Officer wanted to make clear that any statements that Parent made during the Hearing, outside of Parent's sworn testimony, would not be considered evidence which this Hearing Officer could use in making the decision in this case. Fourth, this Hearing Officer wanted the record to reflect that at no time during the Pre-Hearing Conference, nor between the time of that meeting and the 5-business day disclosure deadline, did Parent raise any issues about witness availability. In fact, that was an issue specifically addressed in Sections 5 and 6 of the Notice of Pre-Hearing Conference, and which was discussed at the Pre-Hearing Conference. Therefore, whatever impact that Petitioner's witness availability issue might have on Petitioner's case is not the result of a failure on the part of this Hearing Officer to accommodate the issue. (*HO Ex. 18*). Parent responded to the aforementioned communication, stating that Parent understood Parent must stick to the documents disclosed by the School District. (*HO Ex. 19*).

#### **B. PARENT'S FILING OF A NEW DUE PROCESS COMPLAINT**

In an email that Parent sent to this Hearing Officer on May 14, 2024, Parent indicated that she would be filing a new Due Process Complaint ("DPC"), raising an issue different from the one that we are addressing in this case. (*HO Ex. 17*). At the beginning of the Hearing, counsel for the School District informed this Hearing Officer that Parent had indeed filed a new DPC and inquired as to whether this Hearing Officer was aware of it and wanted to know how the new DPC might impact this case. This Hearing Officer made clear that she has not seen the new DPC and that this Hearing is strictly limited to the issue of the Student's IEP of February 6, 2024. Further, it is unknown at this time what, if any, impact the Decision in this case might have on the new case.

#### **C. ALTERATION OF THE STATEMENT OF ISSUE AT THE END OF THE HEARING TO CONFORM TO THE EVIDENCE PRESENTED**

Originally, the stated issue in this case was "Whether the District provided Student with the least restrictive environment when utilizing Student's **February 29, 2024**, IEP as the basis for its placement decision?" It became clear through witness testimony and an examination of the relevant Exhibits that the recommended placement in a special school was first made in the IEP dated February 6, 2024, and carried through in subsequent IEP revisions. Both Parties were

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in agreement that the most accurate statement of the issue is as follows: “Whether the District provided Student with the least restrictive environment when utilizing Student’s IEP that began on **February 6, 2024**, as the basis for its placement decision?”

**IV.  
STATEMENT OF THE ISSUE TO BE DETERMINED**

Whether the District provided Student with the least restrictive environment when utilizing Student’s IEP that began on February 6, 2024, as the basis for its placement decision?

**V.  
EXHIBITS**

**Hearing Officer Exhibits**

- HO Ex. 1 - Due Process Complaint
- HO Ex. 2 - Notice to the School District of the Due Process Complaint
- HO Ex. 3 - Notice to the Nevada Department of Education of the Due Process Complaint
- HO Ex. 4 - Appointment of Lucinda Coumou as Hearing Officer in this matter
- HO Ex. 5 - School District response to the Due Process Complaint
- HO Ex. 6 - Preliminary Order
- HO Ex. 7 - Hearing Process Guidelines
- HO Ex. 8 - Rights of Parties Related to Hearings
- HO Ex. 9 - Notice of Status Conference and Agenda
- HO Ex. 10 - Notice of Second Status Conference
- HO Ex. 11 - Motion to Continue Decision Deadline
- HO Ex. 12 - Order on Motion for Continuance
- HO Ex. 13 - Notice of Pre-Hearing Conference
- HO Ex. 14 - Pre-Hearing Report and Order
- HO Ex. 15 - School District’s/Respondent’s Disclosure of Potential Witnesses and Exhibits
- HO Ex. 16 - Email from Parent regarding witness statements
- HO Ex. 17 - Email between Parent and Hearing Officer regarding lack of Parent’s disclosures
- HO Ex. 18 - Email from Hearing Officer to Parties regarding pre-hearing issues
- HO Ex. 19 - Email from Parent in response to Hearing Officer’s email regarding pre-hearing issues
- HO Ex. 20 - Remainder of emails throughout this case

**School District/Respondent Exhibits**

- R-1 - School Calendars 2022-2023, 2023-2024, and 2024-2025 School Years
- R-2 - Enrollment History 2023-2024 School Year
- R-3 - Attendance Records 2023-2024 School Year
- R-4 - Status Record
- R-5 - Multi-Disciplinary Team Report (MDT) (6/16/2022)
- R-6 - Special Education Data-Based Decision Worksheet (Student Services Division)

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- R-7 - Functional Behavioral Assessment Results Summary
- R-8 - Behavior Intervention Plan (BIP) (11/1/2023)
- R-9 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (8/26/2022)
- R-10 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (10/14/2022)
- R-11 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (5/11/2023)
- R-12 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (8/16/2023 – Amendment 1)
- R-13 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (8/16/2023 – Amendment 2)
- R-14 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (10/18/2023)
- R-15 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (2/6/2024)
- R-16 - Notice of Intent to Implement, Parental Prior Notices & Individualized Educational Program (IEP) (2/29/2024)
- R-17 - Referrals
- R-18 - Behavior Records
- R-19 - LINKS Records
- R-20 - Behavior Data
- R-21 - Discrete Trial Percent
- R-22 - Case Management (Pending Placement)

### **Petitioner's Exhibits**

None Provided

## **VI. FINDINGS OF FACT**

After considering all the evidence, this Hearing Officer finds the following facts:

1. Student is enrolled in the first grade at a public elementary school in Respondent's School District, (hereinafter referred to as "the School") for the 2023 – 2024 school year. (*Ex. R-3, pg. 1*). Student's primary eligibility for special education services is due to a diagnosis of autism spectrum disorder. (*Ex. R-6, pg. 1*).

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2. Student had an IEP in place at the beginning of the 2023 – 2024 school year that was dated May 11, 2023. That IEP placed Student in a self-contained program, and Student was to spend 22% of the school day in a regular education environment. (*Ex. R-11, pg. 19*).
3. The Principal of the School that Student attends (“Attending School”) is responsible, in part, for the safety and security of all students and staff at the school. The Principal (“Attending School Principal”) is familiar with Student and Student’s current placement in a primary autism classroom, with only eight students in the class. Prior to Student’s enrollment at the School, Student was enrolled in four other public elementary schools in Respondent’s School District for either a regular school year, extended school year, or a summer enrichment/acceleration program. (*Ex. R-2, Testimony of Attending School Principal*).

During the first meeting with Student’s mother, at the beginning of the school year, the elopement behavior was discussed. Elopement behavior can encompass a student trying to get out, and actually getting out, of the classroom. It can also be getting up from the lunch table and running around in other areas of the lunchroom. Over the course of the school year, the elopement behavior has decreased. (*Testimony of Attending School Principal*).

Student has some other behavior issues, such as biting, grabbing, pinching, scratching and pushing. The most concerning of the above-referenced behaviors is the biting, however. Student has bitten numerous staff members, causing broken skin and bruising. As a result, there were workers compensation claims filed and some had to receive tetanus shots. Student has also bitten other students. During the first week of school, Student grabbed Student’s teacher around the ankles, causing the teacher to fall, resulting in a back injury. In March of 2024, Student pushed that same teacher, causing the teacher to fall into a table and sustain a lower spine injury. (*Testimony of Attending School Principal*).

4. The Behavior Detail Report for Student contains information about instances of Student’s behavior that is of concern and results in some type of discipline. That information is input into the Infinite Campus system by either the Attending School Principal or the Assistant Principal. (*Ex. R-18, pgs. 1-2*). A consequence of a severe behavior could be a Required Parent Conference (“RPC”), which removed a student from school for a period of time, akin to a “calm down period.” There is a meeting with the parent prior to a student returning to school. There are four instances detailed in Student’s Behavior Detail Report:

On September 21, 2023, Student was walking with the Special Education Instructional Facilitator when Student bit her arm. Student was sent home for an RPC. On November 27, 2023, Student was coming into the library when Student tried to bite three people. Then Student did bite another student and broke skin, although the other student did nothing to provoke this behavior. Student was sent home for an RPC and returned to

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school on November 29, 2024. On November 30, 2024, Student bit the bus aide very badly on the arm. This was the second occurrence, so student was banned from the bus through December 7, 2024. On December 14, 2023, Student bit two students and all students were evacuated from the classroom. Student was sent home for an RPC and did not return to school until December 16, 2023. (*Ex. R-18, pgs. 1-2, Testimony of Attending School Principal*).

5. During the 2023 – 2024 school year, Student was in a self-contained primary autism class with a Special Education Teacher. Primary autism classes encompass Kindergarten through second grade. Student's Teacher is responsible for IEPs and for documentation of goals and behavior, as well as exposing special education students to general education curriculum. Student's Teacher is familiar with Student and describes Student as sweet, silly and very bright, and having a lot of academic skills. Student's Teacher describes Student's behaviors as biting, eloping, pushing and grabbing. Student engaged in aggressive behaviors on the first day of class when Student bit the teaching assistant. Student had a one-to-one adult assistant from the first day of class and this was officially added into a later revision of Student's IEP. (*Testimony of Student's Special Education Teacher*).
6. The Student's IEP dated May 11, 2023, was the IEP that Student's Special Education Teacher utilized at the beginning of the 2023 – 2024 school year when Student first entered the class. (*Ex. R-4, R-11 and Testimony of Special Education Teacher*). On August 16, 2023, Student's IEP was revised to add new speech goals, new speech minutes, a communication device, and AT/OT assessments. (*Ex. R-4, R-12, Testimony of Special Education Teacher*). A second revision to Student's IEP was done on August 16, 2023, to add a new end date for speech minutes. (*Ex. R-4, R-13*). On October 18, 2023, Student's IEP was again revised to account for the assessments. Student would be receiving assistive technology, occupational therapy, individual intervention services, and a one-to-one adult aide was formally added. (*Ex. R-4, R-14, Testimony of Special Education Teacher*).
7. On February 6, 2024, an IEP revision meeting was held, wherein a Behavior Intervention Plan and current data were reviewed. A change of placement to a special school was discussed. The reason for the recommended change of placement was because multiple interventions had been tried, different people had been brought in from the region and the district and the IEP team felt that a special school was needed to try and reduce the maladaptive behaviors. A special school offers staff that have more training in behavior issues, and it removes the overstimulation that can happen in an environment with a lot of general education students. (*Ex. R-15, and Testimony of Special Education Teacher*).

The IEP meeting was continued to February 27, 2024, where the current data was reviewed. The IEP team addressed Parent's concerns about changing schools this time of the year and informed Parent that the team believed that a special school placement was what was best for Student. Parent disagreed. (*Ex. R-15*). Another IEP meeting was held on February 29, 2024, where Parent was given additional information and Parent



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expressed continued disagreement with the recommendation for a change of placement for Student to a special school. (*Ex. R-4, R-16*).

8. Student's above-referenced IEP, generated as a result of the team meeting on February 6, 2024, states that Student's behavior does impede the Student's own learning and the learning of others. (*Ex. R-15, pg. 15*). A special school is recommended for Student and responses were provided to specific questions seeking justification for a placement involving the removal from a regular education environment. The specialized instruction modifications or accommodations that Student requires cannot be provided in the general education environment because:

[Student] exhibits behaviors that are unsafe for [Student] and those around [Student] and requires extensive behavior programming and communication practice to learn the skills necessary to safely interact within a larger group setting. (*Ex. R-15, pg. 24*).

Student's unique needs and why those needs cannot be met in a general education environment are described as follows:

[Student] is not able to make adequate progress toward IEP goals or access the general education environment currently due to behaviors that are impeding [Student's] learning. [Student] is engaging in behaviors such as eating non-food items (including curriculum materials), leaving the area, destroying materials, and biting [Student] and others. For example, when working on [Student's] math goal, [Student] is ripping and attempting to eat the math manipulatives and direct instruction cannot occur. [Student] is not yet able to work in small or whole group settings. (*Ex. R-15, pg. 24*).

The non-academic benefits that Student has failed to demonstrate in the general education environment are described as:

[Student] is overstimulated in larger group settings and exhibits an increase in maladaptive behaviors when around [Student's] peers. [Student] requires a smaller setting with less distractions to practice [Student's] communication skills and behavior programming. [Student] is not yet ready to engage with [Student's] general education peers and therefore does not demonstrate appropriate social skills or observational learning skills. (*Ex. R-15, pg. 24*).

Student's impact on the teaching and learning in the general education environment is described as:

Specific challenges that are impeding progress include [Student's] inability to maintain appropriate behavior with increased adult proximity. During all settings [Student] attempts to elope, eat non-food items, bite self and others, grab/pinch, and attempt to pull others to the ground. These maladaptive behaviors are preventing [Student] from receiving instruction, completing tasks, and practicing skills. [Student] is successful in short 5-10 minute

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increments with 1-2 adults helping him. This limits the other students in the class from access to instruction from the teacher.  
(*Ex. R-15, pg. 25*).

It is acknowledged that the potential harmful effects of the recommended placement in a special school could be reduced time away from general education peers and lack of exposure to the general education curriculum. (*Ex. R-15, pg. 25*).

9. The Special Education Data-Based Decision-Making Worksheet (“Worksheet”) is a very detailed record of everything that has been done with a student when bigger decisions are being contemplated, such as moving a student to a more- or less-restrictive environment. There is such a Worksheet that was generated and utilized for Student. The Worksheet contains a graph that tracks aggressive incidents, defined as pinching, biting, grabbing, and attempting to bite. (*Ex. R-6, and Testimony of Student’s Special Education Teacher*). The date range of this graph is from September 18, 2023, through February 13, 2024, and the number of aggressive incidents on a single day vary from less than 10 to almost 50. There are nine days, out of the 28 days depicted on the graph, that involve over 20 incidents of aggressive behavior by Student. (*Ex. R-6, pg. 5*). At times there would be improvement in Student’s behavior, but then the maladaptive behaviors would return. (*Testimony of Student’s Special Education Teacher*).

There is a section of the Worksheet that contains a detailed description of the interventions used to address Student’s aggressive behaviors. The interventions range from meetings with Parent to the use of reinforcements to sensory diet choices, to the use of seat cushions, yoga balls, chewies and a hand-held fan. Other interventions involved having an adult in close proximity, multiple opportunities to practice routines, structured breaks and sensory breaks. (*Ex. R-6. pgs. 7-9*).

Section 18 of the Worksheet contains a description of Student’s progress toward IEP goals and appropriate curriculum/instructional standards:

[Student] is not able to make adequate progress toward IEP goals currently due to behaviors that are impeding his learning. [Student] is engaging in behaviors such as eating non-food items (including curriculum materials), leaving the area, ripping materials, and biting [Student] and others. For example, when working on his math goal, [Student] is ripping and attempting to eat the math manipulatives and direct instruction cannot occur. [Student] is not yet able to work in small or whole group settings.  
(*Ex. R-6, pg. 1*)

Section 20 of the Worksheet asks about specific challenges that are currently limiting student performance and progress:

[Student’s] inability to maintain appropriate behavior with increased adult proximity. During all settings [Student] attempts to elope, eat non-food items, bite self and others, grab / pinch, and attempt to pull others to the ground. These maladaptive behaviors are preventing [Student] from receiving instruction, completing tasks, and practicing skills. [Student] is

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successful in short 5 – 10 minute increments with 1 – 2 adults helping him. This limits the other students in the class from access to instruction from the teacher.

*(Ex. R-6, pgs. 1-2).*

10. Student's Special Education Teacher wrote a Functional Behavioral Assessment for Student. This is something that is done before developing a Behavior Intervention Plan. Student's problem behavior is defined as follows:

According to observational data that has been collected this school year, [Student] has been engaging in sensory seeking behavior throughout the day on the school campus. This leads to [Student] eloping, biting [Student] and others, eating non-food items, destruction of property, pinching, kicking, and taking clothing items off.

*(Ex. R-7, pg. 1, and Testimony of Special Education Teacher).*

The functional behavior assessment summary is as follows:

When [Student] is working at [Student's] desk, taking a break with [Student's] earned reinforcement, or transitioning, at all times throughout the day in all settings (classroom, specials classes, recess, bathroom), [Student] will bite [Student], bite adults and peers, pinch, eat non-food items, push, pinch, kick, take [Student's] shoes off, and elope. In order to get sensory needs met.

*(Ex. R-7, pg. 4).*

11. On November 1, 2023, Student's Special Education Teacher tried to address Student's maladaptive behaviors by creating a Behavior Intervention Plan that would teach Student more appropriate ways of getting the desired sensory input. The Teacher created a menu of sensory activities that Student could choose from and taught Student how to engage in these activities. A sensory break could be some time bouncing on a trampoline, running in the courtyard, sitting on a yoga ball, pulling or pushing a wagon, or pressure squeezes. The goal was for Student to choose a sensory break instead of engaging in the maladaptive behavior. Student's behavior did improve a bit during November but overall, Student's aggressive behavior did not improve over the course of the school year. *(Testimony of Special Education Teacher, and Ex. R-8).*
12. Student's Special Education Teacher is currently out on medical leave because on March 20, 2024, Student pushed the Teacher, resulting in an injury to the Teacher's lower spine. The Teacher will be having surgery this summer as a result of this injury. *(Testimony of Special Education Teacher).*
13. LINKS is a team that supports students with autism and emotional/behavioral disorders. Autism can be defined as a neuro-developmental disorder affecting a person's communication and behavior, sometimes resulting in self-injury and it affects learning in

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the classroom. The LINKS team provides classroom consultations for teachers and students, school-based one-on-one individual intervention services, and training for parents and students. The program utilizes Applied Behavioral Analysis which is a methodology used with autistic students. It is used to analyze behaviors, provide a broad spectrum of interventions and discreet trial teaching, and apply reinforcement techniques. Task analysis is used to break down tasks, and data is also analyzed to see if the strategies are working. (*Testimony of Coordinator IV – LINKS program*).

Student was receiving school-based, individual intervention services (“IIS”) with the LINKS program. IIS involves individual work, anywhere from 15 to 20 hours per month, with students to achieve the behavior, social and communication goals as stated in their IEPs. Sessions can be from 45 minutes to 1 hour per day. Learning-to-learn skills are targeted to help facilitate student’s classroom learning. The main goal of this program is to transition students out as quickly as possible so that they can access education in a regular classroom. (*Testimony of Coordinator IV – LINKS program*).

14. The Variety School is a special school where all students have an IEP and the vast majority of those students are eligible due to an autism diagnosis. This is the school that has been discussed for Student. The main difference between this school and a comprehensive campus is that everyone is trained in the Applied Behavioral Analysis program and this school uses the Cleveland Clinic Curriculum, which utilizes more task analysis. The classrooms include individual work areas where staff can monitor the students. Task analysis is chosen for each student individually, all behaviors are tracked, and individual behavior intervention is provided for each student. (*Testimony of Coordinator IV – LINKS program*).

Based upon her review of Student’s records, Student’s behavior incidents, and Student’s rate of learning, the Coordinator IV for the LINKS program believes that the intensity provided at the Variety School would be beneficial for Student. The goal of the Variety School is to reduce maladaptive behaviors, increase skills and enable a transition back to a regular, comprehensive campus. This Coordinator believes that the Variety School would be able to reduce Student’s maladaptive behaviors and increase Student’s communication such that Student would eventually be able to transfer back to a comprehensive, regular campus. (*Testimony of Coordinator IV – LINKS program*).

When determining whether a student is ready to be transferred back to a regular, comprehensive campus, quarterly data would be reviewed. Behaviors and skills are tracked daily. A student’s maladaptive behaviors would need to be reduced by 85% and that reduction would need to be maintained for at least six to eight weeks. Then a student would be placed in a transition program. (*Testimony of Coordinator IV – LINKS program*).

15. The site-based Individual Intervention Services (IIS) Supervisor is a Board-Certified Behavior Analyst, which involves looking at behavior change programs, designing skill acquisition programs and behavior reduction programs for students with autism spectrum disorder. This IIS Supervisor is also a Registered Behavior Technician and is currently

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practicing in the School District in that role. The IIS Supervisor runs the programming that is designed by Board-Certified Behavior Analysts for students with autism spectrum disorder. (*Testimony of SB-IIS Supervisor - LINKS*).

This Supervisor is familiar with Student as Student is one that she supervises in the IIS program. The Supervisor has worked to design Student's program and has worked with staff to help develop Student's IEP goals and to help Student to achieve those goals. The Supervisor opines that according to the IIS Progress Reports, IIS was having minimal impact on Student's behavior as Student's compliance and maladaptive behaviors were remaining fairly constant, despite intensive interventions taking place. Based upon the data collected and the experience of staff in working with Student, this Supervisor is in agreement with the recommendation to move Student to a special school and this Supervisor believes it would "be a good fit" for Student. (*Testimony of SB-IIS Supervisor – LINKS, and Ex. R-19, pg.3*).

16. Parent disagrees with the IEP's placement recommendation of a special school for Student. Parent wants Student to be placed in a regular school closer to home. Parent believes that Student was progressing at the School and that School staff did not want to work with Student. (*Testimony of Parent*).

## VII. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Conclusions of Law of this Hearing Officer are as follows:

### Issue

**Whether the District provided Student with the least restrictive environment when utilizing Student's IEP that began on February 6, 2024, as the basis for its placement decision?**

The *Individuals with Disabilities Education Act* ("IDEA") expresses Congress's preference for educating children with disabilities in a regular classroom, and it states in relevant part that:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

*20 U.S.C. §1412 (5)(A)*

The Ninth Circuit Court of Appeals adopted a four-factor balancing test for determining appropriate placement for a child with disabilities under the requirements of the above-stated

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section of the IDEA in *Sacramento Unified School District v. Rachel Holland*, 14 F.3d 1398, 20 IDELR 812 (9<sup>th</sup> Cir. 1994) cert. denied. The four factors to be considered are:

- (1) The educational benefits available to the student in the regular classroom, supplemented with aids and services, compared to the educational benefits of a special education classroom;
- (2) The non-academic benefits to the student with disabilities of interaction with non-disabled students;
- (3) The effect of the student's presence on the teacher and other students in the classroom; and
- (4) The costs of supplementary aids and services necessary to educate the student with disabilities in a regular classroom setting.

In *Holland*, Rachel was intellectually disabled and her parents sought to have her placed full-time in a regular classroom and the school district objected. The Ninth Circuit embraced and adopted the district court's findings regarding the **four factors** to be considered: First, the District Court gave great weight to Rachel's current teacher who stated that Rachel was a full member of her class and participated in all activities. Further, Rachel was making progress on her IEP goals. The District Court found that the **educational benefits** to Rachel weighed in favor of placing her in a regular classroom. *Id.* at 1401.

Second, the District Court was persuaded by testimony that demonstrated Rachel's excitement about school, learning, new friendships and improved self-confidence and the court found that the **non-academic benefits** to Rachel weighed in favor of placing her in a regular classroom. *Id.* at 1401.

Third, the Court then looked at the effect of Rachel's placement in a regular classroom on the teacher and other children. There was testimony that Rachel followed directions and was well-behaved and not a distraction in class. Further, Rachel's teacher testified that Rachel did not interfere with her ability to teach the other children. The Court determined that the **effect of Rachel's presence in the regular classroom** weighed in favor of keeping her in that classroom. *Id.* at 1401.

Fourth, and finally, the district court found that the school district had not provided any persuasive evidence that educating Rachel in a regular classroom, with appropriate services, would be significantly more expensive than in a special education class. Therefore, the district court found that the **cost factor** did not weigh against mainstreaming Rachel. *Id.* at 1401-02.

In sum, the *Holland* court concluded that the District's proposition that Rachel must be taught by a special education teacher runs directly counter to the congressional preference that students with disabilities be educated in regular classrooms with children who are not disabled. *Id.* at 1405.

Later that year, the Ninth Circuit again applied the four factors it had previously adopted in the *Holland* case to the placement of a 15-year-old student with ADHD and Tourette syndrome in *Clyde K. and Sheila K, for Ryan K. v. Puyallup School District, No. 3*, 35 F.3d

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1396, 21 IDELR 664 (9<sup>th</sup> Cir. 1994). Ryan had originally been receiving special education services while enrolled in mainstream schools in the school district but his behavior problems began escalating dramatically: he frequently disrupted class by taunting students with profanity, insulting teachers with vulgar comments, directing sexually-explicit remarks at female students, refusing to follow directions and kicking and hitting classroom furniture. Ryan was also involved in several violent confrontations with other students and a school staff member. After a meeting with school administrators and teachers, it was recommended that Ryan be temporarily placed in an off-campus, self-contained program called Students Temporarily Away from Regular School (STARS). Ryan's parents ultimately disagreed with this recommendation and argue that STARS was not the least restrictive environment in which he could be educated.

The Ninth Circuit Court applied the four-part *Holland* test: First, Ryan's disruptive classroom behavior prevented him from learning and he was no longer receiving any academic benefit from his mainstream placement. Second, Ryan was deriving only minimal non-academic benefits from his regular class placement and the record suggested that Ryan was not modeling his behavior on that of his non-disabled peers. Third, Ryan's presence in the regular classroom was having an overwhelmingly negative effect on teachers and other students. Ryan was becoming dangerously aggressive, and he regularly disrupted class. The court noted that "while school officials have a statutory duty to ensure that disabled students receive an appropriate education, they are not required to sit on their hands when a disabled student's behavioral problems prevent both him and those around him from learning." *Id.* at 1401-02. The court did not directly address the fourth factor which deals with the cost to the school district of hiring a classroom aide for Ryan because there was a finding that an aide would not have materially improved Ryan's ability to benefit from remaining in a regular classroom. *Id.* at 1402, fn. 9. The Court concluded that the STARS school was the least restrictive environment for Ryan. *Id.* at 1402.

The State of Nevada has codified the IDEA in both statute and administrative code. *Nevada Administrative Code 388.245* addresses restrictions on the placement of a student with a disability, it provides for a continuum of alternative placements, it requires that placements must be determined annually, and it requires the committee that develops a student's Individualized Education Program ("IEP") to provide for the least restrictive environment to the maximum extent appropriate. *Nevada Administrative Code 388.245(1)* states that:

1. A pupil with a disability may not be placed in a special class or in a school different than the one the pupil would normally attend, or otherwise removed from the regular educational environment, unless:
  - (a) The pupil's Individualized Education Program otherwise provides; and
  - (b) The nature or severity of the disability of the pupil is such that, even with the use of supplementary aids and services, the pupil cannot be educated satisfactorily in the regular educational environment.

*Nevada Administrative Code 388.245(2)* requires that a public agency provide a continuum of alternative placements to meet the needs of a student with a disability and it identifies what that continuum includes: a regular class, a special class, a special school, a community-based program, the student's home, a hospital or, finally, an institution. *Nevada*

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*Administrative Code 388.245(4)* requires that the committee which develops a student's IEP shall provide for the least restrictive environment to the maximum extent appropriate. The committee shall consider any potential harmful effects on the pupil and the quality of services the pupil requires. If the committee determines that a student cannot receive an appropriate education in a regular class, even with supplementary aids and services, then the basis for such determination must be clearly set forth in the student's IEP.

The Office of Special Education Programs has advised that "placement determinations must be made on an individual basis in light of each student's individual abilities and needs," and it is the student's IEP that forms the basis for this placement decision. Further, the placement of a disabled student in a separate school can occur only if an individual placement determination is made that the student's IEP cannot be satisfactorily implemented in a less restrictive environment. It is not a requirement that a student actually fail in the regular classroom before a more restrictive placement is considered. *24 IDELR 962 (OSEP 1996)*.

In this case, we must apply the *Holland* four-factor balancing test to determine whether a special school is the appropriate placement for Student in light of the IDEA's mandate that children with disabilities be removed from a general educational environment only when the nature or severity of their disability requires it. The **first factor** to be considered is the educational benefits of a regular classroom with supplemental aids and services versus a special education classroom. Here, there was extensive testimony and data provided to support a finding that Student was not progressing in a regular school environment. Student's behavior was impeding Student's ability to learn, and Student was not able to make adequate progress toward Student's IEP goals. Student has been unable to have much access to the general education environment due to Student's maladaptive behaviors such as eating non-food items (including curriculum materials), leaving the area, destroying materials, and biting. Student's maladaptive behaviors are also preventing Student from receiving academic instruction, completing tasks and practicing skills.

The Variety School offers an environment that would assist Student in developing the learning skills necessary to help with his academic success both there and eventually in a regular school setting. The individual work areas in the classrooms allow for closer monitoring of the students and the school appears to offer a more customized learning environment that would be beneficial for Student. It is clear that Student is not progressing academically in the regular School he now attends, and the nature and severity of Student's disability warrants removal to a special school where Student can receive greater educational benefit.

The **second factor** to be considered is whether the non-academic benefits of interaction with non-disabled students are outweighed by the non-academic benefits of placing Student in a special school setting. Student's IEP explains that Student is overstimulated in larger group settings and Student exhibits an increase in maladaptive behaviors when around Student's peers. Student requires a smaller setting with less distractions in order to practice communication skills and behavior programming. It has been determined that Student is not ready to engage with Student's general education peers and Student does not have appropriate social skills. The Variety School offers a smaller, more intimate educational setting for which Student seems much more suited at this stage of Student's academic and social development. Time spent in this



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special school setting could help Student develop the necessary skills to eventually succeed in a general school setting. The benefits for student of special school placement outweigh the benefits of interaction with non-disabled students.

The **third factor** to be considered is the effect of Student's placement in a regular school/classroom setting on the teacher and other students. It is abundantly clear from the evidence presented that Student poses a significant safety risk to the teachers and other students at Student's current School. Student has displayed aggressive behaviors such as biting, grabbing, pinching, scratching and pushing. Student has bitten numerous staff members, causing broken skin and bruising, resulting in worker's compensation claims and needed tetanus shots. Student has bitten other students, as well. Student has severely injured his Special Education Teacher by pushing her on two occasions. That Teacher is now out on medical leave, having sustained a spine injury that requires surgical repair. Student poses a considerable risk to teachers and other students, and this cannot be ignored.

As noted in Student's IEP, Student's challenges and inability to maintain appropriate behavior without increased adult supervision limits the other students in the class from access to instruction from the teacher. Student not only poses a safety risk but his presence also impacts the ability of the teachers to instruct other students and ultimately affects their learning, as well. It is clear that Student's presence in a regular school setting negatively impacts the teachers and other students.

The **fourth**, and final, **factor** to be considered is the cost of needed supplementary aids and services. Costs were not an issue raised by the School District and thus are not relevant to this analysis.

This Hearing Officer also notes that contrary to Parent's assertion that School staff did not want to work with Student, the evidence in this case makes clear that the School District has provided extensive support to Student. The School District has offered a wide array of interventions to address Student's aggressive behaviors, ranging from Parent meetings, use of reinforcements, sensory diet choices, use of seat cushions, yoga balls and chewies, having an adult in close proximity, multiple opportunities to practice routines, structured breaks and sensory breaks. The School District has put forth a tremendous effort to help Student remain in the general school setting.

After applying the *Holland* factors to this case, this Hearing Officer finds that the appropriate placement for Student is in the special school as recommended in Student's IEP. Student's special school placement is the least restrictive environment for Student. This conclusion is also supported by the Ninth Circuit Court's ruling in the *Puyallup School District* case, *supra*, wherein the student there was dangerously aggressive, as well. This State's requirements for the placement of a student with disabilities in a special school have also been met. *See NAC 388.245.*

## VIII. ORDER

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

That the IEP dated February 6, 2024, and its subsequent revisions, be implemented, placing Student in a special school, until or unless the IEP is amended by the IEP team.

**IX.  
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 Superintendent from a list of officers maintained by the Department shall conduct an impartial review of the hearing pursuant to *NAC 388.315*. [At the parties' request, this decision is being delivered to the parties both by e-mail and U.S. Postal Service. Receipt of this Decision and Order will be determined by either the date of actual delivery, or the date of the first attempt to deliver, by the U.S. Postal Service.]

Date: May 31, 2024

  
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LUCINDA L. COUMOU  
Hearing Officer  
*Coumou Law Group*  
10470 W. Cheyenne Avenue  
Suite 115 - #320  
Las Vegas, Nevada