

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

In the Matter of
SCHOOL DISTRICT

Petitioners,

v.
STUDENT¹, by and through Parent
Respondent

Date: October 1, 2024

Hearing Officer

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION AND ORDER

This matter came for a hearing on September 19, 2024. The School District was represented by Counsel for the School District, and neither Parent nor Student² were present at the hearing. Colleen Platt, Esq. served as the hearing officer (“Hearing Officer”) in this matter. The following Findings of Facts, Conclusions of Law and Decision are hereby rendered by the Hearing Officer.

I. PROCEDURAL HISTORY

On June 24, 2024, School District filed a due process complaint (“Complaint”) requesting an impartial due process hearing to resolve the issue of whether the School District is required to grant a Parent an independent educational evaluation (“IEE”) after it has already provided the Student with an evaluation conducted by the multi-disciplinary team (“MDT”). On June 25, 2024, this Hearing Officer was appointed to hear the Complaint. On June 25, 2024, this Hearing Officer filed a Preliminary Order and Notice of Status Conference setting a status conference for June 28, 2024.

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

² At the time that the Due Process Complaint was filed by the School District and the hearing was conducted, Student was 17 years old. Student turned 18, after the hearing was completed, but before this Findings of Fact, Conclusions of Law and Order were filed.

On June 28, 2024, a status conference was initiated in this matter, neither Parents nor Student were in attendance at the status conference and could not be reached by telephone. In order to allow Parents to participate in the status conference, a status conference was scheduled for July 1, 2024, at 3:00 pm. On July 1, 2024, a status conference was held in this matter. Participating in that status conference were Parents, counsel and staff for the School District and an interpreter. At the status conference, a prehearing conference was scheduled for July 23, 2024, and a hearing was scheduled for July 31 and August 1, 2024. A Preliminary Order was filed on July 1, 2024. On July 20, 2024, this Hearing Officer sent a Notice of Prehearing Conference and draft issues for the hearing. On July 23, 2024, a Prehearing Conference was initiated. Participating in the Prehearing Conference were Parents, counsel and staff for the School District and an interpreter. Prior to the Prehearing Conference, Mother to Student contacted this Hearing Officer by telephone to request a continuance of the Prehearing Conference. This Hearing Officer explained to Mother that this Hearing Officer could not speak to her without counsel for the School District present and to participate at the hearing scheduled for that day. Mother indicated she was in the process of or had retained counsel for the Parents and advised that she had an emergency. At the time scheduled for the prehearing conference, Mother participated in the meeting wherein she advised that Student was having an emergency and she needed to take Student to the doctor. A discussion was had regarding Father participating in the prehearing conference but Mother refused to continue to answer questions without Father present. School District staff called Father to determine whether he could participate in the prehearing conference but was told that Father was at the doctor's office or hospital with Student. The School District made an oral motion to continue this matter for 60 days. Mother had no objection to the continuance. An Order was entered wherein this Hearing Officer found good cause,

specifically that Student was experiencing a medical emergency and Parents were unable to participate in the prehearing conference and it was unclear when the medical emergency would be resolved. Finding good cause, the decision date was continued until October 8, 2024. A status conference was also scheduled for July 31, 2024, at 9:00 am. An Amended Order was also entered, vacating the hearing that was originally scheduled for July 31 and August 1, 2024.

On July 31, 2024, a status conference was held in this matter. Participating in the status conference were the Parents, son of Parents (not the Student), counsel and staff for the School District and an interpreter. The hearing was scheduled for September 19 and 20, 2024. A second prehearing conference was scheduled for September 3, 2024, and the parties discussed the issues that would be heard at the hearing, as well as other formalities related to the hearing. A Status Conference Order was entered by this Hearing Officer on July 31, 2024. On August 21, 2024, a Notice of Prehearing Conference was entered. On September 3, 2024, a prehearing conference was initiated in this matter. Counsel and staff for the School District and an interpreter were present, neither the Parents nor Student were present. Staff for the School District attempted to call both Parents, neither Parent answered the telephone. Neither staff for the School District nor this Hearing Officer received communications prior to the prehearing conference from Parent or Student to indicate whether they would be participating in the status conference. This Hearing Officer emailed both Parents during the prehearing conference as well, but neither Parent joined the meeting. In order to allow the Parents to participate in the prehearing conference, a third prehearing conference was scheduled for September 6, 2024. An Order was entered ordering Parents to attend the prehearing conference on September 6, 2024, and indicating that even if they did not participate, the prehearing conference would occur as scheduled.

On September 6, 2024, a prehearing conference was initiated. Counsel and staff for the School District and an interpreter were present, neither Parents nor Student were present. Neither staff for the School District nor this Hearing Officer received communications from Parent or Student to indicate whether they would be participating in the prehearing conference. The prehearing conference was held and a status conference was scheduled for September 16, 2024, in an effort to allow Parent participation in this matter. A Prehearing Conference Report and Order were entered. A status conference was held on September 16, 2024. Counsel and staff for the School District and an interpreter were present, neither Parents nor Student were present. Neither staff for the School District nor this Hearing Officer received communications from Parent or Student to indicate whether they would be participating in the status conference. After discussing the time necessary to hear the matter, the hearing was scheduled for one day on September 19, 2024. A Status Conference Report and Order were entered, indicating that even if Parents and Student were not present, the hearing would proceed as scheduled.

On September 19, 2024, beginning at 9:30 am a hearing was held on the Complaint. Counsel and staff for the School District and two interpreters were present. Neither Parents nor the Student were present. The School District presented one witness, the Director I of Psychological Services for the School District. Counsel for the School District requested three exhibits be entered, without objection, three exhibits were entered—P-2, P-6 and P-7.

II. ISSUE TO BE DECIDED

The issue to be determined is as follows:

Was the evaluation conducted on or about January 11, 2024, appropriate as set forth in 34 CFR § 300.304 and 300.305?

III. APPLICABLE LAW

20 USC §1414(c)(1)(A) and (B) provide, in relevant part, that a local education agency shall:

- (A) Review existing evaluation data on the child, including:
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
- (B) On the basis of that review, and input from the Child's parents, identify what additional data, if any, are needed to determine:
 - (i) . . . in the case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;
 - (ii) The present levels of academic achievement and related developmental needs of the child;
 - (iii) . . . in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(see also 34 CFR §300.305 and NAC 388.366, 388.440)

20 USC §1414(d)(4)(ii) provides that the Individualized Education Program Team revises the Individualized Education Program ("IEP") as appropriate to address:

- (I) Any lack of expected progress towards the annual goals and in the general education curriculum, where appropriate;
- (II) The results of any reevaluation conducted under this section;
- (III) Information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);
- (IV) The child's anticipated needs; or
- (V) Other matters.

(see also 34 CFR §300.305 and NAC 388.336)

34 CFR §300.303(a)(2) provides that a reevaluation of each child with a disability must be conducted if the “child’s parent or teacher requests a reevaluation.” (see also NAC 388.440)

IV. FINDINGS OF FACT

After considering the testimony presented at the hearing and the admitted exhibits, this Hearing Officer makes the following findings of fact:

1. On January 11, 2024, Student was enrolled at [] (“School”) in the 11th grade and was receiving special education services under the category of autism.
(Petitioner’s Exhibit 2, p. 1)
2. Student was referred for a reevaluation by Student’s special education teacher.
(Petitioner’s Exhibit 2, p. 1)
3. Student’s Mother requested updated testing for Student’s current triennial evaluation, but there was no identification of the assessments that were requested. (Petitioner’s Exhibit 2, p. 1)
4. Based upon the Student’s performance on assessments, data reported from Parents, and prior evaluation data, the multidisciplinary evaluation team (“MDT”) would broaden the scope of the evaluation to include the category of intellectual disability.
(Petitioner’s Exhibit 2, p. 1)
5. Based upon reviews of existing information, input from the MDT, the following assessments were needed to complete the evaluation: cognitive, developmental rating scales, speech and language health screening, social/emotional/behavioral rating scales, adaptive functioning rating scales, and autism rating scales. (Petitioner’s Exhibit 2, p. 1)

6. Assessments as identified in paragraph 5 above were conducted. (Petitioner's Exhibit 2, p. 2-14).
7. Based upon the assessments and available data, records review and MDT input, Student exhibited signs consistent with intellectual impairment and autism spectrum disorder and Student's educational performance appeared to be adversely impacted. (Petitioner's Exhibit 2, p. 14).
8. Student's Mother signed the MDT Report. (Petitioner's Exhibit 2, p. 14)
9. On April 26, 2024, Father of Student sent an email requesting an independent educational evaluation ("IEE") and requested a psycho educational evaluation, speech and language assessment, and occupational therapy assessment. (Petitioner's Exhibit 6, p. 1)
10. The email indicated that there was an email sent to the School District prior to the April 26, 2024, email wherein the Father set forth concerns regarding the Student, but such email was not offered into evidence.
11. On May 16, 2024, Director III, Psychological Services sent a letter to Student's Parents wherein the Director III indicated that the Director III had reviewed the request, along with the available educational records and the request for an IEE was denied because the evaluations conducted and set forth in the MDT Report were comprehensive. (Petitioner's Exhibit 7, p. 1)
12. Director III made the decision to deny the Parent's request for an IEE based upon the review of the Student's educational records and discussion with Director I, Psychological Services. (Testimony Director I, Psychological Services).

13. Parents were afforded every opportunity to participate in these proceedings. This Hearing Officer took the following steps to offer Parent's the opportunity to participate: documents were translated into their native language; attempted to reach Parents by telephone at each status conference and prehearing conference that were held; attempted to reach Parents by email seeking information on their participation. At no time after July 31, 2024, did Parents participate in any status conference, prehearing conference, nor the hearing. Neither did Parents respond to telephone calls or emails seeking their participation, nor did the Parents reach out to this Hearing Officer regarding their participation in this matter.

V. CONCLUSIONS OF LAW

NAC 388.450 provides that “[a] parent may request that a public agency pay for an independent educational evaluation of a pupil if the parent disagrees with the results of an evaluation obtained by the public agency. . .” It goes on to provide that the public agency must “without unnecessary delay, either file a due process complaint pursuant to NAC 388.306 if it believes that its evaluation of the pupil is appropriate, or ensure that an independent educational evaluation is provided at public expense.” NAC 388.440 provides that a “public agency shall ensure that a reevaluation of each pupil with a disability is conducted if the public agency determines that the needs of the pupil for educational or related services, including, without limitation, improved academic achievement and functional performance, warrant a reevaluation or if the parent or teacher of the pupil requests a reevaluation.” Such reevaluation can occur not less than once a year, unless the parent and public agency otherwise agree. Additionally, 34 CFR §300.304(c)(6) provides that the evaluation must be sufficiently comprehensive to identify all of the student’s “special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” In this case, the School District

filed a Due Process Complaint (“Complaint”) when the Parent requested an IEE because the School District believed the reevaluation conducted in January 2024 was appropriate. The School District has the burden of proof to show why the evaluation conducted in January 2024 was appropriate.

NAC 388.440(3) provides a “reevaluation of a pupil must be conducted in the manner prescribed by the committee that developed the individualized educational program for the pupil pursuant to NAC 388.281 and other qualified personnel in accordance with the needs of the pupil. Such a reevaluation also must comply with the requirements set forth in NAC 388.300, 388.330, 388.335, 388.336, 388.340 and 388.420, as appropriate.” In this case, the School District presented the MDT Report dated January 11, 2024, which indicated that the Student’s special education teacher recommended the reevaluation and that Student’s Mother requested updated testing. (Petitioner’s Exhibit 2, p. 1) The MDT Report does not indicate what testing the Mother requested. The MDT Report also indicated that the current concerns were: cognitive ability, academic skills, adaptive functioning, and social/emotional/behavioral functioning. (Petitioner’s Exhibit 2, p. 1) The MDT Report indicated that the Mother agreed with these current concerns. (Petitioner’s Exhibit 2, p. 1)

The MDT Report set forth the scope of the reevaluation, based upon the Student’s performance/scores on assessments, discussion with the MDT members, Parents, reviews of existing information. The reevaluation included assessments in the following areas: cognitive, developmental rating scales, speech and language, health screening, social/emotional/behavioral rating scales, adaptive functioning rating scales, and autism rating scales. (Petitioner’s Exhibit 2, p. 1) Nothing in the MDT Report or other admitted Exhibits indicate that the Student needed an occupational therapy assessment. While the letter denying the Parent’s request for an IEE

indicated that occupational therapy assessments had been conducted on or about 2018 and 2020, no evidence indicated the results of those assessments, or whether occupational therapy had been included in the Student's IEP. The testimony and documentary evidence entered in the hearing do not indicate that the MDT team, which included Student's Mother, felt that occupational therapy was an assessment that was necessary given the Student's special education and related services needs and that the reevaluation and assessments were not linked to the Student's current disability category in which the Student was classified. (Petitioner's Exhibit 2, p. 1, testimony of Director I of Psychological Services) Parents did not participate in the hearing and as such, no evidence was heard to challenge the School District's testimony or admitted evidence.

This Hearing Officer concludes that the evaluation conducted in January 2024, was appropriate in accordance with 34 CFR § 300.304 and 300.305 and NAC 388.440 because the MDT Report (Petitioner's Exhibit 2) is comprehensive and sought to include assessments in areas for which the Student was currently eligible and areas others areas that were not the Student's current eligibility category. The Parents agreed with the scope of the reevaluation and in fact, Petitioner's Exhibit 2 demonstrates that Parents actively participated in the reevaluation.

I. DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, this Hearing Officer's decision is that the evaluation conducted in January 2024, was appropriate in accordance with 34 CFR § 300.304 and 300.305 and NAC 388.440.

IT IS HEREBY ORDERED that the evaluation conducted January 2024, was appropriate in accordance with 34 CFR § 300.304 and 300.305 and NAC 388.440.

II. 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 by filing with the Nevada Department of Education, Superintendent of Public Instruction, a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within 30 days after receiving the decision. A party to the hearing may file a cross appeal by filing a notice of cross-appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within 10 days after receiving notice of the initial appeal. 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: October 1, 2024



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