

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

In the Matter of

SCHOOL DISTRICT

Petitioner,

v.

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

Respondent

**FINDINGS OF FACT, DECISION  
AND ORDER**

Hearing Officer: Audrey Beeson

**I.**

**INTRODUCTION AND PROCEDURAL HISTORY**

The following synopsis of the prehearing proceedings that took place in this matter is in chronological order. On May 2, 2025, the School District (hereinafter “District” or “Petitioner”) filed *Request for Due Process Hearing* (hereinafter “Complaint”). (HO-1) This Impartial Hearing Officer (hereinafter “IHO”) was appointed on or about May 5, 2025. (HO-2) A *Notice of Status Conference, Status Conference Agenda, Preliminary Order, Hearing Process Guidelines, & Rights of Parties* was issued on May 6, 2025. (HO-3) The *Status Conference Report and Order & Notice of Prehearing Conference* was issued on May 9, 2025. (HO-4) Respondent’s *Response to Due Process Complaint* (hereinafter “Response”) was submitted on May 12, 2025. (HO-5) A Prehearing Conference was held on May 15, 2025. A *Prehearing Conference Report and Order* was issued on May 19, 2025. (HO-6) An *Order Granting Extension to Respondent* for the 5-Business Day Disclosures was issued on May 23, 2025. (HO-7) An *Order Continuing Decision Date* was issued on June 1, 2025. (HO-10)

A hearing was held virtually on June 2, 2025. It was a closed hearing. A Court Reporter was present keeping a record of the evidentiary hearing. Petitioner was represented by their attorney, [ ] Respondent was not represented by an attorney.

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

After the opening statement by the Hearing Officer, both parties confirmed that this Hearing Officer was not missing any prehearing correspondence that should be admitted as a hearing officer exhibit.

Each party made an opening statement.

The following witness testified for Petitioner: Director III, Psychological Services.

The following witness testified for Respondent: Respondent.

The following exhibits were admitted into evidence by stipulation of the parties: Hearing Officer Exhibits HO-1 through HO-11; Petitioner's Exhibits P-1 through P-10; Respondent's Exhibit R-4. The following exhibits were admitted into evidence during the hearing: R-5 and R-6 without objection.

The record was closed on June 2, 2025. A decision is due on June 27, 2025.

## **II.**

### **JURISDICTION**

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

## **III.**

### **ISSUES**

The issue to be determined and each of the parties' basic positions concerning each are as follows:

#### **ISSUE:**

Whether District's 2/11/2025 Multidisciplinary Team (MDT) Evaluation that indicated Student is eligible for special education services as a student with Other Health Impairment – Fetal Alcohol Spectrum Disorder (OHI-FASD) and the 4/7/2025 MDT Evaluation that indicated Student is eligible as a student with OHI-FASD but not Autism Spectrum Disorder (ASD) were appropriate to identify Student's eligibility for special education services, and if not, whether Parent is entitled to an Independent Educational Evaluation (IEE) in ASD at public expense?

**Respondent's Position/Argument:** Student has a primary diagnosis of ASD from Center for Autism and requires placement in the full day autism program for pre-K. The evaluators did not accurately assess Student, excluding the ASD diagnosis because of not exhibiting atypical behaviors of tippy toe walking and hand flapping; although Student does exhibit other autism related behaviors such as stimming, clicking, head-banging, lengthy and loud screaming when not getting what Student wants. The eligibility determination of Health Impairment (HI) was largely based on conditions due to pre-term birth that were resolved by 12-18 months old. Student does not meet the HI criteria pursuant to NAC 388.402.

**Relief Requested by Petitioner:** District requests a finding that the evaluations were appropriate to identify Student's eligibility for special education services and therefore Parent is not entitled to an IEE in ASD at public expense.

**Relief Requested by Parent:** Parent requests an IEE in ASD at public expense.

#### IV.

#### FINDINGS OF FACT

After considering all the evidence, as well as arguments of both parties, this Hearing Officer's Findings of Fact are as follows:

##### *Background*

1. An Ackerman Center Evaluation was completed on August 26, 2024, for Student. The reason for the referral was for autism testing and speech therapy. The parent concerns listed in the evaluation included: (1) not speaking any words; (2) does not follow commands or answer to name; (3) fixates on things; and (4) will not eat much regularly, prefers milk in a bottle still, refuses to use sippy cup. The diagnoses included: Autistic disorder; fetal alcohol syndrome; intrauterine drug exposure; mixed receptive-expressive language disorder; sensory processing disorder, global developmental delay; and congenital talipes equinovaris. The Ackerman Center Evaluation consisted of medical history, developmental history, family history, family information, parent/guardian information, current health symptoms, behavior inventory, support services, and developmental-behavioral consultation clinic session notes. (R-4, R-5)
2. In the Ackerman Center Evaluation, under the American Psychiatric Association's Diagnostic and Statistical Manual, Fifth Edition (hereinafter "DSM-5") ASD diagnosis,

the following deficits were “observed clinically” under social communication and interaction: (1) deficits in social-emotional reciprocity, ranging for example, from abnormal social approach and failure of normal back-and-forth conversation, to reduced sharing of interests, emotions, or affect, to failure to initiate or respond to social interactions; (2) deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication to abnormalities in eye contact and body language or deficits in understanding and use of gestures, to a total lack of facial expressions and nonverbal communication; and (3) deficits in developing, maintaining, and understand relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts, to difficulties in sharing imaginative play or making friends, to absence of interest in peers. The following restricted, repetitive behaviors were “observed clinically:” (1) stereotyped or repetitive motor movements, use of objects, or speech; with the remaining behaviors included as “historical:” (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior; (3) highly restricted, fixated interests that are abnormal in intensity or focus; and (4) hyper- or hypo reactivity to sensory input or unusual interest in sensory aspects of the environment. (R-4)

3. On January 28, 2025, Parent signed a Consent for Evaluation of Student based on concerns related to health/motor, speech/language, social/behavior, cognitive, and adaptive skills. Student was referred for an initial evaluation by Nevada Early Intervention Services. Concerns and deficits included: communication/language, adaptive skills, and behavior. Parent provided the Ackerman Center Evaluation of Student’s outside diagnoses of Fetal Alcohol Spectrum Disorder with dysmorphic facial features (hereinafter “FASD”) and Autism to the Multidisciplinary Evaluation Team (hereinafter “MDT”). (P-1, P-4, P-5, R-4)

#### ***February MDT***

4. On February 11, 2025 an MDT Report was completed. Based on the referral information, along with observations, the MDT suspected eligibility for Health Impairment (hereinafter “HI”) under the Nevada Administrative Code (hereinafter “NAC”) criteria. No other eligibility categories were considered at that time. The MDT does not state, and no

testimony was offered, as to why the eligibility category of ASD was not considered. (P-5)

5. The February MDT was comprised of: Parent, school psychologist, special education teacher, speech language pathologist, school nurse, and general education teacher. Based on review of existing information, along with input from all MDT members, the following assessments were needed to complete the evaluation: Health/Developmental, Differential Ability Scales – Second Edition, Adaptive Behavior Assessment System – Third Edition Parent Rating, Developmental Indicators for the Assessment of Learning 4 (DIAL-4), Developmental Profile – Fourth Edition (DP-4), Behavior Assessment System for Children – Third Edition (BASC-3), Receptive-Expressive Emergent Language Test, Third Edition (REEL-3) and Speech/Language. (P-5)
6. The MDT Health and Developmental History was conducted by the school nurse. A health assessment was completed for Student and information for the assessment was obtained from the Health/Developmental/Behavioral History (HS-16), evaluation, observation, medical records from the Ackerman Center, and parent/guardian report. Student was unable to successfully complete all aspects of the health assessment independently. Prenatal history was significant for a lack of prenatal care and maternal use of alcohol, methamphetamine, heroin, methadone, marijuana, and unknown prescription medications. Student was born prematurely at 29 weeks' gestation, weighing 2 lbs 4 oz and complications led to Student spending 75 days in the NICU. (P-5)
7. The MDT Early Childhood Development included the following information: Student's walking and speech developmental milestones were delayed. Student received or was referred to occupational therapy, speech therapy and physical therapy. Student sees a neurologist, ophthalmologist and orthopedic specialist in addition to the pediatrician. Current health conditions include FASD, intrauterine drug exposure, Autism Spectrum Disorder (ASD), sensory processing disorder, global developmental delay, mixed receptive-expressive language disorder (identified in the Ackerman Center evaluation), asthma, macrocephaly, headaches, and potential genetic disorders. Student's current health status adversely impedes access to the general education curriculum. Health or sensory factors appear to have a significant impact on Student's educational performance. (P-5, R-4)

8. For the MDT, the following observations were conducted: social-emotional, concepts, motor and play-based. Student is not yet toilet trained, does not use utensils, does not have much social interaction with other children outside of the family, and does not share toys nicely with other children. During the assessment, Student tried to run away, climb on the chairs/tables, and screamed. Student was observed to be nonverbal with very limited attention and refused tasks. No self-stimulatory behaviors were noted. Student had excessive wiggling, was unwilling to try activities, didn't have eye contact, would fall to the floor, had vocalizations, and would elope, bite and put items in their mouth. Student refused to participate in group activity, did not respond to their name, played alone during the activity, was unable to transition between activities, had no awareness of others, fixated on items of choice and became very upset when those items were removed and repeatedly placed items in their mouth. (P-5)
9. Student's physical skills were in the very deficient range, with motor skills in the potential delay range. Cognitive skills were in the very deficient range, with concepts in the potential delay range. Adaptive behavior was in the very deficient range, with self-skills in the potential delay range. Social-Emotional skills were in the very deficient range. Communication skills were in the very deficient range. (P-5)
10. The BASC-3 Parent Rating noted the following: externalizing problems were within the at-risk range, with average levels of behavior regarding aggression and at-risk levels of behavior concerning hyperactivity. Internalizing problems were in the average range (regarding anxiety, depression and somatization.) Behavioral symptoms fell in the at-risk range. (Student often babbles to themselves, has trouble concentrating, is easily distracted, has a short attention span, argues when denied their own way, disrupts the play of other children, interrupts parents when they are talking on the phone, acts without thinking, cannot wait to take a turn, needs too much supervision, and is unable to slow down.) Adaptive skills fell in the clinically significant range. (P-5)
11. The Adaptive Behavior Assessment System, Third Edition (ABAS-3) Parent Form noted the following: conceptual, social and practical domains were all in the very deficient range. (P-5)
12. Conceptual Domain is comprised of communication, functional academics, and self-direction. Student cannot say the names of other people, use one or more words to get

something they want, shake their head yes or no, point to common items in a room when asked or repeat words others say. Student never points to at least one body part when asked, is not able to point to pictures in books, count three or more objects, sing the alphabet song, or name six or more colors. Student never plays with toys without putting them in their mouth, keeps working on hard tasks without becoming discouraged/quitting, or works independently asking for help only when necessary. Student cannot follow simple household rules, start an activity at once when told to do so, ask permission from an adult when needed, or stop a fun activity at once when told that time is up without complaining. (P-5)

13. Social Domain is comprised of leisure and social scales. Student never looks with an adult at pictures in books or magazines, watches for a few minutes as people play with toys or games, or plays with toys/games or fun items with others. Student never responds differently to familiar and unfamiliar persons, cannot share toys, seeks friendships with others in their age group, greets children, displays good table manners, or says when they are feeling happy/sad/scared. (P-5)
14. Practical Domain is comprised of the community use, home living, health and safety, and self-care scales. Student never stays with parents/family members in a store without wandering off or obeys an adult's request to "don't touch" items in a store. Student cannot inform parents when someone comes to the door, show respect for public property, ask to go to the park or other favorite community places, or remain seated during a religious service or a movie. Student cannot take articles of clothing out of drawers when asked, pick up and throw away paper or trash at home, turn television on and off, get own snacks from cabinet or pantry, or wipe up spills at home. Student never stays still in high chair/seat without climbing or sliding off, follows another person's directions to stop when near danger, points to the body part that hurts when sick or injured, avoids getting too near potential danger, avoids touching dangerous items, or tests hot food items before eating them. Student cannot feed themselves with utensils, wash hands with both soap and water, remain dry without wetting throughout the day, wipe their own face when given a washcloth, get dressed by themselves, or button own clothing. (P-5)
15. Student's DIAL-4 and REEL-3 results were in the below average range. Student did not attempt several of the tests under the DIAL-4. Student could not rhyme words or problem

solve or use receptive or expressive communication skills when given a prompt. The REEL-3 results showed that Student cannot use greetings, name family members, respond to or ask “WH” questions independently, label items, or tell what has happened using words. (P-5)

16. The MDT’s final analysis determined that Student is nonverbal and uses vocalizations to communicate; will attempt to communicate needs by using receptive communication such as guiding someone to the desired place or object; can respond to a nickname and communicate with intention, but has difficulty following verbal directions with prompting; has difficulty using proper greetings and naming family members; and has difficulty being able to communicate basic needs and wants due to language delay. These deficits impact Student’s ability to communicate effectively in the classroom. Recommendations include therapy services in the area of receptive and expressive communication. (P-5)
17. Formal cognitive, motor, health, and speech/language assessments were unable to be completed due to limited attention. Social-Emotional and self-help scores fell below age-level expectations. Student continues to require assistance with dressing, toileting, and feeding (using utensils). Student had difficulty maintaining attention/focus and was impulsive, active, and would run/climb consistently. No repetitive behaviors or fixated interests were observed by the MDT. Parent indicated that Student is sociable and the largest area of concern is hyperactivity and lack of awareness for danger. The MDT determined that while Student does demonstrate behaviors similar to children diagnosed with ASD, during their assessment, Student demonstrated behaviors more consistent with FASD. As a result, the MDT determined that the criteria for HI better fit Student’s overall profile. (P-5)

***First Request for an IEE***

18. On February 12, 2025, the Parent requested an IEE evaluation to look at ASD. After a discussion with the Child Find Coordinator, the Parent withdrew the request for an IEE pending the District’s reevaluation and broadened scope of evaluation to include Other Health Impairment (hereinafter “OHI”) and ASD. The Child Find Coordinator told Parent it was better to get another MDT assessment and withdraw the request for an IEE. Parent was informed that a second MDT assessment would be quicker than having an IEE completed. Parent felt misled and coerced into consenting to the second MDT. Parent did



not realize that the second MDT would be conducted by the same team of individuals that conducted the first MDT. Parent believed that the psychologist on the MDT was biased due to statements that gave Parent the impression that the psychologist believed they were an expert on Autism as a result of having a family member with the disorder. Parent believed that the psychologist bullied the other members of the MDT to agree with the psychologist's opinion. (HO-1, P-8; Parent's testimony)

19. On February 26, 2025, the Child Find Coordinator emailed the Special Education Instructional Facilitator (hereinafter "SEIF") to reevaluate Student to rule in/rule out both HI and Autism. (P-1)
20. On March 11, 2025, Parent signed a Consent for Evaluation due to Parent's concerns related to ASD and/or HI being a suspected disability and for any new assessments that would possibly be conducted for health, social/emotional condition, cognitive, communication, sensory factors, adaptive skills, and other areas as needed. (HO-1, P1, P-6)
21. The referral for the reevaluation listed concerns/deficits including communication/language adaptive skills and behavior. Parent requested the scope of the evaluation be expanded to include ASD due to the clinical diagnosis. Based on the referral information, along with observation, the MDT suspected eligibility for HI and/or ASD under NAC criteria. No other eligibility categories were considered. Additional assessments of Autism Spectrum Rating Scales (hereinafter "ASRS") and Speech/Language were needed to complete the evaluation. (P-7)

***April MDT***

22. The April 7, 2025 MDT contained the information from the February 11, 2025 MDT Report with the following additional information: Student also sees a pulmonologist 1-2 times per year; testing results post February MDT evaluation indicate that Student does not have Fragile X (genetic disorder); signs of ASD appear to have been present prior to age 3; Parent has observed Student banging their head on the floor and wall, scratch themselves and make repetitive clicking sounds. Additional concepts and play-based observations were conducted. Behaviors of note included: very active, limited attention, put items in mouth, limited eye contact, humming/vocalizations, and limited understanding of directions. The following atypical behaviors were not observed by the MDT:

scratching/pulling on oneself, finger posturing, rocking, spinning, hand flapping, fixation, repetitive movements, banging objects, aggressive/self/harm, or toe walking. Behaviors observed by the MDT were consistent with FASD – short attention, easily distracted, low frustration tolerance, social challenges, and trouble with multi-step directions. (P-7; Director III’s testimony)

23. Parent completed the ASRS with scores in the very elevated range indicating that Student has many behavioral characteristics similar to children diagnosed with ASD. The DSM-5 Scale score fell within the very elevated range, indicating that Student demonstrated symptoms directly related to the DSM-5 diagnostic criteria for Autism. Ratings on the Social/Communication scale fell within the very elevated range, indicating that Student has difficulty using verbal and non-verbal communication appropriately to initiate, engage in and maintain social contact. Ratings on the Unusual Behaviors scale fell within the slightly elevated range, indicating that Student may have trouble tolerating changes in routine, and may also engage in apparently purposeless, stereotypical behaviors and overreact to certain sensory experiences. Student’s emotional functioning did not appear to be the primary impact on educational performance and behavioral difficulties appear to be directly related to FASD. (P-7)
24. Student was assessed under the six areas of consideration under the NAC for students who are suspected as having an ASD disability: sensory regulation, self-help/independent living skills, behavior problems, symbolic/imaginative play, activities/special interests, and motor skills. Student is not overly sensitive to sounds, textures, or smells, but does put items in the mouth and hums. Student’s self-help skills fall in the below average range. Student bangs their head and throws themselves back onto the floor without any concern for the height. Student does not typically demonstrate imaginative play when given toys or play elaborate make-believe games. Student enjoys playing outside, running, climbing and watching Sesame Street. Student’s motor skills fall below average range, as Student is uncoordinated and cannot yet throw/kick a ball in a desired direction. Student has fine motor skill difficulties with fastening/manipulating small objects, writing, and using utensils. (P-7; Director III’s testimony)
25. The summary portion of the MDT report acknowledged that while Student exhibits some characteristics that align with Autism – such as occasional limited social awareness, hand

flapping, banging head, and banging objects, as reported by the parent – the overall profile did not fully align with the eligibility criteria for Autism as defined under the NAC. Throughout the evaluation Student demonstrated difficulty maintaining focus, was impulsive, climbed/ran when expected to be seated and had generally high activity levels, which align with the characteristics commonly observed in students with executive functioning challenges and directly associated with FASD. Given the presence of a medical diagnosis of FASD, and the educational impact of the condition, the MDT determined that Student meets the criteria under Other Health Impairment (hereinafter “OHI”) but was not eligible for ASD under Nevada Administrative Code. The MDT referenced that some of the elements were consistent with the ASD eligibility but they didn’t see other elements that are generally aligned with Autism even though other elements were reported by Parent. The psychologist clarified several times that just because the MDT didn’t observe the other elements, that didn’t mean that Student wasn’t showing those signs, is not Autistic, or does not qualify. (P-7; Director III’s testimony; Parent’s testimony)

26. Parent disagreed with the eligibility finding of OHI and agreed only with Autism for eligibility, particularly because the autism assessment was conducted in a 30-minute evaluation. Except for the nurse, who voted for both eligibility categories, the remainder of the MDT members voted yes for OHI and no for Autism. Parent informed the MDT that they would be requesting an IEE. (P-1; Parent’s testimony)

### ***Second Request for an IEE***

27. On April 9, 2025 Parent requested a District-funded IEE. On April 10, 2025, Student’s confidential folder was delivered to the Psychological Services Department. Director III, Psychological Services is the District representative that addressed the IEE request.<sup>2</sup> (P-1; Director III’s testimony)
28. On April 16, 2025 Director III reviewed the records and denied the request for an IEE. The denial letter states that the medical disorder (FASD) contributing to the HI classification

<sup>2</sup> Generally, after receipt of a request for an IEE, Director III collects student records including the confidential folder, online records such as enrollment and attendance, and completes a review of the evaluation that the parent has a disagreement with. Director III reviews the information to determine whether the suspicion of disabilities are identified under the scope of the evaluation and whether or not it’s comprehensive in relation to the NAC where all of the required domains for that eligibility classification are considered and documented in the evaluation. (Director III’s testimony)

was well-documented, that the clinical diagnosis of Autism was also recognized (Student had some symptomology in relation to Autism); but both disorders can share a number of characteristic and behaviors, especially for very young children, and with broad potential implications for general development, language development, behavior, social skills, etc.; in reviewing both evaluation reports and the outside medical information, HI appeared to be a best and adequate descriptor for Student's current learning profile. Director III acknowledged that there's a significant overlap between the symptomology of FASD and ASD with broad implications across domains and that the issue of eligibility classification can always be revisited. Director III did not eliminate the possibility of ASD as an eligibility category, stating, "it could be fetal alcohol, it could be autism, it could be both; but at this time it seemed to align best with fetal alcohol." The testimony of Director III was almost entirely focused on the April MDT with little testimony related to the February MDT. (P-1, P-8, Director III's testimony)

29. It is not uncommon for the same team to complete a second evaluation when a parent disagrees with an initial evaluation. In this case, District believed it made sense to have the same team conduct the reevaluation because they had already collected some of the information and could look at all the information from a broader scope. (Director III's testimony)
30. Thirty (30) minutes is a limited amount of time to complete an autism assessment and there are weaknesses associated with evaluating early childhood students. Part of the reason for the denial of the IEE was due to the belief that District will probably learn more from the interactions that will occur once Student attends an educational setting. ASD was not dismissed as a possibility, and neither was a combination of both HI and ASD. Because a lot of information cannot be obtained from a direct assessment of Student at this time, Director III believes that HI aligns best based on the overlap of Student's deficit areas until better results from an assessment can be achieved. (Director III's testimony)

## V.

### CONCLUSIONS OF LAW AND DISCUSSION

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

*Whether District's 2/11/2025 Multidisciplinary Team (MDT) Evaluation that indicated Student is eligible for special education services as a student with OHI-FASD and the 4/7/2025 MDT Evaluation that indicated Student is eligible as a student with OHI-FASD but not Autism Spectrum Disorder (ASD) were appropriate to identify Student's eligibility for special education services, and if not, whether Parent is entitled to an Independent Educational Evaluation in ASD at public expense?*

### LEGAL AUTHORITY

#### i. Evaluation Procedures

Any person responsible for administering or interpreting an assessment pursuant to NAC 388.330 to 388.440, inclusive, must: (1) possess a license or certificate in the area of the person's professional discipline; and (2) be trained in the area of the assessment in question.<sup>3</sup> Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, must comply with the evaluation procedures set forth in 34 C.F.R. §§ 300.304 to 300.311, inclusive, and NAC 388.340 and 388.420.<sup>4</sup>

As part of an initial evaluation, if data is available, a group that includes the committee that will develop the pupil's individualized educational program pursuant to NAC 388.281, the members of the eligibility team and any other qualified professionals appointed shall, in accordance with 34 C.F.R. § 300.305: (1) conduct a review of data from existing evaluations, including, without limitation: (a) evaluations and information provided by the parents of the pupil; (b) current local or state assessments and classroom-based assessments and observations; and (c) observations by teachers and related service providers.<sup>5</sup>

<sup>3</sup> NAC 388.330

<sup>4</sup> NAC 388.335

<sup>5</sup> NAC 388.336(1)

In conducting an evaluation the public agency shall comply with the provisions of 34 C.F.R. §§ 300.304, 300.305 and 300.306 and shall use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information concerning the pupil, including, without limitation, information provided by the parent that may assist in determining: (a) Whether the pupil is a pupil with a disability; and (b) The educational needs of the pupil and the content of the pupil's individualized educational program, including, without limitation, information related to enabling the pupil to be involved in and progress in the general education curriculum or, for preschool children, to participate in appropriate activities.<sup>6</sup> No single measure or assessment may be used as the sole or controlling criterion for determining whether a pupil is a pupil with a disability.<sup>7</sup>

When interpreting evaluation data to determine the eligibility of a pupil for special education and related services and to determine the educational needs of the pupil, the public agency shall: (a) Draw upon information from a variety of sources, including, without limitation, aptitude and achievement tests, input from the parent of the pupil, recommendations from the teacher of the pupil and any other information about the physical condition, social or cultural background of the pupil and the adaptive behavior of the pupil; and (b) Ensure that the information obtained from sources pursuant to paragraph (a) is properly documented and carefully considered.<sup>8</sup> The IDEA requires the local educational agency to ensure that "the child is assessed in all areas of suspected disability"<sup>9</sup>. In addition, the Code of Federal Regulations states an evaluation must be "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."<sup>10</sup>

## **ii. Right to an Independent Educational Evaluation**

The parents of a child with a disability have the right to obtain an independent educational evaluation of the child at public expense if the parent disagrees with an evaluation obtained by the public agency.<sup>11</sup> The public agency shall, without unnecessary delay, either file a due process complaint pursuant to [NAC 388.306](#) if it believes that its evaluation of the pupil is appropriate, or

<sup>6</sup> 20 U.S.C. § 1414(1); 34 C.F.R. § 300.304; NAC 388.340

<sup>7</sup> NAC 388.340(2)

<sup>8</sup> NAC 388.340(5)

<sup>9</sup> 20 U.S.C. § 1414 (b)(3)(B)

<sup>10</sup> 34 C.F.R. §300.304(c)(6).

<sup>11</sup> 20 U.S.C. § 1415(b)(1); 34 C.F.R. §300.502; NAC 388.450(1)

ensure that an independent educational evaluation is provided at public expense.<sup>12</sup> If a parent disagrees with an evaluation because a specific area of the child’s needs was not assessed the parent has a right to an IEE at public expense to fill the gap in the district’s evaluation.<sup>13</sup>

IEE means an evaluation conducted by a qualified examiner who is “not employed by the public agency responsible for the education of the child in question.”<sup>14</sup> If a parent requests an independent educational evaluation, the public agency may inquire into the reason of the parent for objecting to the public evaluation. The public agency shall not require the parent to provide an explanation and shall not unreasonably delay the independent educational evaluation or delay in filing a due process complaint to request a hearing to defend the public evaluation.<sup>15</sup>

If a parent shares with the public agency an evaluation obtained at private expense, the results of the evaluation “must be considered by the public agency” if it meets agency criteria, and any decision made with respect to the provision of a FAPE to the child.<sup>16</sup>

The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE. Therefore, it would be inconsistent with the provisions of 34 C.F.R. § 300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate.<sup>17</sup>

## ANALYSIS

### i. **Statutory Construction**

When the language of a statute is unambiguous, the Nevada Supreme Court gives that language its ordinary meaning unless it is clear that the meaning was not intended.<sup>18</sup> NAC 388.450 states a public agency shall, without unnecessary delay, either file a due process complaint or ensure that an independent educational evaluation is provided at public expense. It does not state that the agency can persuade or coerce a parent to have another evaluation done by the public

<sup>12</sup> NAC 388.450(1)

<sup>13</sup> *Letter to Buas*, 65 IDELR 81 (OSEP 2015)

<sup>14</sup> 34 C.F.R. § 300.502(3)(1)

<sup>15</sup> NAC 388.450(5)

<sup>16</sup> 34 C.F.R. § 300.502 (c)(1)

<sup>17</sup> *Letter to Carroll*, 68 IDELR 279 (OSEP October 22, 2016)

<sup>18</sup> *State, Dept. of Taxation v. Daimlerchrysler*, 119 P.3d 135 (Nev. 2005).

agency. Furthermore, 34 C.F.R. § 300.502 defines an IEE as an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

Here, the District did not file a due process complaint after Parent's February 2025 request for an IEE, nor did it fund an IEE at public expense; instead, the District coerced Parent into withdrawing the request for an IEE, without explaining that the proposed reevaluation would be completed by the same individuals that completed the initial MDT evaluation. (FOF 18) Because the Parent felt coerced and misled, the consent to withdraw the initial request for an IEE was not voluntary. (FOF 18)

Although courts are not bound by agency interpretations of statutes and regulations, they generally give them deferential consideration. Therefore, the guidance provided by the Office of Special Education Programs (OSEP) in *Letter to Buas*, also supports the analysis provided herein above. It would be inconsistent with 34 C.F.R. § 300.502 to allow District to get a second bite at the apple by conducting an additional assessment in Autism when it was not part of the initial February 7, 2025 evaluation. (FOF 4) The District was on notice of the outside diagnosis of Autism provided by the Ackerman Center Evaluation. (FOF 1; 2; 3; 6) District failed to provide any evidence of why Autism was not considered in the initial MDT evaluation. (FOF 4)

***Therefore, Parent's withdrawal of the request for an IEE was not voluntary and District failed to comply with the requirements pursuant to 34 CFR § 300.502 and NAC 388.450 when it failed without unnecessary delay to either file a due process complaint after the February 12, 2025 request for an IEE or to ensure that an IEE was provided at public expense.***

ii. **Appropriateness of February MDT**

Due to the involuntary withdrawal of Parent's request for an IEE, and District's failure to comply with the requirements of 34 C.F.R. § 300.502, and NAC 388.450, this Hearing Officer need not analyze and determine whether the February 11, 2025 MDT was appropriate. (FOF 18)

However, even if this Hearing Officer considered the Complaint filed by District on May 2, 2025 timely and filed without unnecessary delay, the fact that (1) the February 11, 2025 did not include any justification for the failure to consider Autism along with (2) the additional required assessments of ASRS and Speech/Language were necessary to complete the April evaluation



show that the February 11, 2025 was not appropriate because it did not assess Student in all areas of suspected disability although it referenced the Ackerman diagnosis of ASD. (FOF 1; 2; 3; 4; 6; 19; 20; 21; 22; 23; 24) The February MDT failed to comply with NAC 388.340 (5)(b) because while the information obtained from the Ackerman Center Evaluation was documented, there is no sufficient evidence that it was carefully considered. (FOF 4; 6; 7; 17)

iii. **Appropriateness of April MDT**

For the reasons that: (1) Parent's withdrawal of the initial IEE request was not voluntary, and (2) that the District cannot require a reevaluation when it fails to consider all areas of suspected disability in an initial evaluation before acting on a Parent's request for an IEE, this Hearing Officer need not analyze or determine whether the April 7, 2025 MDT was appropriate. (FOF 18; 19)

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, **it is hereby ordered:** that District fund an IEE in ASD for Student within thirty (30) days of the issuance of this Decision. The IEE shall meet the requirements regarding the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, that must be the same as the criteria that the public agency uses when it initiates an evaluation.<sup>19</sup> District shall provide Parent another copy of the information where the IEE may be obtained, and the agency criteria applicable for IEE.<sup>20</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 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

<sup>19</sup> 34 C.F.R. § 300.502 (a)(2), (e); NAC 388.450(8)

<sup>20</sup> *Attachments to IEE Denial letter include IEE Evaluation and Evaluator Criteria; referenced but not included in P-8.*

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 electronically by e-mail. Receipt of this Decision and Order will be determined by the date of actual delivery of the email noted by the 'delivery receipt' this Hearing Officer receives and provides to the parties after issuance of the decision.

Dated: June 26, 2025

/s/ Audrey J. Beeson  
Hearing Officer

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