

**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
STUDENT <sup>1</sup> , by and through Parent,	)	OFFICER
	)	
Petitioner,	)	Date: 2/3/2025
	)	
v.	)	
	)	Hearing Officer: David A. Stephens
SCHOOL DISTRICT,	)	
	)	
Respondent.	)	

**INTRODUCTION**

This matter comes before the undersigned hearing officer on Petitioner’s Notice of Due Process Complaint filed on August 9, 2024, (hereinafter “Complaint”), HO 1.<sup>2</sup> I was appointed as the hearing officer on August 15, 2024. HO 2. Respondent’s Response to the Complaint was filed on or about August 15, 2024. HO 3. Petitioner, with permission, filed and served an amended complaint on November 20, 2024. HO 4. Respondent filed a Response to the Amended Complaint on November 26, 2024. HO 5. A resolution meeting was held. The parties, however, were not able to reach an agreement.

**PRELIMINARY MATTERS**

<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

<sup>2</sup> The Hearing Officer Exhibits will be referred to as HO followed by an exhibit number; Petitioner’s Exhibits will be referred to as P followed by an exhibit number and Respondent’s Exhibits will be referred to as R followed by an exhibit number. When citing any exhibit the

This case arises out of a due process complaint filed by the Student on August 9, 2024. HO 1. The Hearing Officer was appointed on August 15, 2024. HO 2.

At the Status Conference the parties indicated that the hearing would take three days. The Petitioner moved to extend the decision deadline on October 11, 2024. The School district did not oppose the motion. Based upon the motion and a finding of good cause, the hearing officer entered an order extending the decision deadline to November 23, 2024. HO 6.

The Petitioner, with permission, filed an amended Petition on November 20, 2024. HO 4. Pursuant to 34 CFR 300.508(d)(4) the filing of an amended due process complaint resets the timeline set forth in 34 CFR 300.510, including starting a new resolution period and a new deadline to hold a hearing and issue and serve a decision. Based on the amended petition, the Decision Deadline was then reset to February 3, 2025. HO 7.

A Pre-hearing Conference in the matter was scheduled for, and held, on December 18, 2024. HO 4. At the December 18, 2024, Pre-hearing Conference the issues were outlined and decided by the parties in addition to other matters set forth in the Pre-hearing Report and Order. The Pre-hearing Conference Report and Order was issued on December 31, 2024. HO 8.

The hearing was held on January 15, 16, and 17, 2025. The Hearing was held by video conference. It was a closed hearing. Both Parties were represented by attorneys.

The following individuals testified during the hearing; Assistant Principal of Autism School, (“Assistant Principal”), Behavior Mentor at Autism School, (“Behavior Mentor”), Director 1 of Crisis Response Team for School District, (“Director 1”), Director of Least Restrictive Environment Intensive Intervention Team for School District, (“Director of LRE”), second number will refer to the Bates page number within the referenced exhibit.

Petitioner’s Expert in ABA Therapy and Sexology, (“Petitioner’s Expert”), Autism School Special Education Teacher, (“Special Education Teacher 1”), Specialty School Special Education Teacher, (“Special Education Teacher 2”), Student’s caretaker, (“Caretaker”), and Student’s Guardian, (“Guardian”).<sup>3</sup>

Hearing Officer exhibits HO-1 through HO-8 were admitted into evidence. Petitioner offered into evidence exhibits P-1, P-5, P-6, P-7, P-9, P-10, P-12, P-13, P-14, P-15, P-16, P-17, P-18, P-19, P-20, P-21, P-26, P-29, P-33, P-34, P-35, P-40, P-45, P-49, P-58, and P-59 which were admitted. Respondent’s Exhibits R-1 through R-10, R-13, and R-16 were stipulated into evidence.<sup>4</sup>

The decision is due on February 3, 2025, and has been issued within the required timeline pursuant to 34 C.F.R. §§ 300.515(a)(1) and (2) and within a properly extended timeline pursuant to 34 C.F.R. § 300.515(c)(1).

### **JURISDICTION**

The due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Act (hereinafter, “IDEA”), 20 U.S.C. §1400 et seq.,<sup>5</sup> and its implementing regulations, 34 C.F.R. §300 et seq., the Nevada Revised Statutes (NRS), chapter 388 and the Nevada Administrative Code (NAC) chapter 388.

The basis for jurisdiction of this matter is 20 USC §1415, 34 CFR §§ 300.508, 509, 510,

<sup>3</sup> See Appendix B for the identifying information regarding these witnesses.

<sup>4</sup> A more detailed list of Exhibits is attached as Appendix C to this Decision.

<sup>5</sup> In 2004, Congress reauthorized the Individuals with Disabilities Education Act as the Individuals with Disabilities Education Improvement Act. See Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with Disabilities Education Act. See Pub. L. Chapter 388, and the Nevada Administrative Code (NAC), Chapter 388.

and 511, NRS 385.080 and 388.520, and NAC 388.310.

## **ISSUES**

The issues to be determined are as follows:

A. Whether the IEP dated April 16, 2024, changing the Student's school from an Autism School to a Specialty School is a change in placement under the IDEA, and if so did that change in placement deny the Student FAPE?

B. If the change from an Autism School to a Specialty School was a change in placement, whether the IEP changing the placement of the Student was predetermined and without parental support, and if so did it deny the Student FAPE by significantly impeding the parent's opportunity to participate?

C. If the change from an autism School to a Specialty School Autism School was a change in placement, whether the Specialty School is an appropriate placement for the Student, and if not, is the Autism School an appropriate placement for the Student, and if not, what is the appropriate program and least restrictive environment for the Student, and did this change in placement deny the Student FAPE.

D. Whether since the Student's IEPs dated February 21, 2023, May 10, 2024, February 21, 2024, and April 16, 2024, and were reasonably calculated to enable the Student to make progress appropriate to the Student's circumstances and to meet the Student's unique needs with respect to behavior, restraint, and elopement under the IDEA and NRS 388.501, and if not, was the Student denied FAPE?

E. With respect to restraining the Student, did the School District violate NRS 388.501 by failing to hold a revision IEP meeting after the 5th restraint in the 2023-2024 school year? Once an annual IEP meeting was held that year, did the School District violate NRS 388.501 by failing to hold another IEP meeting after the 6th annual restraint to incorporate the mandatory statutory safeguards? If so, was the Student denied FAPE?

F. Whether since February 2, 2023, the School District denied the opportunity for meaningful parental participation by significantly impeding the parent's opportunity to participate in the decision making process, by predetermining the placement of the Student, and ignoring parental concerns as to the Students behavior and progress, and if so, did these actions deny the parent her rights under the IDEA and also deny the student FAPE?

G. Were the series of short term suspensions and exclusions from school, during the 2023-2024 school year including a directive to pick the student up due to behaviors at the start of the school day, a disciplinary change of placement given the similarities of the recurring behaviors? And if so, did the disciplinary change of placement deny the Student FAPE?

H. Whether since February 2, 2023, the School District committed a procedural violation of the IDEA by failing to hold a Manifestation Determination Review after the Student's 10<sup>th</sup> cumulative day of exclusion from school, and if so did that failure deny the Student FAPE?

## **FINDINGS OF FACT**

### 1. Glossary of terms:

- a. IDEA means the Individuals With Disabilities Education Act, codified as 20

USC<sup>6</sup> §§1400, et seq.;

b. IEP means an Individualized Education Program under the IDEA;

c. IEP Team means the team of persons who meet to formulate or amend an IEP and is composed of at least the following persons; a representative of the local education agency, in this case the School District, (“LEA”), parents or guardians of the student, the student’s special education teacher, and the student’s general education teacher. See, 34 CFR 300.28 and 300.321;

d. MDT means multidisciplinary team which assesses students for disabilities and eligibility for special education;

e. A Free Appropriate Public Education, (“FAPE”), means the special education and related services provided to every child with a disability through an IEP, that is reasonably calculated to enable a child to make progress appropriate to that child’s unique circumstances, at no cost to the child’s family. (See 34 CFR §§300.17 and 300.101).

f. “Autism spectrum disorder” (“Autism”), means a condition which:

(a) Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;

(b) Is usually apparent before the age of 3 years; and

(c) Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

<sup>6</sup> USC refers to the United States Code.

(See, NAC 388.028).

h. A behavioral intervention plan (BIP) is a written plan that helps an individual student improve challenging behaviors and replace them with more appropriate behaviors. (See 34 C.F.R. 530).

i. A manifestation determination review, (“MDR”), is a process mandated by the IDEA that schools must follow when a student with a disability has engaged in behavior that may result in disciplinary action. The review is designed to determine whether the behavior was a manifestation of the student's disability or the result of the school's failure to implement the student's IEP. 34 C.F.R.530(e).

### **BACKGROUND FACTS**

2. The MDT found Student was eligible for special education when he was about three years old, based evaluations that led to findings of disabilities related to autism. (Testimony of Guardian, R-11, see, also NAC 388.387)

3. The Student started school at a general education elementary school. (R-2).

4. The Student then attended Specialty School, (“Specialty School”), from April 13, 2015 until June 17, 2022. (R-2).

5. The Specialty School is a public specialty school. It does not have general education students. It serves only special education students. It focuses on students with disabilities that have significant behavioral issues. Some students on the autism spectrum attend Specialty School. (Testimony of LRE Director).

6. The Student then attended Autism School, (“Autism School”) from August 8, 2022, until April 17, 2024. (R-2). The Student was also registered to attend Autism School for the

2024-2025 school year, but has not attended Autism School up to the date of the hearing.

(Testimony of Guardian).

7. The Autism School is a public specialty school. It does not have general education students. It serves only special education students. The majority of its students are on the autism spectrum. (Testimony of LRE Director).

8. A student can only be admitted to Autism School or Specialty School if a Student's IEP team recommends it. While those particular IEPs were not admitted into evidence, the Student's IEP Teams did recommend placement at the Specialty School and later the Autism School. (Testimony of Assistant Principal).

9. At Autism School the School District partners with a Private Clinic which works with and trains teachers and staff on their ABA model. The Private Clinic assists each autism classroom with training on autism, interventions, reinforcements, ABA therapy, strategies for teaching, and curriculum. Private Clinic also has a data collection system, and it trains teachers using the data collection system. The data system should be uniform across classes. The Private Clinic consultant does training. The Private Clinic provides training on Wednesday and Friday when the students return to school, and also on four staff development days. The consultant is present at Autism School ten school days per month during the first two to three months of the school year and then is present at the Autism School five school days per month for the balance of the school year. The consultant goes to classrooms, helps staff with behavior and curriculum data, based on IEP Goals and benchmarks, helps teachers with behavior data, trains teachers and staff on how to decrease behavior, based on the ABA model, how to set up classrooms.

(Testimony of Special Education Teacher 1).



10. The Private Clinic consultant does not train teachers and staff on restraints. This training is provided through the crisis prevention institute, (CPI), with the School District. Teachers and staff can also seek out support from Private Clinic. (Testimony of Special Education Teacher 1).

11. Data collection on behaviors is very important. The data drives behavior decisions. Without accurate data the people working with the Student they cannot decide what programs work or do not work. (Testimony of Special Education Teacher 1).

12. Autism School tracks eleven behaviors, language, elopement, screaming, checking if students are making progress, adjust goals and benchmarks. The key is reducing student problem behaviors. If a student gets to 90% that student can be transferred to comprehensive campus. (Testimony of Special Education Teacher 1).

13. The data collection in this matter was not consistently collected on the Student because the Student was not in an autism classroom. (Testimony of Special Education Teacher 1).

14. Consistency is essential with autistic students. (Testimony of Assistant Principal).

15. Special Education Teacher 1 is not aware of Private Clinic providing this service at any other school with the School District.

16. Autism School primarily teaches with students with autism. There are a few students at Autism School who are not identified as autistic. Behavior instruction is the focus at Autism School. Autism School has a modified academic curriculum. (Testimony of LRE Director).

17. Specialty School focuses mainly on standard education curriculum. Specialty School students will get a standard diploma if they graduate. Some students at Specialty School earn

adjusted diplomas, because their disabilities prevent them from gaining a standard diploma.

(Testimony of LRE Director).

18. Autism School students are usually working for adjusted diplomas such as meeting IEP goals. (Testimony of LRE Director).

19. Autism School and Specialty School do provide different programs. Specialty School uses ABA therapy, but it does not use the Private Clinic model. Both schools use ABA Therapy, but they use different models of ABA Therapy. Specialty School's teachers and staff are not trained on the Private Clinic model. The Specialty School uses modeling and reinforcement of social behavior to help its students become part of society. (Testimony of LRE Director).

20. The Student is higher functioning than most students at Autism School. The Student is set to take assessment tests and is the only student at Autism School taking assessment tests for measuring academic progress. (Testimony of Assistant Principal).

21. At Autism School the Student is in school with other students with autism, but the Student is not in an autism classroom. The Student's classroom is an SDC classroom, meaning severely developmentally or diversely challenged classroom. (Testimony of Assistant Principal).

22. The Student is currently 17 years old.

23. An annual IEP Meeting was held for the Student on February 12, 2023, and an IEP was developed for the Student for the 2023-2024 school year. (R-4) The Parent agreed to this IEP. (Testimony of Assistant Principal).

24. The Student's annual IEP dated February 12, 2023, noted the Student suffered from multiple impairments, and provided measurable goals for the Student. It noted that the Student's

behavior interferes with the Student's education and that of others. It summarized the behavioral problems the student had in the last year. (R-4, p. 11). It provided special education services of reading, writing, math, communication and behavioral skills. It so noted that the Student had a BIP in place. It provided related services of curb to curb transportation. (See R-4)

25. A revision IEP Meeting was held for the Student on May 10, 2023, and a revised IEP was developed for the Student for the 2023-2024 school year. It was designed to be in place from May 10, 2023 until the annual IEP in 2024. (R-5, p. 5). The Parent agreed to this IEP. (R-5, p. 22).

26. The reason for the revised IEP was the Student had been restrained five times in the academic school year. The five restraints listed in the revised IEP occurred on February 2, (twice), March 1, and March 2, (twice), 2023. (R-5, pp. 5, 12)<sup>7</sup>.

27. Restraints involve holding a student so a student cannot hurt others or himself. The restraints last only as long as it takes for a student to regain control. The restraint can be serial. (Testimony of ABA Expert and Assistant Principal).

28. The Student's revised IEP dated May 10, 2023, noted the Student suffered from multiple impairments, and provided measurable goals for the Student. It noted that the Student's behavior interferes with the Student's education and that of others. It noted that the Student had a BIP in place. It provided special education services of reading, writing, math, communication and behavioral skills. It provided related services of curb to curb transportation. There were no changes to this IEP based on the restraints. (See R-5)

<sup>7</sup> Page numbers referred to the Bates stamped numbers on the exhibit, not the page numbers of

29. Although this IEP was called a revised IEP, no different services were added. (R-5). The Student's BIP was not changed. (R-8).

30. In the last two years while at the Autism School, the Student's bad behaviors include calling 911 on cell phone if denied something, undressing completely, attempting to elope, spitting, hitting others, making threats, and crawling under cars in parking lot. The Student has probably attempted to elope from Autism School a dozen times but the Student has never got past the parking lot. (Testimony of Assistant Principal).

31. Student did elope off campus from Specialty School at least once. The Student went out by the gate. (Testimony of Special Education Teacher 2 and Caretaker).

32. Each Student has a behavior detail report. The behavior report provides dates and details as to what happened, when it happened and the result, if any. (See R-10).

33. Based on the earliest behavior detail report of the Student, dated September 16, 2019, these behaviors began and happened regularly at the Specialty School and later at the Autism School. (R-10, pp. 29-48, and Testimony of Guardian).

34. In December 2023, the Student began seeking out another student at Autism School. (Testimony of Assistant Principal).

35. On December 11, 2023, after breakfast, the Student, upset about computer time, struck an Autism School teacher and eloped to the parking lot, where he had to be restrained. He was verbally aggressive and eventually the School District Police and the Student's Guardian were called. The Student left the Autism School with the Guardian during the incident, before the end of the school day. (R-10, pp. 9-10 and testimony of Guardian).

the exhibit itself.

36. On December 12, 2023, the Student refused to get off of the school bus unless he was placed in the same class as another student.<sup>8</sup> The Student threatened to rape the other student. He was verbally aggressive, shoved, spat on and struck the Autism School Staff. The School District police were called and had to place the Student in a spit mask and handcuffs. (R-10, pp. 7-9.)

37. This December 12, 2023 incident resulted in the Student being suspended from school with instruction. Suspended with instruction means the student was taught, even though suspended. This instruction is usually done remotely by google meet. (Testimony of Assistant Principal.) The student remained out of school for three days and then winter break started. The Student returned to Autism School when school started after winter break. (Testimony of Assistant Principal).

38. There is no evidence that an MDR was held after the December 12, 2023, incident. (Testimony of Assistant Principal).

39. The Student had several similar incidents in January, 2024. The other student had to hide or be hidden by Autism School staff during these incidents. Autism School created a safety plan for the other student during these times. (Testimony of Assistant Principal).

40. An annual IEP Meeting was held for the Student on February 21, 2024, and an IEP was developed for the Student. (R-6) The Parent agreed to this IEP. (R-6).

41. The Student's annual IEP dated February 21, 2024, noted the Student suffered from multiple impairments, and provided measurable goals for the Student. It noted that the Student's

<sup>8</sup> The other student was in a different classroom than the Student during the school day.

behavior interferes with the Student's education and that of others. It noted that the Student had a BIP in place. It provided special education services of reading, writing, math, communication and behavioral skills. It provided related services of curb to curb transportation. (See R-6).

42. The February 21, 2024 IEP also noted a series of behavioral incidents at the School during the 2023-2024 school year. (R-6, pp. 13-14). It also noted a series of restraints of the Student during the 2023-2024 school year. (R-6, pp. 14-15). It contains a discussion of the Student's general behavior issues. (R-6, pp. 16-17). It also notes the Student was suspended with instruction from school for December 12, 13, and 14 of 2023. (R-3, p. 3. and R-6, p. 13).

43. This IEP, although it noted the Student's behavioral issues, did not change any goals or any services being offered to the Student. (See R-5 and R-6). The Student's BIP was not changed. (Testimony of Assistant Principal.)

44. Everything seemed to calm down until one incident on March 1, 2024. After that incident everything was calm until April 11, 2024, when things took a turn for the worse, again. (R-10). (Testimony of Assistant Principal).

45. On April 11, 2024, the Student attempted to elope and enter the other student's classroom. The student hit another student, ran into the parking lot and began throwing things, spitting kicking, punching, and disrobing. An ambulance and the school district police were called and the Student eventually left in an ambulance for UMC with the guardian's permission. (R-10, pp. 1-2, and testimony of Assistant Principal and Guardian).

46. Following the April 11, 2024 incident the Student was suspended from school until April 17, 2024. (R-3, p. 3). Exhibit R-3 does not indicate this suspension was with instruction. (Testimony of Assistant Principal.)

However, it is noted elsewhere that this suspension was also with instruction. (Testimony of Assistant Principal).

47. A revision IEP Meeting was held for the Student on April 16, 2024, and a revised IEP was developed for the Student. (R-7). The Guardian and Caretaker attend this revision IEP Meeting. (Testimony of Guardian and Caretaker).

48. The reason for the revised IEP was the Student had ongoing behavior issues at Autism School. (R-7, p. 2). The April 16, 2024 revised IEP meeting arose mainly out the n incident which occurred at Autism School on April 11, 2024, that is described above. (R-7). The Prior Written Notice from the School District proposed to "laterally change placement Autism School - Specialty School." (R-7, p. 2).

49. The Student's revised IEP dated April 16, 2024, noted the Student suffered from multiple impairments, and provided measurable goals for the Student. It noted that the Student's behavior interferes with the Student's education and that of others. It noted that the Student had a BIP in place. It provided special education services of reading, writing, math, communication and behavioral skills. It also listed out a series of behavior incidents and restraints of the Student. (R-7, pp. 11-13, and 15). It provided related services of curb to curb transportation.

50. Although this IEP was called a revised IEP, no additional goals or services were added. (See R-7). The Student's BIP was not changed. (R-8 and testimony of Assistant Principal).

51. The only change in the revised IEP of April 16, 2024 was Student was changed from attending Autism to Specialty programs. (R-7).

52. There is no evidence that an MDR was held after the April 11, 2024, incident.

(Testimony of Assistant Principal).

53. This suspension apparently ended when the amended IEP, (R-7), changed the Student's school from Autism School to Specialty School. (R-2).

54. There is also no evidence that an MDR was held after the April 12, 2024, suspension ended. (Testimony of Assistant Principal).

55. The School District maintains that the Guardian agreed to this change. (See R-9, p. 7, and R-7, p.30). However, the Guardian maintains she did not agree to this change. (Testimony of Guardian). The IEP itself is not signed by the Guardian. (R-7, p. 28).

56. The Student's current IEP, (R-7), can be implemented at Specialty School or Autism School. There is nothing in the Student's IEP that could not be implemented on either campus. (Testimony of LRE Director).

57. The key reason for the change in schools was the concerns Autism School had with the Student's behavior and the Student's threats to the other student. (Testimony of Assistant Principal and Guardian).

58. The Guardian did not want the Student to return to Specialty School because the Guardian believed that the Student's problematic behaviors began at, and were learned at Specialty School, and that the Specialty School was not a good fit for the Student. This position was not considered by the IEP Team. (Testimony of Guardian).

59. The Guardian testified that this change of school was predetermined. There was no discussion of other options other than this change to Specialty School at the IEP Meeting. It was presented as the only thing the IEP Team could do. Additionally, a Specialty School bus



driver had driven to the Guardian's home the day before the IEP Meeting in what was described as a "dry run." (Testimony of Guardian). .

60. The Student was hospitalized on April 16, 2024 due, at least in part to the Student melting down after learning that the Student's school was being changed from Autism School to Specialty School. This hospital was a behavior hospital. (Testimony of Guardian).

61. When the Student was in school the melt downs depended on the day and the routine at school. (Testimony of Caretaker and Guardian).

62. Even though the Student's last IEP (R-7) provided for the Student to attend the Specialty School, the Guardian and representatives of Autism School met on August 30, 2024 and prepared a safety plan for the Student to return to Autism School. (R-12). The Safety Plan was created with recommendations from mental health team and the School District crisis response team. (Testimony of Assistant Principal).

63. The Safety Plan was not implemented because it was not signed by the Student's Guardian. (Testimony of Assistant Principal).

64. The Assistant Principal believed the Student would return to school for the 2024-2025 school year. (Testimony of Assistant Principal).

65. The Student has not returned to any school since the suspension of April 12, 2024. (Testimony of Assistant Principal and Guardian). At least for the 2024-2025 school year this appears to be the decision of the Guardian. The Student did not receive services from the School district since April 17, 2024 to today's date. (Testimony of Guardian).

66. Petitioner's expert was certified as an expert in ABA therapy and also sexology.

67. After the April 2024 suspension, the Guardian contacted Petitioner's Expert to do

assessments on the Student, including for sexual behavior treatment. (Testimony of Petitioner's Expert and Guardian.)

68. Petitioner's expert performed generalized assessments academic and behavioral . Petitioner's expert found that the Student had deficits in communication, language uses, understanding of language uses, frustration tolerance, and emotional management. (Testimony of Petitioner's Expert.)

69. Petitioner's Expert did other assessments, including SKAAT-R which tests to sexual knowledge and attitudes tests, anatomy, men's bodies, pregnancy, intimacy, healthy boundaries. The test is normed to persons with disabilities. (Testimony of Petitioner's Expert.)

70. Petitioner's expert found the Student had deficits across the board meaning lack of knowledge in the areas tested. The Student's lowest scores were anatomy and men's bodies. The Student did not have a clear understanding of school issues, such as frequently stripping, elope, and threats to rape a teacher's wife, or a student. The Student did not mean rape, literally. The Student was saying what the Student thought needed to be said in the moment.

71. Aggressive language coupled with low SKAAT-R scores is due to lack of education. Student did not know what rape meant at time he stated this. (Testimony of Petitioner's Expert.)

72. Things stated by teens with autism can be misconstrued as sexual when what they say is not meant to be sexual. Often teens with autism do not recognize levels of appropriateness or social boundaries. They struggle with taking metaphors literally. They also know they can get a reaction, even if they do not understand the exact meaning of what they are saying. (Testimony of Petitioner's Expert.)

73. The ideal response to Student's behavior would have been to avoid reinforcing the

behavior, and when de-escalated, to educate the Student as to words he used. (Testimony of Petitioner's Expert.)

74. After assessments were completed Petitioner's Expert and the Guardian got together to create a program of teaching skills, and have been following this program. (Testimony of Petitioner's Expert.)

75. ABA Therapy, also known as Applied Behavior Analysis is a behavioral therapy that uses positive reinforcement to help people with autism and other developmental disorders learn new skills and reduce challenging behaviors. (Testimony of Petitioner's Expert).

76. The Student has been out of school since April 12, 2025. For the Student to successfully transition back to school, the Student needs an escape to manage frustration, functional communication, and help in avoiding maladaptive behavior. (Testimony of Petitioner's Expert.)

77. If the Student does return to school, the Student would still have problems with this behavior. A one on one aide could help the Student to see context and antecedents, avoid and release pressure, develop social skills. Additionally, ABA therapy in the school setting would help the Student improve behavior. (Testimony of Petitioner's Expert).

78. The Student needs a specific de-escalation plan, which is individualized. The Student's BIP should include recognition of antecedents and triggers, and antecedent interventions, strategies, and spinners. (Testimony of Petitioner's Expert).

79. After the first incident with sexual context, in December 2023, the IEP team should have called IEP meeting, put their heads together to recommend services, such as speech services, a one on one aide, and changes to the Student's BIP. Such an approach would help the

Student be more successful. (Testimony of Petitioner's Expert).

80. The School District maintains that a change from one specialty school to another specialty school within the district is not a change in placement under the IDEA. (Testimony of Assistant Principal).

81. Autism School has related services. It has two speech pathologists, an occupational therapist, a school mental health provider, and a school social worker. Autism School just added a counseling position. (Testimony of Assistant Principal).

82. Exhibit R-13 consists of Reports of Physical Restraint pertaining to the Student from April 11, 2019 to April 11, 2024. There are reports from the Speciality School and the Autism School. (R-13).

83. These reports must be completed every time there is a physical restraint of a student involving risk to the student or others students or property damage. (Testimony of Director 1).

84. A threat assessment is done after tough incidents. The threat assessment includes reviewing the incident to determine level of threat, and whether there is a risk to the student or other students. It also reviews what supports are needed to be safe and to help student. (Testimony of Director 1).

85. A safety plan is always put into if threat assessment is completed. A safety plan is a plan to keep the school community safe and the student safe, (Testimony of Director 1).

86. In this case, after the April 11, 2024, incident, the School District was going to prepare a safety plan, but due to the hospitalization of the Student the decision was made to wait until the Student was ready to return to school. (Testimony of Assistant Principal).

87. The Guardian filed this Due Process complaint on August 9, 2024, (HO 1).

### CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel and the Hearing Officer's research, the Conclusions of Law of this Hearing Officer are as follows:

1. The Hearing Office has jurisdiction over the parties and the subject matter of this Due Process Hearing. The basis for jurisdiction of this matter is 20 USC §1415, 34 CFR §§ 300.508, 509, 510, and 511, NRS 388.310, and NAC 388.310.

2. The IDEA requires that states receiving federal education funding provide “free appropriate public education (FAPE) . . . to all children with disabilities residing in the state between the ages of three and twenty-one.” 20 USC §1414(a)(1). It also establishes a procedure for creating an IEP which is a written statement of present levels of academic achievement and functional performance and goals in those areas. See 20 USC §1414(d)(1). The IEP must also include a “statement of special education services and accommodations being provided to the child.” 20 USC §1414(d)(1)(A). It also requires measurable goals and periodic progress reports. See, 34 CFR 300.320(a)(2)(i).

3. A parent with a child with a disability who alleges a violation of the IDEA may present a due process complaint setting forth the allegations that form the complaint. See 20 USC §1415(b)(6).

4. 34 C.F.R. 300.116 provides, as follows, with respect to placement:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs;

5. The IDEA and OSEP define "placement" as the amount of exposure to the Student's general education peers. This standard does not apply in this case because the Student has no exposure to general education peers at either Specialty School or Autism School.

6. Under the IDEA, a "change in placement" is defined as a fundamental change in, or elimination of, a basic element of a child's educational program. *Lunceford v. District of Columbia Board of Education*, 745 F.2d 1577, 1582 (D.C. Cir.1984).

7. The Office of Special Education Programs (OSEP) stated that the determination as to whether a change in placement has occurred must be made on a case-by-case basis. The

following factors are relevant to this analysis:

1. Whether the educational program set out in the child's IEP has been revised;
2. Whether the child will be able to be educated with nondisabled children to the same extent;
3. Whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and
4. Whether the new placement option is the same option on the continuum of alternative placements.

*Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

8. “A transfer to a different school building for fiscal or other reasons unrelated to the disabled child has generally not been deemed a change in placement, whereas an expulsion from school or some other change in location made on account of the disabled child or his behavior has usually been deemed a change in educational placement that violates the stay-put provision if made unilaterally. *Hale ex rel. Hale v. Poplar Bluffs R-I Sch. Dist.*, 280 F.3d 831, 834 (8th Cir.2002) (per curiam) (agreeing with the district court's factual determination that changing the location of instruction for a student from his home to a school effected a change to his educational placement); see also *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 549 (7th Cir.1996) (“[W]e adopt our sister circuits' fact-driven approach. We accept as the outer parameters of ‘educational placement’ that it means something more than the actual school attended by the child and something less than the child's ultimate

educational goals.”). This dichotomy is appropriate because one of the primary concerns of IDEA was to prevent schools or educational agencies from excluding “hard-to-handle disabled students” from classrooms. *Honig v. Doe*, 484 U.S. 305, 324, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988).”

*D.D. v. New Jersey Department of Education*, 801 F.3d 205, 217-218 (3<sup>rd</sup> Cir. 2015).

9. Changing the Student’s school to Specialty School from Autism School, particularly without an MDR, with the School District predetermination, and lack of parental consent, (See, 34 C.F.R. 300.530), is a change in placement. This change was done unilaterally.

10. Like the case of *HB v. Las Virgenes Unified School District*, 370 F.Appx 843 (9<sup>th</sup> Cir. 2010), the IEP team never discussed the possibility of keeping the Student in Autism School. It had predetermined that the Student would attend Specialty School. This failure to discuss coupled with the predetermination of the change to the Specialty School interfered with a parent’s right to participate in this decision. See also, 34 C.F.R.116(a)(1).

11. “In the Ninth Circuit, '[a] school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement.” *K.D. ex rel. C.L. v. Dep't of Educ., Hawaii*, 665 F.3d 1110, 1123 (9<sup>th</sup> Cir. 2011).” *M. S. v. L. A. Unified Sch. Dist.*, 913 F.3d 1119 (9<sup>th</sup> Cir. 2019).

12. It is clear that the IEP Team on April 17, 2024, predetermined the placement of the Student which is a procedural violation of the IDEA.

13. 20 USC 1414(2) provides as to reevaluations:

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted-



(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

(B) in accordance with subsections (b) and (c) of this section.

14. However, the School District had a duty to seek to re-evaluate the Student after as early as the May 10, 2023, revision IEP meeting in that the Student had been restrained at least five times during that school year. By then the local education agency was aware of the Student's significant behavioral problems which warranted a reevaluation. Such restraints, at a minimum should lead to a reevaluation to determine what can be done to eliminate such restraints.

15. The School District did not violate NRS 388.501 to the extent it held a revision IEP meeting after the 5th restraint in the 2022-2023 school year. However, NRS 388.501 requires more than a meeting. It requires the school district and the parent of the pupil to include in the Student's individualized education program additional methods that are appropriate for the pupil to ensure that the restraint does not continue, including, without limitation, mentoring, training, a functional behavioral assessment, a positive behavior plan and positive behavioral supports. Given the lack of changes in the Student's IEP from the revision meeting and the Student's ongoing behavior issues, it appears that the IEP team just went through the motion of holding a statutorily required revision IEP Meeting, rather than seriously evaluating at what could be done to help this Student.

16. The School district violated NRS 388.501 by failing to provide additional methods to support the Student who was having major behavioral issues.

17. The duty to reevaluate continued to all subsequent IEPs yet no reevaluation of the

Student was done during this time period.

18. Thus the local education agency failed to properly assess the Student from May 10, 2023, to today's date, which denied the Student FAPE.

19. A FAPE “consists of educational instruction specially designed to meet the needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.” *Board of Education v. Rowley*, 458 S.Ct. 176, 188-189, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). An IEP must provide the Student the services “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. vs. School District*, 137 S.Ct. 988 (2017).

20. The instruction offered must be “specially designed” to meet a child's “unique needs” through an “individualized education program,” (IEP). 20 USC §§ 1401(29), (14). The IDEA guarantees individually-tailored educational services for children with special educational needs. See 20 USC §§ 1400(d)(1)(A), 1401(29).

21. The IDEA provides for a FAPE that must conform to a student’s IEP, which is a program detailing the student’s abilities, educational goals, and specific services that are designed to achieve those goals within a designated time frame. See 20 USC §§ 1412(a)(4), 1436(d).

22. *Amanda J. v. Clark County School District*, 267 F.3d 877, 894 (9th Cir. 2001), states:

“A FAPE, as required by the IDEA, must be tailored to the unique needs of each individual child. Each child has different needs, different skills, and a different time frame for effective treatment. . . . These programs often must address a wide range of skills, ranging from academic to social to functional living skills,

depending on the severity of the particular child's condition.”

23. Because there were no modifications made to the May 10, 2023 revision IEP or the Student’s BIP, when it was clear the Student having serious behavioral problems, commencing with the IEP dated May 10, 2023, (R-5), the School District failed to provide the Student with an IEP tailored to the unique needs of the Student. This IEP was a revision IEP following five restraints in a school year, but nothing changed in the IEP or the related BIP relative to the Student’s behavior and efforts to remedy it. This failure denied the Student FAPE.

24. Thus, due to its failure to appropriately assess and tailor the Student’s IEP, commencing with the IEP dated May 10, 2023, (R-5), the School District has failed to provide the Student FAPE since that time.

25. There is no evidence that Autism School failed to implement the Student’s IEPs at issue in this case.

26. At this time Autism School is the appropriate placement for the Student. It has expertise in autism. It has the support of Private Clinic. Its staff and teachers are trained to handle students on the autism spectrum. It is the placement desired by the Guardian.

27. The hearing officer does not need to decide whether the series of short term suspensions and exclusions from school, including a directive to pick the student up due to behaviors at the start of the school day, resulted in a disciplinary change of placement given the similarities of the recurring behaviors. Based on the Conclusions of Law, that issue is moot.

28. By failing to properly and timely assess the Student commencing in May, 2023, the IEP Team impeded the ability of Student’s Guardian to participate in formulating Student’s IEPs.

29. *R.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019), stated regarding whether a procedural violation results in the denial of FAPE:

However, "[i]n matters alleging a procedural violation", an ALJ "may find that a child did not receive a [FAPE]" if the ALJ determines that a procedural right was violated and that the violation "significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a [FAPE] to the parents' child." *Id.* § 1415(f)(3)(E)(ii)(II).

Under § 1415(f)(3)(E)(ii)(II), an ALJ must answer each of the following in the affirmative to find that a procedural violation of the parental rights provisions of the IDEA constitutes a violation of the IDEA: (1) whether the plaintiffs "alleg[ed] a procedural violation," (2) whether that violation "significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a [FAPE] to the parents' child," and (3) whether the child "did not receive a [FAPE]" as a result. *Id.* § 1415(f)(3)(E). Unless an ALJ determines that a given procedural violation denied the child a FAPE, she may only order compliance with the IDEA's procedural requirements and cannot grant other forms of relief, such as private placement or compensatory education. See *Fry v. Napoleon Cnty. Schs.*, — U.S. —, 137 S.Ct. 743, 754 n.6, 197 L.Ed.2d 46 (2017) ("Without finding the denial of a FAPE, a hearing officer may do nothing more than order a school district to comply with the [IDEA's] various procedural requirements.").

*R.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237, 248 (4th Cir. 2019), see also 34 CFR §300.513(2).

30. Here, the Guardian alleged and proved a procedural violation of the IDEA. That violation significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to their child. Additionally this procedural violation denied FAPE to the Student.

31. Thus, the IEP Team committed a procedural violation that denied FAPE to the Student.

### **ORDER**

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

IT IS HEREBY ORDERED, as follows:

1. The Student shall be educated at the Autism School.
2. The IEP Team shall complete a functional behavioral assessment and any other necessary evaluations relative to the behavioral concerns of the Student within 30 days of the date of this Order.
3. The IEP Team shall immediately amend the Student's current IEP to provide for a one on one aide to the Student from drop off to pick up each day.
4. Once the Assessments are complete the IEP team shall meet within two weeks of the date the assessments are complete, to revise the Student's IEP and BIP based on the results of the assessments. The IEP Team shall review the assessments of Petitioner's expert, if the Guardian provides them to the IEP Team as part of this IEP Meeting.
5. In view of the fact the Student has not had any educational services since April 11, 2024, the Student shall receive five hours per week of the educational services outlined in the April 16, 2024 IEP until April 25, 2025.

6. In view of the fact the Student has not had any behavioral services since April 11, 2024 the Student shall receive five hours per week of behavioral services, outlined in the April 16, 2024 IEP including Aba therapy, until April 25, 2025.

### **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. Since this decision is being delivered in both electronic and hard copy, receipt of a copy 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.

Dated this 3 day of February, 2025.

  
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