

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

In the Matter of

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

v.  
SCHOOL DISTRICT  
Respondent

Date: February 19, 2025

Hearing Officer  
Colleen Platt

**FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION AND ORDER**

This matter came for a hearing on January 29 and 30, 2025. The Respondent was represented by Counsel for the School District and Petitioner was represented by Counsel for Petitioner. 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 January 2, 2025, Petitioner filed a due process complaint (“Complaint”) requesting an impartial due process hearing. On January 8, 2025, this Hearing Officer was appointed to hear the Complaint and on that same date the Respondent filed its response to the Complaint. On January 9, 2025, this Hearing Officer filed a Preliminary Order and Notice of Status Conference setting a status conference for January 10, 2025, because after review of the Complaint, this Hearing Officer determined that the Complaint contained both expedited and non-expedited

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

issues.<sup>2</sup> On January 9, 2025, Petitioner provided a copy of the order appointing them guardianship over the Student. (“Guardianship Order”).

On January 10, 2025, a status conference was held in this matter wherein the parties indicated that they had a resolution meeting scheduled for January 14, 2025. The Guardianship Order was also discussed, specifically that upon review of the Guardianship Order, the Guardianship Order did not appear to give the Parents authority to act on behalf of the Student in educational matters. Counsel for Petitioner argued that the Parents had a duty to act on behalf of the Student pursuant to NRS 159.079. Further discussion was had regarding the application of NRS 159.079 and the language in the Guardianship Order. Counsel for Petitioner indicated that they would file a stipulation with the proper court that clarifies that the Parents have the power to make educational decisions for the Student. A prehearing conference was scheduled for January 21, 2025, and a hearing was scheduled for January 29 and 30, 2025 on the expedited issues. A Status Conference Report and Order was filed on January 10, 2025. On January 10, 2025, this Hearing Officer sent a Notice of Prehearing Conference and draft issues for the hearing. On January 21, 2025, a Pre-hearing Conference was held wherein the parties discussed the issues that would be heard at the hearing, as well as other formalities related to the hearing. On January 21, 2025, Counsel for Petitioner filed the previously requested Stipulation and Order Confirming Order Appointing Guardian Includes Educational Rights which clarified that the Guardianship Order authorized the Parents, the Student’s appointed guardians, to make educational decision, including filing the Complaint and participating in the hearing, for the Student.

<sup>2</sup> The underlying Due Process Complaint contained both expedited and non-expedited issues. One of the non-expedited issues is whether the School District knew of the Student’s schizophrenia diagnosis and should have engaged in an IEP review and other assessments to determine whether the Student’s IEP should be updated to include emotional disturbance as an eligibility category (34 C.F.R. §300.8(c)(4)). This issue is not decided in this decision. Another due process hearing that will address the non-expedited issues and requests for relief, including, without limitation, compensatory education, will be held at a later date.

On January 29 and 30, 2025, beginning at 9:00 a.m. each day, by videoconference, a hearing was held on the expedited issues in the Complaint which was within the 20 school-day required pursuant to 34 C.F.R. §300.532(c)(2). The Respondent presented eight witnesses: (1) Principal; (2) Special Education Instructional Facilitator (“SEIF”); (3) School Nurse; (4) School Counselor; (5) Special Education Teacher; (6) Director of Crisis Response Team; (7) Director in Student Services Division over Academic Centers; and (8) Coordinator IV of Department of Due Process/Home Schooling. Petitioner presented six additional witnesses: (1) Mother; (2) Father; (3) School Police Officer; (4) Specialized Program Teacher’s Assistant (“Classroom Aide”); (5) School Social Worker; and (6) School Psychologist of Crisis Response Team. The parties stipulated to the admission of Respondent’s Exhibits 1 through 12 and 14 through 16. Prior to the hearing, Counsel for Petitioner raised concerns regarding Respondent’s Exhibit 13, a 19 second video of the alleged incident, indicating that it was not the full video of the incident and was a recording made by someone recording the video playing on a computer. The Respondent responded that the full video had not be provided because there were other students in the video and their images needed to be blurred. The Respondent stated that the redacted video would be available on January 29, 2025. At the hearing, arguments were heard regarding Respondent’s Exhibit 13—two videos of the incidents involving the Student. The videos were uploaded to the shared exhibit drive at roughly 7:00 am on January 29, 2025, but Counsel for the Petitioner was not notified of the availability of the files. The hearing was recessed to allow Counsel for the Petitioner to review the video. Upon readjournment of the hearing, Counsel for Petitioner argued that the video was produced outside the disclosure deadline and objected to its admission. Counsel for the Respondent argued that it was not aware of a longer video when it disclosed the original Exhibit 13. This Hearing Officer ruled that Exhibit 13 was not admitted to evidence because it

was submitted after the 5-day rule and the Petitioner had not had sufficient time to review the videos or prepare a response to the videos. At the hearing, the School District stipulated to the admission of Petitioner's Exhibits 2, 3, 4, 6, and 26. During the hearing, Petitioner's Exhibits 5, 7, 16, 27, and 46 were entered into evidence.

At the conclusion of the hearing, this Hearing Officer allowed the parties to submit written closing arguments on or before 11:00 pm on February 4, 2024, which was the 20<sup>th</sup> school day from the filing of the Complaint. The parties submitted their closing arguments on February 4, 2024.

## **II. ISSUES TO BE DECIDED**

The issues to be determined are as follows:

1. Did the School District deny the Student a FAPE by determining that the Student's conduct on December 13, 2023, was not a manifestation of the Student's disability?
2. Did the School District deny the Student a FAPE by changing the educational placement of the Student pursuant to a disciplinary action and failing to provide educational and related services to the student as set forth in 24 CFR §500.530(d)(1)?

## **III. 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. The Student was enrolled at the High School beginning on August 9, 2022, and was unenrolled on March 24, 2023, and was re-enrolled on August 7, 2023, through January 30, 2024. (Respondent's Exhibit 1)
2. At the time of the December 13, 2023, incident, the Individualized Education Program ("IEP"), in effect was dated November 28, 2023, wherein Student's

- eligibility category was Autism Spectrum Disorder. (Respondent's Exhibit 4, Testimony of SEIF; Special Education Teacher)
3. The November 28, 2023, IEP revised the Student's prior IEP which was dated November 29, 2022, which listed the Student's eligibility category as Autism Spectrum Disorder. (Respondent's Exhibit 4, Petitioner's Exhibit 6)
  4. On February 24, 2023, Student was admitted to the Hospital for a psychiatric evaluation. (Respondent's Exhibit 9)
  5. While at the Hospital, Student was evaluated for unspecified schizophrenia spectrum and other psychotic disorder and autism spectrum disorder. (Respondent's Exhibit 9; Testimony of Father, Director of the Crisis Response Team)
  6. The records regarding the hospitalization on February 24, 2023, were provided to the Crisis Response Team of the School District ("Crisis Response Team") on March 2, 2023, and the Director of the Crisis Response Team reviewed the information and sent the records to the school administration at the High School and the school-based intervention team at the High School on March 9, 2023. (Respondent's Exhibit 9, Testimony of Director of the Crisis Response Team)
  7. The Director of the Crisis Response Team would redact information that is not educationally relevant, but the information concerning a diagnosis or assessment would be included. (Testimony of Director of the Crisis Response Team)
  8. The school-based intervention team is authorized to share what is educationally relevant with the appropriate individuals regarding the information in the hospitalization. (Testimony of Director of the Crisis Response Team)

9. The School Nurse for the High School received the records from the Hospital that were provided by the Crisis Response Team, but did not do anything with them because the School Nurse believed they were protected by the Health Insurance Portability and Accountability Act (“HIPAA”). (Testimony of School Nurse)
10. The School Nurse entered information from the records from the Hospital into the confidential system used by the School Nurse regarding healthcare information for students, specifically that the Student had been discharged from the Hospital and that Student was diagnosed with unspecified schizophrenia and other psychotic disorder and autism spectrum disorder. (Respondent’s Exhibit 16, p. 17, Testimony of School Nurse)
11. Upon questioning by Counsel for the School District, the School Nurse stated that it was careless to use the term “diagnosed” when the document used the term “assessment.” (Testimony of School Nurse)
12. While the records regarding the hospitalization put the term “unspecified schizophrenia spectrum and other psychotic disorder” under the subheading “assessment” under the heading “Diagnosis, Assessment & Plan” the records should be read as the Student was diagnosed with unspecified schizophrenia and other psychotic disorder, the term assessment is used interchangeably with the term diagnosis at the Hospital. (Respondent’s Exhibit 9, p. 5-6, Testimony of Director of the Crisis Response Team)
13. Between February 22, 2023, and February 26, 2023, Father and Special Education Teacher exchanged emails regarding Student’s mental health both while at the High School and at home, including informing the Special Education Teacher that the

Student had been hospitalized at the Hospital for mental health reasons. (Petitioner's Exhibit 7, p. 66-70, Testimony of Father and Special Education Teacher)

14. On March 3, 2023, Father emailed Special Education Teacher an update on Student's hospitalization and asking for assistance with the staff at the High School overseeing student attendance to ensure Student was not withdrawn from the High School and notifying Special Education Teacher that Father would be speaking to a lawyer about guardianship of Student. (Petitioner's Exhibit 7, p. 71, Testimony of Father and Special Education Teacher)
15. Between March 6, 2023, and March 27, 2023, Father and Special Education Teacher exchanged emails regarding Student. Special Education Teacher informed Father on March 9, 2023, that Student had missed 14 school days as of March 10, 2023. On March 9, 2023, Father responded that Student was delusional at times and was refused from a program at the University of Nevada, Las Vegas for individuals with schizophrenia because Student also had autism spectrum disorder. (Petitioner's Exhibit 7, p. 72-78, Testimony of Father and Special Education Teacher)
16. On March 28, 2023, Special Education Teacher emailed Father from Special Education Teacher's personal email regarding Student's unenrollment at the High School. Special Education Teacher told Parent that reenrollment was possible and not to sweat the small stuff because it is "insignificant compared to what you have to deal with." (Petitioner's Exhibit 7, p. 81-82, Testimony of Father and Special Education Teacher)
17. Father and Special Education Teacher exchanged emails on May 5, 2023, and May 19, 2023, regarding Student and how Student was doing. Father responded that he

- sleeps at the front door to ensure Student does not leave the house at night. Special Education Teacher inquired about Student enrolling in the High School for the upcoming school year to ensure Student was able to enroll in the High School because it was not the Student's zoned school. (Petitioner's Exhibit 7, p. 83-84, Testimony of Father and Special Education Teacher)
18. On July 24, 2023, Father emails Special Education Teacher regarding two incidents that occurred over the summer with Student leaving the house and to inform Special Education Teacher that Student was looking forward to returning to the High School. (Petitioner's Exhibit 7, p. 85-86, Testimony of Father and Special Education Teacher)
19. Student was enrolled in the High School for the 2023-2024 school year.  
(Respondent's Exhibit 1, Testimony of Special Education Teacher, and Parents)
20. At the November 28, 2023, IEP meeting, the Parents informed the IEP team that the Student had been diagnosed with schizophrenia. The Student's IEP eligibility category was not revised at this IEP meeting. The Parents agreed with the November 28, 2023, IEP, even though it did not revise the Student's eligibility category or address the Student's schizophrenia diagnosis because the Student was doing well and was not having mental health issues or psychosis events at this time.  
Additionally, the Parents believed that the High School had the records from the Student's hospitalization in February 2023, and they had further informed the IEP team at this meeting of the Student's diagnosis. (Respondent's Exhibit 4, Testimony of Father)
21. The November 28, 2023, IEP reviewed the Student's August 13, 2021, multidisciplinary team report. The Student's reading comprehension, written



expression, math, were assessed from August 7, 2023, through November 27, 2023.

The Student's social/emotional/behavior was assessed from August 7, 2023, through September 11, 2023. (Respondent's Exhibit 4, p. 3-5)

22. The November 28, 2023, IEP provided that Student's special education services would be provided in a self-contained classroom. It also indicated that the Student had a Behavioral Intervention Plan ("BIP"), would receive 60 minutes per week of counseling, had supplementary aids and services such as using a calculator for math and science and additional time to complete assignments. (Respondent's Exhibit 4, p. 13-14)
23. The Student's most recent BIP is dated November 28, 2023. The BIP does not include information regarding the Student's schizophrenia diagnosis, nor does it include any discussion or concerns regarding elopement. (Respondent's Exhibit 8)
24. The November 28, 2023, IEP provided that Student would spend 365 of the school day in the regular school environment. The November 28, 2023, IEP did not indicate that the Student had any issues with elopement and no behavioral interventions were included in the IEP to address elopement. (Respondent's Exhibit 4, p. 16)
25. On December 8, 2023, Student was involved in an incident at the High School wherein Student left his special education classroom and walked into a general education classroom that was not the Student's general education classroom speaking in a foreign language, saying racial slurs, and making terroristic threats such as "belonging to Hamas," "Allah Akbar." The Student became aggressive towards the pregnant Jewish teacher of the regular classroom the Student entered. Student moved towards the teacher in an aggressive manner and was stopped by students in the

- classroom. The students restrained the Student and Student began punching the students. High School staff, including the School Police Officer and another school police officer arrived at the regular classroom and were able to remove Student from the situation. (Respondent's Exhibit 7, p. 2, Testimony of Father, SEIF, Special Education Teacher, Classroom Aide, Principal)
26. The students that had restrained Student when he entered the general education classroom were not injured but had been punched by the Student. (Testimony of School Police Officer)
27. At the time of the December 8, 2023, incident, the Classroom Aide was on a break and the Student was pacing vigorously in the special education classroom which was the Student's normal way to wear off some energy. The Special Education Teacher did not notice that the Student had eloped from the special education classroom. (Petitioner's Exhibit 27, p. 2, Testimony of School Police Officer, Special Education Teacher, and Classroom Aide)
28. The School Police Officer and another school police officer responded to the general education classroom after being notified that there was a fight. (Petitioner's Exhibit 27, p. 1, Testimony of School Police Officer)
29. When the School Police Officer arrived, the Student pointed at a School Police Officer and the other responding school police officer and stated, "You hate black people" along with attempting to say "Allahu Akbar" and "You're oppressing black people." (Petitioner's Exhibit 27, p. 134-135, Testimony of School Police Officer)
30. The School Police Officer asked the administration staff of the High School who were present if Student was a "special needs student" because the Student's behavior

- on December 8, 2023, was not normal and Student did not appear to be under the influence of alcohol or drugs. (Petitioner's Exhibit 27, p. 135, Testimony of School Police Officer)
31. The School Police Officer contacted the SEIF and the SEIF stated that the behavior exhibited on December 8, 2023, was part of Student's IEP and that Student has been known to act in this nature. (Petitioner's Exhibit 27, p. 136, Testimony of School Police Officer)
32. The SEIF does not recall speaking to the School Police Officer regarding the December 8, 2023, incident, or making the statements indicated in the School District incident report, nor was her recollection recalled after reading the School District incident report prepared by the School Police Officer. (Testimony of SEIF).
33. School Police Officer reached out to Father to discuss the December 8, 2023, incident and ask whether there were weapons in the home. Father informs School Police Officer that Student has autism and schizophrenia and that there were no weapons in the home. (Petitioner's Exhibit 27, p. 136, Testimony of Police Officer and Father)
34. The School Police Officer, in his incident report for the December 8, 2023, incident, determined that due to Student's disabilities, Student is unable to control his behavior and it would not be in the best interest of justice to prosecute a person for their actions relating to the Student's disability. This decision was solely regarding whether or not to move forward with criminal charges against the Student. (Petitioner's Exhibit 27, p. 136-137, Testimony of School Police Officer)
35. The Parents, SEIF, Principal and an assistant principal met with the Parents on or about December 10, 2023, to discuss the incident on December 8, 2023, how to

prevent it from happening again, and what measures should be implemented to allow Student to return to the High School so that Student could take the end of semester examinations. (Respondent's Exhibit 7, p. 3, Testimony of Principal, SEIF, Father, and Mother)

36. The Parents, SEIF, Principal, and assistant principal, verbally agreed and determined that Student would return to school on December 13, 2023, Student would not bring a backpack to school, a safety plan would be implemented, which would include the Classroom Aide or some other staff person meeting the Student at the entrance or school bus area, and bring the Student to the classroom when other students were not in the hallways passing to other classes. (Testimony of Principal, SEIF, Special Education Teacher, Father)

37. The safety plan discussed at the December 10, 2023, meeting was not written down before the Student returned to school on December 13, 2023. (Testimony of Principal, SEIF, Father)

38. The severity of the December 8, 2023, incident was not communicated to the Parents. The Parents understood the December 8, 2023, incident to have not been a major incident. Parents learned after the December 13, 2023, incident that there had been a police report prepared regarding the December 8, 2023, incident and it is at that time they learned the full extent of the December 8, 2023, incident. Parents would not have allowed the Student to return to the High School on December 13, 2023, if they had known the full information and severity of the December 8, 2023, incident. (Testimony of Father and Mother)

39. On December 13, 2023, Student was involved in an incident at the High School.
- Student ran out his special education classroom and began running down the halls of the High School. The Classroom Aide followed Student out of the special education classroom and followed Student down the hall. Other administrative staff of the High School also followed Student. (Respondent's Exhibit 7, p. 1, Testimony of SEIF, Special Education Teacher, School Police Officer)
40. Student as he was running down the halls of the High School observed a school police officer, Student then ran to the school police officer yelling various statements, including "Black power," and "I hope ISIS kills you." (Respondent's Exhibit 6, p. 1, Exhibit 7, p. 1, Exhibit 14, p. 6-11, Testimony of SEIF, Special Education Teacher, Classroom Aide, School Police Officer)
41. Student then, unprovoked, began to punch the school police officer and forcefully strike the school police officer's head, shoulders, and upper body which resulted in bruising and cuts to the school police officer. (Respondent's Exhibit 6, p. 1, Exhibit 7, p. 1, Exhibit 14, p. 6-11, Testimony of SEIF, Special Education Teacher, Classroom Aide, School Police Officer)
42. The Student did not respond to requests from administration staff and Classroom Aide to stop and resisted being restrained. (Respondent's Exhibit 6, p. 1, Exhibit 7, p. 1, Exhibit 14, p. 6-11, Testimony of SEIF, Special Education Teacher, Classroom Aide, School Police Officer)
43. The Student was restrained by the school police officers, administration staff and Classroom Aide. The school police officer placed the Student in handcuffs and he was taken to the School Nurse's office wherein Student was able to remove the

- handcuffs and began to attack other individuals in the room, including the responding emergency medical technicians and other school police officers. (Respondent's Exhibit 6, p. 1, Exhibit 7, p. 1, Exhibit 14, p. 6-11, Testimony of SEIF, Special Education Teacher, Classroom Aide, School Police Officer)
44. The Student was again restrained by the emergency medical technicians and his hands were taped by the emergency medical technicians. Student continued to attempt to use his torso to attack individuals in the room while making terrorist threats similar to what was said when he attacked the school police officer and began speaking in another language, possibly mandarin. (Respondent's Exhibit 6, p. 1, Exhibit 7, p. 1, Exhibit 14, p. 6-11, Testimony of SEIF, Special Education Teacher, Classroom Aide, School Police Officer)
45. The Student was taken into police custody and taken to Clark County Detention Center and charged with battery. Parents were notified on December 13, 2023, by the High School administration staff that the December 13, 2023, incident occurred. (Respondent's Exhibit 2, p. 3<sup>3</sup>, and Exhibit 14, p. 1, Testimony of Father)
46. The Crisis Response Team was called on December 13, 2023, to review the incident involving the Student on December 13, 2023, and prepare a report ("Direct Response Summary"). (Respondent's Exhibit 11, p. 1-4, Testimony of Director of the Crisis Response Team, School Psychologist of the Crisis Response Team)

<sup>3</sup> Respondent's Exhibit 2, p. 3 does not appear to contain the entire entry from January 5, 2024. The last sentence under the heading "Current Status" states "Parent and [Student] (Legally recognized adult student) notified" however, the sentence does not continue on the next page. The sentence merely ends without conclusion, indicating that there may have been more to what was entered on January 5, 2024.

47. The Direct Response Summary was not completed until after January 31, 2024.  
(Respondent's Exhibit 11, p. 1-4, Testimony of Director of the Crisis Response Team, School Psychologist of the Crisis Response Team)
48. In preparing the Direct Response Summary the Crisis Response Team reviewed the Student's records, conducted High School staff interviews, interviewed the Student and Parents. (Respondent's Exhibit 11, p. 1-4, Testimony of Director of the Crisis Response Team, School Psychologist of the Crisis Response Team)
49. The Direct Response Summary noted that the school psychologist noted it was apparent that the Student's behavior had deteriorated from a prior incident in 2021.  
(Respondent's Exhibit 11, p. 3, Testimony of Director of the Crisis Response Team, School Psychologist of the Crisis Response Team)
50. The Direct Response Summary contained recommendations for interventions for both at home and at school. (Respondent's Exhibit 11, p. 3, Testimony of Director of the Crisis Response Team, School Psychologist of the Crisis Response Team)
51. The Direct Response Summary was provided to the Principal and reviewed with the High School administration with the main focus on the recommendations contained in the Summary. (Testimony of Director of Crisis Response Team)
52. A parent conference was held on December 15, 2023, with Father, Principal, and two assistant principals. During this conference, the School District's rules and regulations were discussed and the Student's disregard for those rules and regulations. The Father was informed that the Student was being suspended with instruction pending expulsion. Father did not agree with the recommendation.  
(Respondent's Exhibit 14, p. 4, Testimony of Father)

53. A Functional Behavioral Assessment (“FBA”) was conducted by the Special Education Teacher on January 2, 2024. The behavior reviewed was “running from class, verbal outburst (profanity/racial slurs and terrorist threat), Physical aggression (assault to staff and students). (Respondent’s Exhibit 6, p. 1, and Exhibit 14, p. 27)

54. For the problem behavior “Verbal (Threats/Racial Slurs)/Physical Aggression Towards Staff and Peers” the FBA provided:

- a. Setting: classroom and school campus;
- b. Antecedent: Student completing classwork in STAR program;
- c. Consequence: release of anger/frustration towards a group or individual;
- d. Setting event: incidents took place during the AM during 1<sup>st</sup> in the west atrium; and
- e. Function: aggression is a behavior strategy that in an attempt to resolve interpersonal conflicts including physical or psychological annoyance; other person’s disobedience, perceived injustice, and a threat to one’s social identity.

(Respondent’s Exhibit 14, p. 27)

55. The FBA also included a summary of indirect assessments—Parents stated that the Student has difficulty sleeping; the Student had attended 69.5 instructional days for the first semester; and the Student had a current BIP dated November 28, 2023.

(Respondent’s Exhibit 14, p. 27)

56. The FBA noted that the frequency of the data was that the aggressive behavior had occurred twice during the Student’s enrollment, but does not indicate any dates, and



- that the duration of those incidents ranged from 10 to 15 minutes. (Respondent's Exhibit 14, p. 27)
57. The hypothesis statement for the FBA was "When [Student] is faced with social interactions or is feeling stressed, he will not focus on the task at hand but become physically agitated and fixated on what is [in his] own view or personal agenda of higher priority to him, he will pace the room. In order to relieve that stress. This is more likely to occur if [Student] is in large dynamic environment." (Respondent's Exhibit 14, p. 27-28)
58. A Manifestation Determination Meeting ("MDM") was held on January 5, 2024, to determine whether the behavior on December 13, 2023, was caused by, or have a direct and substantial relationship to the Student's disability or was it a failure of the School District to implement the Student's IEP? (Respondent's Exhibit 6, p. 1-8, Testimony of SEIF, Special Education Teacher, School Counselor)
59. Present at the MDM were: Student, Parents, SEIF, Special Education Teacher, School Counselor, School Social Worker, and Student's regular education teacher. Parents had requested that the School Social Worker and one of Student's treatment providers attend, however, the treatment provider was unable to attend. No one from the Crisis Response Team participated in the MDM. (Respondent's Exhibit 6, p. 1-8, Testimony of Director of Crisis Response Team, SEIF, Special Education Teacher, School Counselor, School Social Worker, Father, and Mother)
60. The SEIF, Special Education Teacher, School Counselor, School Social Worker, general education teacher, who were members of the Student's November 28, 2023, IEP team collectively the "MDT," determined that the Student's behavior on

December 13, 2023, was not a manifestation of the Student's disability nor a failure of the School District to implement the Student's IEP. While the Parents attempted to provide documentation that suggested that the Student's diagnosis of schizophrenia impacted the Student's behavior that day and was the reason for his actions, the documentation was not considered because the MDT can only go on data that they have. The Student and Parents disagreed with the MDT's decision. (Respondent's Exhibit 6, Testimony of SEIF)

61. The only disability that the MDT considered at the MDM were the ones on file for the Student—Autism Spectrum Disorder, Obsessive Compulsive Disorder, and General Anxiety and the similarities between the December 8, 2023, incident and December 13, 2023, incident were not considered by the MDM because the December 8, 2023, was not the reason why the MDM was initiated. (Testimony of SEIF)
62. The behavior considered in the MDM was the attack on the police officer it did not include the elopement from the special education classroom, or the language used in the December 13, 2023, incident. (Testimony of SEIF)
63. The SEIF prepared the Manifestation Determination Compliance Protocol and Review Checklist ("Checklist") in preparation for the MDM. Under Step II of the Checklist, the individual preparing the Checklist is required to review all relevant information to determine if the conduct in question was caused by or had a direct and substantial relationship to the student's disability and must place a checkmark on the information that was reviewed. The SEIF did not place a checkmark by the "Health file/medical history" nor "Independent/community reports/documentation" nor "Other records" which indicates that those items were not reviewed for the MDM.

- The SEIF testified that the reason she did not review the health file or medical records is because they were protected by HIPAA. (Respondent's Exhibit 14, p. 24-28)
64. The SEIF prepared a Manifestation Summary ("Summary") as a result of the MDM. (Respondent's Exhibit 6, Testimony of SEIF)
65. In the Summary, a description of the relevant information supplied by the Parents was included. This description states that the Parents presented the MDT with a note from Student's doctor which stated that Student had been diagnosed with both autism and schizophrenia. The description goes on to state that Father told the MDT that the Crisis Response Team was made aware of the schizophrenia diagnosis and that Student has been having mental health issues, which were manifested on December 13, 2023, and previously on December 8, 2023. (Respondent's Exhibit 6, p. 2, and Exhibit 12, Testimony of SEIF, School Counselor, School Social Worker, Special Education Teacher, Father)
66. The Summary also states that the MDT reviewed the Student's "educational records (Confidential file, Cumulative file, and Infinite Campus)" and "explored the Student's disability broadly, Autism Spectrum Disorder, Generalized Anxiety Disorder and Obsessive Compulsive Disorder" and that the behavior on December 13, 2023, was not a part of the Student's disability because autism spectrum disorder, generalized anxiety disorder, and obsessive compulsive disorder, do not preclude or excuse students from engaging in purposeful misconduct that is goal oriented. However, the Summary does not include any sort of discussion as to why the MDT made the determination that the Student's behavior that day was not a manifestation of the

Student's disability, other than merely saying it was not because it was a "targeted" attack. (Respondent's Exhibit 6, p. 6)

67. The Summary notes that the Parents argued that schizophrenia was the reason for the Student's behavior on December 13, 2023, but went on to provide that the "[MDT] must make informed decisions based on the documents and data" it has access to. The Summary goes on to state that the behavior, specifically the attacking of the school police officer without any observed provocation, was targeted at the school police officer because the Student passed other students and staff in the hall and did not attack them. As such, because it was a targeted attack, the Student must therefore not be delusional. (Respondent's Exhibit 6, p. 6)
68. The Summary also states that targeting "specific individuals is not a product or characteristic of Autism Spectrum Disorder, OCD, or Generalized Anxiety Disorder. It is a willful act to do others harm." (Respondent's Exhibit 6, p. 6)
69. The Summary contains no information regarding how the MDT concluded that the behavior was not a product or characteristic of autism, obsessive compulsive disorder or generalized anxiety disorder nor was there any testimony regarding how that determination was made. (Respondent's Exhibit 6, p. 6)
70. The Summary does not contain any indication that there was any discussion at the MDM regarding whether the Student's IEP was fully implemented regarding the Student's behavior or the current BIP. The Summary only indicates that the Student's BIP indicates that the Student is prone to pacing when stressed which can occur in the classroom or multipurpose room or bus. (Respondent's Exhibit 6)

71. While the Father tried to get the MDT to review the Student's medical records from the Student's hospitalization in February 2023, that were previously provided to the Crisis Response Team and to contact the Crisis Response Team to discuss the diagnosis of schizophrenia, the School Social Worker told the Father that the Student's mental health records were protected information under HIPAA and mental health professionals are not at liberty to share such information without written consent. The School Social Worker did not offer a form to Parents to provide such consent during the MDM, nor did she inform the Parents that such a form could be provided at the MDM to allow such discussion to be had. (Respondent's Exhibit 6, p. 6, Testimony of School Social Worker, Father)<sup>4</sup>
72. This was the first MDM that the School Counselor participated in and was told by the SEIF to attend but was not told to review any documentation. The School Counselor did not review any documents before the MDM, but thinks that he reviewed the Student's IEP at the MDM. (Testimony of School Counselor)
73. The School Counselor testified that the SEIF controlled the MDM and the Father did tell the MDT that the Student had been diagnosed with schizophrenia. The incident on December 8, 2023, was mentioned at the MDM, but was not discussed in any

<sup>4</sup> There is a deep misunderstanding of the applicability of HIPAA to the Student's records. HIPAA is applicable to healthcare providers who electronically transmit health information for certain purposes such as insurance claims, benefit eligibility, and referral authorization requests. (45 C.F.R. §160.103) When a healthcare provider such as a school nurse or a school social worker is acting on behalf of a school that is subject to the Family Education Rights Privacy Act ("FERPA") and maintains student health records, including mental health records, those records are considered education records which are protected under FERPA **not** HIPAA. (34 C.F.R. §99.3)(see also *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*, U.S. Departments of Health and Human Services and Education, December 2019 Update <https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf>)

- meaningful way because the purpose of the MDM was to review the incident on December 13, 2023. (Testimony of School Counselor)
74. The School Counselor said that the behavior on December 13, 2023, was not a manifestation of the Student's disability because it was a physical attack and that behavior was not related to autism. (Testimony of School Counselor)
75. The School Counselor did not consider the schizophrenia diagnosis because he was only allowed to consider the diagnosis of autism because that was the only disability listed in the Student's IEP. (Testimony of School Counselor)
76. The School Counselor did not receive any training for students with autism spectrum disorder. (Testimony of School Counselor)
77. The Parents requested the School Social Worker be present at the MDM. (Testimony of Father)
78. The School Social Worker refused to testify because she believed that HIPAA prevented her from discussing any conversations she had with the Student and that her professional ethical obligations prevented such discussions without a signed written consent. The School Social Worker did not provide the Parents or Student with any consent form to fill out to allow her to speak to the conversations between herself and the Student. (Testimony of School Social Worker)(see Footnote 4)
79. The School Social Worker did not provide any information and told the MDT that she was not a required member and could not provide any information regarding the Student because the information was protected under HIPAA. (Testimony of School Social Worker)

80. The School Social Worker was member of the school-based intervention team and did receive the medical records from the Student's hospitalization in February 2023, but did not believe that she received all of records, only the portion of the record that contained the references to the assessment for schizophrenia and autism. She did not provide the medical records to anyone. (Testimony of School Social Worker)
81. The School Social Worker would take notes regarding meetings with Student, maintained those notes in a file that was outside the Student's official file, but the file was shredded when she left employment with the High School. (Testimony of School Social Worker)
82. Even though the School Social Worker was present at the MDM, she did not participate in the discussion but still voted that the behavior on December 13, 2023, was not a manifestation of the Student's disability. (Testimony of School Social Worker)
83. The Special Education Teacher prepared the Functional Behavioral Assessment, reviewed the behavior incident, Student's IEP, and enrollment information before the MDM. (Testimony of Special Education Teacher)
84. The MDM was tense because Father of Student was trying to make a point that the Student's diagnosis of schizophrenia was the reason for the Student's behavior on December 13, 2023, and Father believed the outcome was predetermined. (Testimony of Special Education Teacher and Father)
85. The Special Education Teacher reviewed the note provided by the Student's Father from the Student's doctor regarding Student's diagnosis for autism and schizophrenia, but the Special Education Teacher wasn't influenced by it during the MDM because

the letter was “fresh” and because the letter talks about autism and he didn’t find the letter to be accurate. The Special Education Teacher believed the letter was not timely because it was dated the day of the MDM and did not include a date of the diagnosis, but did not ask Parents or Student how long he had been diagnosed with schizophrenia. The Special Education Teacher did not believe that autism spectrum disorder was a mental disorder and wanted a cleaner letter that spelled out how schizophrenia would impact an individual’s behavior. (Testimony of Special Education Teacher)

86. The language used by Student in the December 13, 2023, incident was new for the Student, and the Student had not used this type of language before, except for the December 8, 2023, incident. (Testimony of Special Education Teacher, Classroom Aide)

87. The Special Education Teacher acknowledged the emails that the Special Education Teacher and Father exchanged after the Student’s hospitalization in February 2023 but needed hard factual evidence in order to request a multidisciplinary team review an IEP. (Petitioner’s Exhibit 7, Testimony of Special Education Teacher)

88. The Student’s IEP was revised on January 5, 2024, wherein it provided that the Student would be placed in an Alternative Instructional Arrangement (“AIA”) from January 5, 2024, until January 26, 2024, and that beginning on January 27, 2024, through November 27, 2024, the Student would be placed in a self-contained classroom and spend 33% of his school day in the regular education environment. Parents disagreed with this IEP. (Respondent’s Exhibit 5, p. 19-23)



89. On January 8, 2024, the School District provided Student with a Notice of intent to Implement IEP (“Notice”). The Notice indicated that it was the intent of the School District to implement the January 5, 2024, IEP on January 15, 2024. (Respondent’s Exhibit 5, p. 24)
90. The Notice indicated that the Student’s November 28, 2023, IEP was being revised as a result of the MDT decision at the MDM. The Notice went on to indicate that the Parents requested that the MDM be halted to allow the Crisis Response Team to be contacted to get an understanding of the Student’s schizophrenia diagnosis because the Parents disagreed with the finding of the MDT that the Student’s behavior on December 13, 2023, was not a manifestation of the Student’s disability. The reason set forth in the Notice for not postponing the MDM to allow the Crisis Response Team to be contacted was because the IDEA requires the MDM to take place within 10 school days from the date of the infraction and that Parents could provide the MDT with any information relevant to the disability, including any report by the Crisis Response Team. (Respondent’s Exhibit 5, p. 24)
91. The Notice further indicates that the MDT considered halting the MDM to contact the Crisis Response Team to obtain information relevant to a Threat Assessment generated by the High School administration in response to the severity of the December 13, 2023, incident. The MDT rejected this option because “Mental Health records are protected documents that are protected under HIPA (sic). [School District] Mental Health professionals are not allowed to share these documents without the expressed written consent of the parent. During the meeting, [MDT] must make an

- informed decision based on the data and documentation they have access to at the time.” (Respondent’s Exhibit 5, p. 24)
92. The Notice indicates that the MDT reviewed the following documents in its decision: educational records, confidential folder review, IEP, multidisciplinary team report, Infinite Campus discipline chronology, cumulative file, and teacher progress notes. The Notice does not indicate any dates for those documents or when the MDT reviewed those documents. (Respondent’s Exhibit 5, p. 24)
93. Student was removed from the High School and placed in AIA at an academic center in a self-contained classroom that is considered a behavioral school, however, Student did not attend the AIA because the Parents felt that the particular behavioral school selected for the Student was not appropriate given the Student’s mental state. The behavioral school has other students who have behavioral issues and there are fights, which could continue the Student’s mental health crisis. The students at the behavioral school must adhere to behavioral standards and if they do not, then the students can go to jail, which would be detrimental to the Student’s mental health. (Testimony of Father)
94. Parents were unaware that Student could be placed in an AIA that was a virtual or online classroom. (Testimony of Father)
95. Student has not been in school since December 13, 2023. (Respondent’s Exhibit 1, Testimony of Parents)

#### **IV. CONCLUSIONS OF LAW**

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

The IDEA was enacted for, among other reasons, to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” (20 U.S.C. §1400(d)(1)(A)) A school district’s compliance with the procedural safeguards set forth in the IDEA is “essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parental participation are particularly important.” (*Amanda J. v. Clark County School District*, 267 F.3d 877, 891 (9<sup>th</sup> Cir. 2001)). Though a school district may have engaged in a procedural violation of the IDEA, not every procedural violation will be the denial of a FAPE to a student. *Amanda J.*, 267 F.3d at 892. However, where the procedural violation of the IDEA results in the “loss of educational opportunity” or “seriously infringes the parents’ opportunity to participate” in the process or “caused a deprivation of educational benefits” the procedural violation is a denial of a student’s FAPE. *Id.* (citing *W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992) and *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1<sup>st</sup> Cir. 1990)).

NAC 388.265 sets forth the procedure pursuant to which a pupil with a disability may be suspended, expelled, or excluded from attendance by a school district. Before initiating any suspension, expulsion, or exclusion that will result in a change of placement for the pupil with a disability, the school district shall convene a meeting of the relevant members of the committee that developed the pupil’s IEP but must include the parent of the pupil. (NAC 388.265(2)). The committee shall:

- (a) Consider all information relevant to the behavior subject to disciplinary action, including, without limitation:

(1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil;

(2) Observations of the pupil; and

(3) The pupil's individualized educational program and placement.

(b) Determine whether the behavior of the pupil was a manifestation of the disability of the pupil. In carrying out the requirements of this paragraph, it must be determined whether the conduct in question was:

(1) Caused by or directly and substantially related to the disability of the pupil; or

(2) The direct result of the public agency's failure to implement the pupil's individualized educational program.

→If the public agency, the parent and the relevant members of the committee determine that either subparagraph (1) or (2) is applicable to the pupil, the conduct must be determined to be a manifestation of the disability of the pupil.

(c) Prepare a report containing their findings and conclusions.

(NAC 388.265(3)(a), (b) and (c)).

NRS 388.467 provides that when a “due process hearing is held pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., regarding the identification, evaluation, reevaluation, classification, educational placement or disciplinary action of or provision of a free appropriate public education to a pupil with a disability, and a school district is a party, the school district has the burden of proof and the burden of production.”

**A. Did the School District deny the Student a FAPE by determining that the Student’s conduct on December 13, 2023, was not a manifestation of the Student’s disability?**

This Hearing Officer finds that the School District denied the Student a FAPE by determining that Student’s behavior on December 13, 2023, was not a manifestation of the Student’s disability because the MDT did not consider all information relevant to the behavior

subject to the disciplinary action. NAC 388.265(3)(a)(1) requires the MDT to consider evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil. In this case, the evidence is clear that the School District did not consider information relating to the Student's schizophrenia diagnosis which is relevant information regarding the Student's behavior on December 13, 2023. The SEIF, Special Education Teacher, and School Counselor each testified that the only diagnosis that the MDT could consider was autism because that was the Student's eligibility in his IEP. Despite this assertion in testimony, the Summary created by the SEIF and the Special Education Teacher at the MDM indicates that the Student's disabilities were autism spectrum disorder, generalized anxiety disorder and obsessive-compulsive disorder. However, there was no discussion at the MDM about the aspects of general anxiety disorder, or obsessive-compulsive disorder or how those disabilities affected the Student's behavior on December 13, 2023. Nor did the MDT consider any documents provided by the Parents such as the letter from the Student's doctor clearly indicating a diagnosis of schizophrenia or consider postponing the MDM to enable the Crisis Response Team to provide the documents it received regarding the Student's hospitalization or other behaviors. The SEIF and School Social Worker stated that the documents the Parents were seeking were protected by HIPAA, and could not be provided without a written consent, but neither the SEIF nor School Social Worker offered to provide such a form to the Parents or Student who were physically present at the MDM and could have provided such consent. This misunderstanding of the confidentiality provisions of HIPAA and FERPA contributed to the situation and is why this Hearing Officer finds that the MDT did not consider the relevant information regarding the Student's behavior on December 13, 2023.

In addition to not considering the documents provided by Parents, the School Counselor testified that he reviewed no documents in preparation for the MDM. Though upon further questioning during his testimony, he may have reviewed the Student's IEP at the MDM. He also testified that while the Parents presented a letter from the Student's doctor stating that the Student had been diagnosed schizophrenia, that letter was not considered by him at the MDM because he was only allowed to consider autism because that was the Student's eligibility category. The School Social Worker also had information that was relevant to the behavior but refused to provide that information at the MDM because of her misunderstanding of the applicability of HIPAA to the Student's records; nor did she review any documents prior to the MDM and did not engage in the discussion but still determined that the behavior was not a manifestation of the Student's disability.

The Special Education Teacher testified that the Father had told him that the Student had been diagnosed with schizophrenia but in order to consider that diagnosis, he wanted to see more documentation relating to the diagnosis. However, when presented with a letter at the MDM, the Special Education Teacher determined that the letter was too "fresh" and the timing was suspect so he did not consider it in his review of the December 13, 2023, incident. The SEIF, School Counselor and Special Education Teacher all testified that the December 8, 2023, incident was mentioned at the MDM, but neither the similarities of that incident to the December 13, 2023, incident nor the timing of both incidents were discussed when evaluating whether the Student's behavior on December 13, 2023, was a manifestation of the Student's disability.

NAC 388.386 sets forth the required elements of an assessment of a student's functional behavior. Specifically, it requires the following:

- (a) Systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration and intensity of the behavior.
- (b) Systematic observation of the events that immediately precede each display of the targeted behavior and are associated with the display of the behavior.
- (c) Systematic observation and analysis of the consequences following the display of the targeted behavior to identify the specific environmental or physiological outcomes produced by the behavior in order to determine the function that the behavior serves for the pupil. The communicative intent of the targeted behavior must be identified in terms of what the pupil is either requesting or protesting through the display of the behavior.
- (d) Analysis of the settings in which the targeted behavior occurs most frequently. Factors that may be considered include the physical setting, the social setting, the activities and the nature of instruction, scheduling, the quality of communication between the pupil and staff and other pupils, the degree of participation of the pupil in the setting, the amount and quality of social interaction, the degree of choice and the variety of activities.
- (e) Review of records for health and medical factors which may influence the targeted behavior, including, without limitation, levels of medication, sleep cycles, health and diet.
- (f) Review of the history of the targeted behavior to include the effectiveness of any intervention previously used.

The FBA completed by the Special Education Teacher on January 2, 2024, which was reviewed at the MDM appears to refer to two incidents but does not include the dates of the incidents. Nor did testimony at the hearing specifically speak to the FBA. However, based on the testimony from the Special Education Teacher and the Classroom Aide. Specifically that the behavior exhibited by the Student on December 8 and 13, 2023, were new behaviors of the Student which neither the Special Education Teacher or the Classroom Aide had previously observed, this Hearing Officer believes that the incidents referred to in the FBA are the December 8 and 13, 2023, incidents. In reviewing the FBA, the FBA fails to include the specific elements required by NAC 388.386(1). The FBA includes an observation of the behavior, preceding events, consequences, but does not include any sort of analysis of those observations.

The FBA does not indicate that any records for health and medical factors were reviewed, save for a statement from Parents that the Student has difficulty sleeping.

NAC 388.265 requires the MDT to consider **all** information relevant to the behavior of the Student to determine whether the Student's behavior on December 13, 2023, was caused by or **directly and substantially** related to the disability of the Student. (emphasis added) In this case, the MDT did not consider all information that was relevant to the behavior on December 13, 2023. The MDT did not consider: (1) the Student's diagnosis of schizophrenia and how that diagnosis coupled with the Student's current disabilities: autism spectrum disorder, generalized anxiety disorder; (2) obsessive-compulsive disorder could have contributed to the Student's conduct on December 13, 2023; nor (3) the Student's mental health records. The MDT chose instead to focus on how autism was traditionally exhibited by the Student and determining that because the behavior of attacking the school police officer, on review of the video of the incident<sup>5</sup>, was unprovoked and targeted, the behavior was not a manifestation of the Student's disability. The MDT further reasoned that it could not consider the diagnosis of schizophrenia because it was not listed on the Student's IEP as an eligibility category or diagnosis. The MDT misunderstands what it is required to review. NAC 388.265 requires the MDT to review all information relevant to the **behavior**, not just the disabilities listed in the IEP. In its review of all the information, the MDT is required to review "evaluations and diagnostic results, **including, without limitation**, relevant information supplied by the parents of the pupil." (NAC 388.265(3)(a)(1), emphasis added). The MDT simply did not consider this information.

<sup>5</sup> The SEIF, Special Education Teacher, and School Counselor testified that they were not present and did not witness the December 13, 2023, incident itself. The SEIF and Special Education Teacher testified that they reviewed the video of the incident.



The School District argued that the High School did not have notice of the diagnosis of schizophrenia and that Parents agreed with the November 28, 2023, IEP which did not revise the Student's eligibility category and did not include the Student's schizophrenia diagnosis. Testimony by the Director of the Crisis Response Team, Special Education Teacher, and School Nurse indicated that they were aware that the Student had been diagnosed with schizophrenia. However, NAC 388.265(3) does not require the diagnosis to be in the Student's IEP, that information, if it is relevant to the behavior in question, must be considered, even if it is provided by the Parents.

Each member of the MDT is not required to review "every piece of information in the student's file" but is required to review the relevant information. *Fitzgerald v. Fairfax County School Board*, 556 F. Supp. 2d, 543, 559 (E.D. Va. 2008). The "manifestation determination must be done carefully and thoroughly with consideration of any **rare or extraordinary circumstances presented.**" (Discussion of the IDEA regulations: Vol. 71, Fed. Reg. pg. 46720 (Aug. 14, 2006)) In this case, the MDT did not review the relevant information. The SEIF testified that she did not review the Student's health file/medical history. The School Counselor testified that he did not review anything prior to the MDM, but that he may have reviewed the Student's IEP at the MDM. The School Social Worker testified that she had relevant information, but did not provide that information to the MDT during the MDM. In addition, the MDT was clearly presented with rare or extraordinary circumstances, specifically that the Student had engaged in similar behavior 5 days prior to the December 13, 2023, incident, the behavior exhibited in both the December 8, 2023, and December 13, 2023, incidents were similar—Student used similar language and exhibited aggressive behavior. Testimony from the Special Education Teacher and the Classroom Aide was that the behavior exhibited by the

Student on December 8, 2023, and December 13, 2023, was new, Student had not previously been aggressive nor had he engaged in the language that was used in those incidents.

“When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination.” (*Doug C. ex rel. Spencer C. v. State of Hawaii, Dep't of Educ.*, 720 F.3d 1038; 1046 (9th Cir. 2013)). In this case, the Parents requested that the MDM be paused or continued to another day to allow the MDT to contact the Crisis Response Team, but such request was denied because the MDM must take place within 10 school days from the date of the incident. No evidence was presented, such as the school calendar for that school year, to indicate that the MDM was held on the 10<sup>th</sup> school day or that there was not additional time to reconvene the MDM. However, even if the MDM was on the 10<sup>th</sup> school day, the court in *Doug C.* makes clear that the School District must make a reasonable determination that promotes the purposes of the IDEA, in that the MDT needs the relevant information to review when determining whether the behavior of the Student is a manifestation of his disability—the Parents were the ones requesting the postponement to allow the relevant information to be presented.

While not every procedural violation of the IDEA will be the denial of a FAPE to a student, here, the Petitioner has demonstrated that each of the above procedural violations is a denial of FAPE. (*Amanda J.*, 267 F.3d at 892). Procedural violations must “actually interfere with the provisions of a FAPE to that child.” (*Dibuo v. Board of Education of Worcester County*, 309 F.3d 184, 190 (4<sup>th</sup> Cir. 2002)). The evidence admitted indicates that the MDM was a tense and emotionally charged meeting. The evidence admitted shows that the members of the MDT

did not have the relevant information to determine whether the Student's conduct was a manifestation of his disability. This procedural violation actually interfered with the provision of FAPE to the Student and was a denial of the Student's right to a FAPE.

**B. Did the School District deny the Student a FAPE by failing to provide educational and related services to the Student as set forth in 34 C.F.R. §500.530(d)(1)?**

The School District cannot “eschew its affirmative duties under the IDEA by blaming the parents.” (*Doug C. v. State of Hawaii*, 720 F.3d at 1045). While parental participation in a student's education is one of the cornerstones of the IDEA, it presumes that the parent does in fact participate in the provision of the student's education. “The critical nature of the provisions protecting parental involvement is highlighted when they are considered in light of the stated purposes of the IDEA. To accomplish the IDEA's goal of ensuring that ‘all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs,’ 20 U.S.C. §1400(c), those individuals who have first-hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process.” (*Amanda J.* 267 F.3d at 891).

In this case, the Parent chose not to allow the Student to participate in the AIA. The School District was ready and able to provide the services to Student. The Parents, however, disagreed with the AIA originally selected for the Student because it would not allow Student to be successful and as such did not allow the Student to attend. The Parents did testify that they were not aware other options were available, but it is unclear whether they inquired as to other

options. As such, the School District has not denied the Student a FAPE by failing to provide educational and related services to the Student as set forth in 34 C.F.R. §500.530(d)(1).

## **V. DECISION AND ORDER**

Based on the above Findings of Fact and Conclusions of Law, this Hearing Officer's decision is that the School District finds that the School District denied the Student a FAPE by determining that Student's behavior on December 13, 2023, was not a manifestation of the Student's disability because the MDT did not consider all information relevant to the behavior subject to the disciplinary action; and the School District did not deny the Student a FAPE by failing to provide educational and related services to the Student as set forth in 34 C.F.R. §500.530(d)(1) because the Parents chose not to allow Student to participate in AIA. It is hereby ordered:

IT IS HEREBY ORDERED that the School District shall be returned to the Student's return to the education setting set forth in the November 28, 2023, IEP at the High School on or before March 10, 2025. During this period, the School District shall conduct a Functional Behavioral Assessment which must include a review of the Student's schizophrenia diagnosis, an assessment of the Student's social and emotional condition as set forth in NAC 388.350, and convene an IEP meeting which must be comprised of the persons identified in NAC 388.415(4), to determine whether Student's eligibility category must be revised and if any other revisions to the Student's IEP are necessary.<sup>6</sup>

## **VI. 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

<sup>6</sup> Pursuant to 34 C.F.R. §300.513(a) nothing precludes a hearing officer from ordering a school district to comply with the procedural requirements of the IDEA.

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: 2/19/2025

  
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