

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

STATE OF NEVADA

In the Matter of

DECISION OF THE IHO

SCHOOL DISTRICT,

Date: June 16, 2025

Petitioners,

v.

Victoria T. Oldenburg,
Impartial Hearing Officer (IHO)

STUDENT¹, by and through The Parents,

Respondent.

INTRODUCTION AND PRELIMINARY MATTERS

1. The parties to the present matter are the Student, by and through the Parents (“Petitioners and/or Parents”) and the School District (“Respondent and/or “District”).² The District was represented by Legal Counsel. The Parent was not represented by Legal Counsel.

2. On May 2, 2025 The District filed a Request for Due Process (DPC) under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 et. seq., and its implementing regulations, 34 CFR §300 et seq., Chapter 388 of the Nevada Revised Statutes (NRS), and Chapter 388 of the Nevada Administrative Code (NAC). The District requested the hearing under 34 C.F.R. 300.502 (b)(2)(i) for a determination as to whether it is required to fund an independent

¹ Personally identifiable information is included in the Appendix to the final decision in this matter and will be removed prior to public distribution. *See Letter to Schad*, 105 LRP 4754 (December 23, 2004).

² All pre-hearing documents referenced herein were provided electronically.

education evaluation (IEE) for the Student.³

3. On May 2, 2025 the Nevada Department of Education (NDE) Superintendent of Public Instruction appointed the undersigned IHO, Victoria T. Oldenburg, to this matter.⁴

4. On May 5, 2025 the IHO issued a Preliminary Order setting forth the statutory time periods applicable to the proceeding as established in 34 C.F.R. §300.532(c).⁵ The IHO also issued a Notice of Status Conference setting the telephonic Status Conference for May 8, 2025 at 9:00 a.m., and issued the Rights of the Parties.⁶ The primary purpose of the Status Conference was to set the dates for the Pre-Hearing Conference and hearing in the event the parties were unable to resolve the issues in the Expedited DPC.⁷

5. On May 8, 2025 the telephonic status conference was held via the virtual platform “Google Meet.” The District and the Parent participated in the status conference. At the status conference the parties agreed to a hearing date of June 6, 2025 and a telephonic Prehearing Conference date of May 28, 2025 at 1:00 p.m.⁸

6. On May 9, 2025 the IHO issued a Notice of Prehearing Conference and the Hearing Process Guidelines.⁹

7. A Notice of Prehearing Conference was provided to the Parties on May 9, 2025. On the

³ IHO Exhibit (HO) 1.

⁴ HO 1

⁵ HO 3

⁶ HO 2, 4

⁷ HO 3

⁸ HO 5

⁹ HO 5

morning of May 23, 2025, the District forwarded the Hearing Officer an email from the Parent to the District stating Parent needed to reschedule the Prehearing Conference as the Parent would be busy because May 28th is the Student's graduation day. The Parent did not send the email to the IHO. That day the Hearing Officer requested that the parties provide their availability to hold the prehearing conference on May 27, 2025, the morning of May 28, 2025, or on May 29, 2025. The District responded to the Parent and the IHO that they were available May 27, 2025 from 12:00-12:30 or 3:00-3:30, or May 29, 2025 from 8:30-9:00. Another email was sent the morning of May 23, 2025 by the IHO to the District and the Parent requesting that the District hold open the times on May 27, 2025 pending confirmation from the Parent. The Hearing Officer did not receive a response from the Parent prior to the commencement of the Memorial Day 3-day weekend. Therefore, on May 24, 2025 the Hearing Officer sent an email to the parties notifying them the Prehearing Conference would be held on May 29, 2025 at 8:30 a.m.¹⁰

8. On May 26, 2025, in response to the May 24, 2025 email from the IHO, the Parent sent the IHO and the District an email stating that they would not be available until June 9, 2025 because the Parent had a very busy schedule. On May 26, 2025 the IHO replied to the IHO and the District reminding the Parent that on May 8, 2025 the Parent had agreed to the date for the Prehearing Conference and the hearing, informing the Parent that the hearing could not be rescheduled, and asking whether the Parent intended to participate in the June 6, 2025 hearing.¹¹ The Parent did not respond to the email.

9. On May 27, 2025 the IHO issued an order rescheduling the telephonic Prehearing

¹⁰ HO 8

¹¹ HO 8

Conference to May 29, 2025 at 8:30 a.m. The IHO also ordered that the virtual hearing scheduled for June 6, 2025 would proceed unless the Parent submitted a request to continue the hearing and decision due date on or before close of business on May 28, 2025, which specifically set forth good cause for continuing the hearing and the decision due date.¹² The Parent did not submit a request to continue the hearing and did not engage in further communication with the IHO.

10. On May 29, 2025 a Prehearing Conference was held and the Parent did not attend.¹³

11. The due process hearing was held on June 6, 2025. Pursuant to the agreement of the parties at the May 8, 2025 status conference the hearing was held via simultaneous electronic audio/visual means (“Zoom”). The Parent was not present at the hearing and the hearing was closed.

12. At the hearing, IHO Exhibits 1 through 8 were admitted and Petitioner’s Exhibits P-1 through P-8 were admitted. The decision due date is June 16, 2025.

ISSUES

As set forth in the Second Prehearing Conference Report and Order the issue to be decided by the IHO is whether the District is required to fund an IEE for the Student.

FINDINGS OF FACT

After considering all the evidence, this IHO's Findings of Facts are as follows:

1. The Student was born on August 21, 2007. (P-1) At the time the DPC was filed the Student was a 12th grade pupil at High School. (P-8)

2. The Student qualifies for special education and related services under the eligibility category of Autism Spectrum Disorder. (ASD). (P-2) Records indicate the Student has

¹² HO 6

¹³ HO 7

maintained special education eligibility under the ASD classification since entering the District as a special education transfer student in 2016. At the time of the transfer the Student was receiving special education services as a student with ASD and a speech/language impairment. The Student received an evaluation in 2019. (P-4, page 1, P-5)

3. On or about February 6, 2023 the Student was referred for an evaluation based upon concerns in the areas of health, social/emotional/adaptive behavior, and speech and language communication based on suspicion of ASD. The Parent consented to the reevaluation (hereafter referred to as the Multidisciplinary Evaluation or “MDE”). (P-3)

4. The MDE was done on March 27, 2026. The Multidisciplinary Team (MDT) consisted of the school psychologist, general education teacher, speech/language therapist, special education teacher, representative of the LEA, and the Parent. (P-4, page 14).

5. Throughout the evaluation timeframe, MDT members had the opportunity to review data from available records and existing information, which included observations from MDT members and others. As part of the evaluation process, MDT members provided input regarding the scope of the evaluation relative to required NAC components, along with other data deemed appropriate to inform MDT decisions. (P-4)

6. The MDT reviewed previous evaluation data from the Student’s 2019 assessment in the areas of cognitive functioning. The Student had been assessed using the Wechsler Intelligence Scale for Children – Fifth Edition (WICS-V). (P-4, pages 1-3)

7. The Gilliam Asperger’s Disorder Scale (GADS) is used for the assessment of individuals ages 3 through 22 who present unique behavioral problems. The GADS provides information about four categories of behavior – social interaction, restricted patterns of behavior, cognitive patters, and pragmatic skills. The MDT reviewed previous GADS data from 2019. (P-4, page 3)

8. The MDT also reviewed a report completed by the University in March of 2019 which included compiling data using the Differential Ability Scales II; Peabody Picture Vocabulary Test; Expressive Vocabulary Test-2; Wechsler Individual Achievement Test III; Woodcock Johnson Reading Mastery Test III; Child Behavior Checklist; Vineland Adaptive Behavior Scale 3, and; Childhood Autism Rating Scale 2. In 2019 and 2022 the school-based teams completed waivers of formal reevaluation. (P-4, page 4)
9. With regard to Health/Medical Status/Development History a health screening was done, and health and behavior history forms were completed. (P-4, page 4)
10. The Kaufman Test of Educational Achievement, Third Edition (KTEA-3) assesses the achievement domains of reading, math and written expression. The KTEA was administered to the Student by the Student's Case Manager on March 3, 2023 and results were obtained. (P-4, page 5)
11. A Self-Report of Personality of the Behavioral Assessment System for Children Third Edition (BASC-3) was completed and results obtained in all required areas. (P-4, pages 5-7)
12. An Adaptive Behavior Assessment System Third Edition (ABAS-3) was done by the teacher and the Parent and results were obtained in all required areas. (P-4, pages 7-9)
13. Scores for the Student were obtained using the Autism Spectrum Rating Scales (ASRS 6-18yr) resulting in quantifiable information from the ratings of the Student in all required areas. (P-4, pages 9-11)
14. For Speech, Language and Communication, the MDT reviewed the Student's records for Behavior, Functional, Social, Study and Organizational skills based upon teacher observations from August 2021 to April 2022. The Student was also observed on February 17, 2023 in Student's physical science class. The MDT reviewed assessments and results from the Student's

Comprehensive Assessment of Spoken Language – 2nd Edition (CASL-2), the CSAL-2 Receptive Vocabulary Test, the CASL-2 Antonyms Test, the CASL-2 Synonyms Test, the CASL-2 Expressive Vocabulary Test, the CASL-2 Sentence Expression Test, the CASL-2 Pragmatic Judgment Test. (P-4, pages 11-14).

15. The MDT Report concluded that the continued development of the Student's pragmatic and vocabulary skills is provided through direct instruction in the language-rich general education classroom curriculum along with goals and modifications in the Student's current IEP. The Student is provided with multiple opportunities to participate in daily real-time activities to practice learning and acquiring vocabulary. Generalization is more likely to occur when skills are taught in their natural environment. The Student's communication skills enabled the Student to affect Student's environment to make decisions, exercise choices and to participate in daily activities and routines. Based upon the file review and current evaluation, the Student's communication skills are considered adequate to access the educational curriculum and school environment and do not require a duplication of service that are being provided in the classroom. Therefore, Student is able to gain access to, and benefit from, Student's special education program. The MDT Report went on to state that findings in the evaluation appear to be consistent with NAC criteria for ASD eligibility. (P-4, page 13)

16. On March 26, 2025 during the annual IEP meeting the Parent had expressed concerns to the IEP team regarding the Students' reading comprehension. To further assess the Student's reading comprehension abilities the School reassessed the Student using the KTEA-Form A with text to speech. The Student's standard score had improved from 81 to 94. Two additional accommodations were placed in the Student's IEP; allowing the Student to play, pause, and replay audio at the Student's own pace and repeating directions for classroom assessments and

assignments. The “assessments and assignments” to the text to speech accommodation for college were also added. The Parent agreed with all components of the IEP dated March 26, 2025 and was in agreement with locking the IEP. The Parent did not express any concerns with occupational therapy. (P-1, pages 2-3)

17. The Student demonstrated passing grades for the first semester of the 2024-2025 school year, with a GPA of 3.625 in the first quarter and a GPA of 3.875 in the second quarter. (P-7)

18. On April 3, 2025 the Parent requested an IEE in the areas of psychoeducational, functioning, speech and language functioning and occupational therapy. (P-1, pages 2-3, P-5)

19. On April 18, 2025 the IEE request was denied. In denying the request the District relied on the MDE and MDT, noting that all members of the MDT were in agreement with the eligibility decision and that the Student has maintained special education eligibility under the Autism Classification, the Student’s last IEP indicates limited resource placement, the Student has passing grades for the first semester of the 2024-2025 school year and was on track to graduate in May, 2025, and that no occupational therapy concerns or prior District services were identified for the Student. (P-5)

20. In denying the IEE request, the District reviewed existing data, reviewed the MDE including all assessment data set forth in the MDE, and concluded the MDE was comprehensive and aligned with all legal standards. The District noted there were no concerns regarding the Student’s eligibility, the Student was working at present levels, had good attendance, behavior, and grades, and was on track for graduation. (P-1, page 1, testimony of Director III, Psychological Services).

21. On May 28, 2025 the Student graduated and received a College and Career Ready Diploma, which is a step above a standard diploma and is earned when a student completes additional course

work beyond that required. (P-6, testimony of Director III, Psychological Services).

22. The Parent was provided with a full opportunity to participate in the Prehearing Conference and the Hearing. During the status call on May 8, 2025 the Parent expressly agreed to a Prehearing Conference date of May 28, 2025, and a hearing date of June 6, 2025. It was not until May 23, 2025 five days before the scheduled Prehearing Conference, that the Parent stated they could not attend the Prehearing Conference because they were too busy. The Parent did not respond to attempts by the IHO to reschedule the Prehearing Conference. The only response from the Parent was on May 26, 2025, 11 days prior to the scheduled Hearing of June 6, 2025, that the Parent informed the IHO that they were not available until June 9, 2025 as Parent was too busy. The Parent was given an opportunity to request a continuance of the Hearing and decision due date but did not do so.

CONCLUSIONS OF LAW

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

A reevaluation of a student with a disability must be conducted if the student's parent or teacher requests a reevaluation. 34 C.F.R. §300.303(a)(2). The parent of a student with a disability has the right to request an independent education evaluation (IEE) at public expense when the parent disagrees with an evaluation obtained by the public agency 34 C.F.R. 300.502 (a)(1), (3)(ii)(b). If a Parent requests an IEE at public expense the public agency must, without unnecessary delay, file a due process complaint to request a hearing to show if its evaluation is appropriate. 34 C.F.R. 300.502 (b)(2)(i).

Relevant to whether an evaluation is appropriate, 34 C.F.R. 300.304 provides, in pertinent part:

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under §300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

34 C.F.R. 300.304

Pursuant to 34 C.F.R. § 300.305, additional requirements for evaluations and reevaluations are:

(a) *Review of existing evaluation data.* As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) (A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) *Conduct of review.* The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

...

34 C.F.R. § 300.305

Pursuant to NAC 388.387:

1. A pupil is eligible for special education and related services if the eligibility team, comprised of the persons set forth in subsection 2, determines that the pupil has an autism spectrum disorder and, by reason thereof, needs special education and related services.

2. The eligibility team must consist of:

(a) A school psychologist.

(b) A teacher of special education or a person with a specialized knowledge of autism spectrum disorder.

(c) A regular classroom teacher of the pupil or, if none, a person qualified to teach the pupil.

(d) A specialist of speech and language.

(e) A parent of the pupil.

(f) If not otherwise a member of the team, one or more persons who have sufficient knowledge of the pupil to interpret information relating to the pupil's social, emotional, developmental and

familial condition. Such persons may include, without limitation, a school administrator, school nurse, school counselor, school psychologist or any other certificated or licensed professional.

3. The eligibility team shall conduct an evaluation of the pupil to determine whether the pupil is eligible for special education and related services pursuant to this section. Such an evaluation must:

(a) Assess the:

(1) Health and medical status;

(2) Developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;

(3) Cognitive abilities;

(4) Social and emotional condition in multiple settings;

(5) Academic achievement;

(6) Adaptive skills; and

(7) Speech, language and other communication skills,
--of the pupil; and

(b) Consider the:

(1) Sensory regulation;

(2) Self-help and independent living skills;

(3) Behavior problems;

(4) Symbolic and imaginative play;

(5) Activities and special interests; and

(6) Motor skills,
- of the pupil.

NAC 388.387.

While a school district must reevaluate a student if the district determines that the student's performance warrants a reevaluation or upon the request of the student's parent or teacher, a district

need not reevaluate a student in every area in which a parent requests reevaluation. Rather, the district must review "existing evaluation data" on the student and, on the basis of that review and input from the parents, "identify what additional data, if any," are needed to ensure the child receives a FAPE. *L.C. on behalf of A.S., v. Issaquah School District*, 74 IDELR 132, 119 LRP 18751 (U.S. Dist. Ct., Western Dist. of Washington, May 8, 2019).

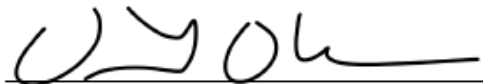
The evidence shows that the MDE was appropriate and comprehensive and done in accordance with the IDEA and the NAC. The MDT members reviewed existing evaluation data on the child, including evaluations and information provided by the Parent of the Student, standardized and classroom-based assessments tools and observations, and observations by teachers and related services providers. The MDT appropriately determined the scope of the MDE and any additional data needed in making its finding that the Student remained eligible for special education services under the category of ASD and that the Student continued to need special education and related services. In addition, the MDT used a variety of comprehensive assessment tools and strategies to gather relevant information, including information from the Parent. Finally, the MDE was conducted in accordance with NAC 388.387 governing eligibility for a pupil with ASD.

Based upon the foregoing, the IHO finds that the District was not required to fund and IEE for the Student.

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision by filing with the Nevada Department of Education, Superintendent of Public Instruction, a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within thirty (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 ten (10) days after receiving notice of the initial appeal. At the parties' request, this decision is being delivered to the parties by electronic mail and U.S. Postal Service. Receipt of this Decision and Order will be determined by the date of actual delivery.

A handwritten signature in black ink, appearing to read 'V. Oldenburg', is written over a horizontal line.

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