

**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,	)	DECISION OF THE HEARING OFFICER
	)	
Petitioner,	)	Date: 7/18/2025
	)	
v.	)	
	)	Hearing Officer: David A. Stephens
SCHOOL DISTRICT,	)	
	)	
Respondent.	)	

**INTRODUCTION**

This matter comes before the undersigned hearing officer on Petitioner’s Notice of Due Process Complaint filed on November 25, 2024, (hereinafter “Complaint”), HO 1.<sup>2</sup> I was appointed as the hearing officer on November 27, 2024. HO 2. Respondent’s Response to the Complaint was filed on or about December 2, 2024. HO 3. Petitioners filed an amended Due Process Complaint on

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

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

December 5, 2024. HO 4. Respondent's Response to the Amended Complaint was filed on or about December 10, 2024. HO 5. Petitioners filed a second amended Due Process Complaint on December 24, 2024. HO 6. Respondent's Response to the Second Amended Complaint was filed on or about January 2, 2025. HO 7. A resolution meeting was held. The parties, however, were not able to reach an agreement.

### **PRELIMINARY MATTERS**

This case arises out of a due process complaint filed by the Student on November 25, 2024. HO 1. The Hearing Officer was appointed on November 27, 2024. HO 2. Petitioners filed an amended Due Process Complaint on December 5, 2024. HO 3. Respondent's Response to the Amended Complaint was filed on or about December 10, 2024. HO 4. Petitioners filed a second amended Due Process Complaint on December 24, 2024. HO 5. Respondent's Response to the Second Amended Complaint was filed on or about January 2, 2025. HO 6.

At the Status Conference, on December 30, 2024, the parties indicated that the hearing would take three days. Under 34 CFR 300.510, on January 9, 2025, the Hearing Officer issued an Order Setting Deadlines based on the filing of the Second Amended Complaint. HO 7. On February 19, 2025, the parties agreed to mediate this matter. On March 12, 2025, based on a request of the Petitioner, the Hearing

Officer issued an Order Setting Deadlines based on the mediation. HO 8. On April 29, 11, 2025, the Petitioner moved to extend the decision deadline. HO 9. The Respondent did not oppose that motion. Based on the Petitioner's motion and a finding of good cause, on May 1, 2025, the Hearing Officer issued an Order extending the decision deadline to May 30, 2025. HO 10.

A Pre-hearing Conference in the matter was scheduled, and held, on April 11, 2025. At the April 11, 2025, Pre-hearing Conference the issues were outlined and decided by the parties in addition to other matters set forth in the Pre-hearing Report and Order. The Pre-hearing Conference Report and Order was issued and served by the Hearing Officer on April 24, 2025. HO 11.

The parties provided prehearing briefs. Petitioners' prehearing brief is admitted as HO 12. Respondent's prehearing brief is admitted as HO 13. The written decision of the Hearing Officer regarding the Respondent's Motion to Strike Witnesses is admitted as HO 14. Based on the Petitioner's motion and a finding of good cause, on May 23, 2025, the Hearing Officer issued an Order extending the decision deadline to May 30, 2025. HO 15. Based on the Petitioner's motion and a finding of good cause, on June 2, 2025, the Hearing Officer issued an Order extending the decision deadline to July 18, 2025. HO 16.

The hearing was held on May 20, 21, 22, and continued to May, 29, 2025, and July 10, 2025. The Hearing was held by video conference. It was a closed hearing. Both Parties were represented by attorneys.

The following individuals testified during the hearing; Principal of Comprehensive High School, (“Principal”), Special Education Facilitator at Comprehensive High School, (“Facilitator”), Student Success Coordinator at Specialty School, (“Coordinator”), General Education Teacher at Comprehensive High School, (“Teacher”), School Psychologist, (“Psychologist”), Special Education Teacher at Comprehensive High School, (“Special Education Teacher”), Special Education Director, (“Director”), Student’s Father, (“Father”), Student’s Mother, (“Mother”), and Special Education Teacher at Residential Treatment Center 3, (“Special Education Teacher 2”).<sup>3</sup>

Hearing Officer exhibits HO-1 through HO-16 were admitted into evidence. Petitioners offered into evidence exhibits P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16, P-17, P-18, P-19, P-20, P-21, P-26, P-29, P-33, P-34, P-35, P-40, P-45, P-49, P-58, and P-59 which were admitted. Respondent’s Exhibits R-1 through R-10, R-11, R-12, R-13, R-14, R-15, R-16, R-

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

17, R-18, R-21, R-23, R-24, R-25, R-26, R-27, R-28, R-29, R-30, and R-31 were offered and admitted into evidence.<sup>4</sup>

The decision is due on July 18, 2025, and has been issued within the required timeline pursuant to 34 C.F.R. §§ 300.515(a)(1) and (2) and within a properly extended timeline pursuant to 34 C.F.R. § 300.515(c)(1).

## **JURISDICTION**

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

The basis for jurisdiction of this matter is 20 USC §1415, 34 CFR §§ 300.508, 509, 510, and 511, NRS 385.080 and 388.520, and NAC 388.310.

## **ISSUES**

The issues to be determined are as follows:

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

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

A. Whether from November 25, 2022, School District failed to evaluate the Student all areas of suspected disability, and if so was the Student denied FAPE?

B. Whether the May 1, 2024, IEP and the revision IEP dated November 5, 2024 were reasonably calculated to enable the Student to make progress appropriate to the Student's circumstances and to meet the Student's unique needs with respect to behavior and learning under the IDEA, and if not, was the Student denied FAPE?

Assuming a denial of FAPE is found, among the remedies being sought by Petitioner is placement of the Student in a public or private residential placement.

## **FINDINGS OF FACT**

### **1. Glossary of terms:**

a. IDEA means the Individuals With Disabilities Education Act, codified as 20 USC<sup>6</sup> §§1400, et seq.;

b. IEP means an Individualized Education Program under the IDEA, see 34 CFR<sup>7</sup> 300.22;

c. IEP Team means the team of persons who meet to formulate or amend an IEP and is composed of at least the following persons; a representative of

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

<sup>7</sup> CFR refers to the Code of Federal Regulations

the local education agency, (“LEA”), in this case the School District, parents or guardians of the student, the student’s special education teacher, and the student’s general education teacher, if the student is, or may be, participating in the regular education environment. See, 34 CFR 300.28 and 300.321;

d. MDT means multidisciplinary team, which is a term used by the School District to refer to the group of professionals which reviews assessments and assesses students for disabilities and eligibility for special education under 34 CFR 300.111, 300.304, 300.306, and NAC<sup>8</sup> 388.336 and 388.340;

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

f. “‘Health Impairment’ means an impairment that limits the strength, vitality or alertness of the pupil, including, without limitation, a heightened alertness to environmental stimuli which results in limited alertness with respect to the educational environment and which:

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<sup>8</sup> NAC refers to the Nevada Administrative Code

“1. Is caused by chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Rett’s disorder, sickle-cell anemia and Tourette syndrome; and

“2. Adversely affects the educational performance of the pupil.”

NAC 388.046

g. “‘Specific learning disability’ means a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language which is not primarily the result of a visual, hearing or motor impairment, an intellectual disability, an emotional disturbance, or an environmental, cultural or economic disadvantage. The disorder may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations. The disorder includes, without limitation, such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.”

NAC 388.117

h. “‘Emotional disturbance’ means a severe emotional disorder that:

1. Is exhibited by a person for at least 3 months;



2. Adversely affects academic performance; and
3. Includes one or more of the following:
  - (a) An inability to learn which is not caused by an intellectual, sensory or health factor;
  - (b) An inability to engage in or to maintain interpersonal relationships with peers and teachers;
  - (c) Inappropriate behavior or feelings;
  - (d) A general and pervasive mood of unhappiness or depression;
  - (e) A physical symptom associated with a personal or academic problem; or
  - (f) The expression of fears regarding personal or academic problems”

NAC 388.0417

2. The Student was adopted by the Student’s parents when the Student was almost two years old. (Testimony of Father and Mother).
3. The Student is currently 17 years of age. (Testimony of Father and Mother).
4. The Student in the 2025-2026 school year will be a junior in high school. (Testimony of Facilitator).

5. The Student entered this School District in August 2023, and enrolled in a public comprehensive high school, (“High School”), in the School District as a freshman. The High School was the school the student was zoned to attend. (Testimony of Facilitator).

6. The Student came into the School District from a Residential Treatment Center in Texas, (RTC 2). The Student had an IEP in Texas. (R-23).

7. Under the Texas IEP the Student was eligible for special education under the IDEA due to Specific Learning Disability. (R-23, p. 1.)

8. The High School formed an IEP team and put together an interim IEP for the Student on August 21, 2023, (R-9), which essentially arose out of the Texas IEP, (R-9, p. 9, and Testimony of Special Education Teacher 1).

9. The Student’s parents attended the August 21, 2023 IEP Meeting and agreed to this interim IEP. (R-9, pp. 8, 18).

10. This interim IEP found that the Student was eligible for special education services due to specific learning disability. (R-9). It placed the Student on a track for a general high school diploma. (R-9, p. 11). This IEP provided specially designed instruction and supplementary aids and services. (R-9, pp. 14-16). This IEP placed the student in both self contained and general education class rooms. (R-9, pp. 14-16).

11. Following the August 21, 2023 IEP Meeting and MDT was formed to further evaluate the Student. (R-15, Testimony of Facilitator).

12. The MDT assessed the Student's health. The MDT reviewed the Student's prior and current education. The MDT team tested the Student's abilities and learning. (R-15, and Testimony of Special Education Teacher 2).

13. The MDT, on or about September 15, 2024, found the student was eligible for special education under the IDEA due to Specific Learning Disability. (R-15 and see, also NAC 388.387).

14. On September 15, 2023, the IEP team met again to form an initial IEP based on the MDT evaluations and additional information learned about the Student from his attendance at the High School. (R-10, and Testimony of Facilitator).

15. The Student's parents attended the September 15, 2023 IEP Meeting and agreed to this IEP. (R-10, pp. 8, 27).

16. This initial IEP found that the Student was eligible for special education services based on specific learning disability. (R-10). It placed the Student on a track for a general high school diploma. (R-10, p. 13). This IEP provided specially designed instruction and supplementary aids and services for the Student. (R-10, pp. 19-21). This IEP placed the student in self contained classroom, resource room, and general education class rooms. (R-10, pp. 19-21). Under this IEP the Student

would spend 38% of the school day in the regular education environment. (R-10, p. 25). Progress reports were provided to the parents under this IEP. (R-10, pp. 30-35).

17. During the 2023-2024 school year the Student was absent for 11 periods in the first quarter, 21 periods in the second quarter, 20 periods in the third quarter and 87 periods in the fourth quarter. (R-2, and Testimony of Principal).

18. The Student, under the IEP prepared on September 15, 2023, was doing well in school. (Testimony of Teacher and Special Education Teacher 1). Under this IEP the Student had very few behavioral problems at the High School. (Testimony of Facilitator and Teacher).

19. On March 19, 2024, the Student's parents met with the High School to ask for a reevaluation because of the Student's hospitalizations, new diagnoses, (see paragraph 22, *infra*), and school observations. (R-4, p. 5).

20. Based on the parents' request and consent the MDT reviewed documents provided by the Parents, including the Ackerman Report, (R-18), and performed some additional evaluations of the Student. (R-16 and Testimony of Psychologist).

21. The Student was generally well behaved and did well in the school year 2023-2024. (Testimony of Special Education Teacher 2 and Teacher).

22. On May 1, 2024, the IEP team met for an annual IEP meeting. (R-12).

23. The Student's parents attended the May 1, 2024 IEP Meeting and agreed to this IEP. (R-12, pp. 10, 28, Testimony of Parents and Facilitator).

24. This annual IEP found that the Student was eligible for special education services. Based on the recent MDT evaluation, the IEP Team changed the Student's eligibility to emotional disturbance and secondarily, health impairment. (R-11, p. 9). This change was made because the Student had, since the last IEP Meeting, been diagnosed as suffering from fetal alcohol syndrome<sup>9</sup>, ADHD, disruptive mood dysregulation, and reactive attachment disorder. (R-11, p. 15, R-16, and Testimony of Mother and Facilitator). It placed the Student on a track for a general high school diploma. (R-11, p. 17). This IEP provided specially designed instruction and supplementary aids and services to the Student. (R-11, pp. 23-25). With some minor changes the specially designed instruction and supplementary aids were substantially similar to those provided in the prior IEP. (See, R-10, pp. 16-21). This IEP placed the student in self contained and general education classrooms. (R-11, pp. 19-21). Under this IEP, the Student would spend 52% of the school day in a general education environment. (R-11, p. 26).

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<sup>9</sup> There is some evidence in the record that the Student was suspected to suffer from Fetal Alcohol Syndrome, but the Student was not formally diagnosed with Fetal Alcohol Syndrome until February 9, 2024. See R-18. Mother provided a copy of this report to the MDT. (R-16, p. 2, and Testimony of Mother).

25. Shortly after this IEP was implemented, in May, 2024, Mother and her spouse spoke to the Student at home about the importance of completing school assignments. The Student was not happy being lectured. No punishment was imposed. The family then went to a track meet of one of the Student's siblings. The track meet was near a local hotel and casino. The Student asked to go to the bathroom. After Student had been gone for about seven minutes the Mother and the Mother's spouse went to check on the Student. The Student was not in the bathroom. The Mother then called the police. The Student was found, the next morning at another hotel and casino, on the other side [ ]. The Mother learned that the Student had gone to [ ] had been drinking energy drinks, smoking and eventually got a bus pass to the casino where the Student was found. The Parents then had the Student transported to a local hospital emergency room. The Student was admitted and stayed in the hospital for about 10 days. The Student was then released to an acute care center where the Student stayed about four days. On May 20, 2024, with the Parents' consent the Student was then transported to an out of state Residential Treatment Center, (RTC 3). (Testimony of Mother).

26. The Student did not attend school again for the rest of the 2023-2024 school year, which had about two weeks remaining when the incident occurred. (R-1, p. 2, and R-2, p. 1).

27. While the Student was out of state in RTC 3 the Student did not attend a school in the School District. During this time the Student was enrolled in a school affiliated with RTC 3. (Testimony of Parents, Special Education Teacher 1, and Special Education Teacher 2).

28. The Student was in RTC 3 until November 12, 2024, when the Student was discharged to live with the Student's Mother and return to school in the School District. (R-27 and Testimony of Mother).

29. RTC 3 discharged the Student because the Student no longer had a medical necessity to remain at RTC 3, and the Student was ready for a lower level of care. (R-27, p. 1, and Testimony of Special Education Teacher 2 and Special Education Teacher 1).

30. Special Education Teacher 2 also testified that the Student was released from RTC 3 in part because the Parents' insurance was not willing to pay for further treatment due to the Student's improvement. (Testimony of Special Education Teacher 2).

31. Special Education Teacher 2 testified that the Student could not be readmitted to RTC 3. This Teacher further testified that the interventions the Student needed were not available at RTC 3, that the Student displayed a general

apathy in program, and the Student's high level of aggression made it hard to keep the RTC 3 community safe. (Testimony of Special Education Teacher 2).

32. Knowing the Student was being released from RTC 3, a revision IEP meeting was held on November 5, 2024, to prepare for the Student's return to the High School. (R-12 and testimony of Facilitator).

33. The IEP Team for the High School, the parents and two members of the staff or RTC 3 attended this IEP meeting. The two members of the staff of RTC 3, who attended by video, were the Student's therapist and Special Education Teacher at RTC 3. (R-12, p.7, and Testimony of Special Education Teacher 2).

34. It was at the November 5, 2024, IEP meeting that the parties first discussed the possibility of the Student needing a residential placement. The Parents were seeking a residential placement for the Student, rather than placement in a comprehensive high school. (R-12, Testimony of Father, Mother, and Facilitator).

35. Based on the evidence the IEP Team had, the IEP team determined that the Student did not require a residential placement to receive FAPE. (R-12, Testimony of Facilitator, Director, and Special Education Teacher 1).

36. A Residential Treatment Center is one of the most restrictive educational environments. (Testimony of Facilitator).



37. At the November 5, 2024 IEP Meeting, the IEP Team found that the Student remained eligible for special education services due to emotional disturbance and health impairment. (R-12, p. 6, Testimony of Psychologist). This IEP placed the Student on a track for a general high school diploma. (R-12, p. 17). This IEP provided specially designed instruction and supplementary aids and services. The specially designed instruction and supplementary aids and services were substantially similar to those of the prior IEP. (R-11, pp. 23-25, R-12, pp. 22-25). This IEP placed the Student in self contained classroom and general education class rooms. (R-10, pp. 19-21). Under this IEP, the Student would spend 52% of the school day in a general education environment. (R-12, p. 26). The IEP team believed the Student would do well in the Student's return to High School. (Testimony of Teacher).

38. The RTC 3 reports regarding the Student, which were not received by the IEP team until after the IEP Meeting of November 5, 2024, did not indicate that the Student needed to be placed in a Residential Treatment Center to obtain FAPE. (R-27, and testimony of Facilitator).

39. The Student's Parents did not agree to this IEP. (R-12, p. 28, and Testimony of Mother and Father). The Parents were provided notice in the IEP that if they wished to prevent the implementation of this IEP they had to file a Request

for Due Process. (R-12, p. 28). The Parents were provided a Notice of Intent to Implement this IEP on November 5, 2024. (R-12, p. 29).

40. This IEP was implemented when the Student returned to attend the High School on November 12, 2024.

41. On Wednesday, November 20, 2024, the Student arrived at the High School and shortly after that disappeared. Upon learning the Student was not in the class, Special Education Teacher 1 called Student's Mother about why the student was not present. Student's Mother indicated that the Student's tracker showed the Student was on campus. The High School began a search. The search found the Student's tracker, which had been cut off, but not the Student. The Student was not found on campus and was eventually found at a hotel casino. (R-5, p. 1, Testimony of Principal, Mother and Special Education Teacher 1).

42. Once the Student was found the Parents had the Student transported to an acute care facility and then to a Youth Center. After two weeks at the Youth Center with the consent of the Parents the Student was transported to RTC 4, which was out of state. (Testimony of Mother and Father).

43. The Parents filed this Due Process complaint on November 25, 2024, (HO 1).

44. On December 3, 2025 and December 4, 2025 revision IEP Meetings were held to correct errors in the November 4, 2025 IEP, including a missing accommodation dealing with the Student having an escort. (R-13, R-14 and Testimony of Facilitator and Special Education Teacher 1).

45. The Student, with Parents' consent, was admitted to an out of state Residential Treatment Center (RTC 4) on December 7, 2024, due to mental health concerns. The Student remained at RTC 4 until April 28, 2025. The Student was released from RTC 4 having improved from the Student's condition when the Student was admitted to RTC 4. (R-29, pp. 2-3).

46. While at RTC 4, the Student received an education based on the academic standards of the state where RTC 4 was located. The Student received high school credit for some of the courses taken at RTC 4. (R-30).

47. Knowing the Student was about to be released from RTC 4, an annual IEP meeting was held on April 23, 2025. (R-31, p. 7). The IEP Meeting was attended by the Student's parents. The IEP team reviewed the academic information for RTC 4, which included a statement that the Student would be "best served in a general education setting with additional supports in place.". (R-31, pp. 12, 14). The IEP team decided to place the Student in a specialty school with no

exposure to general education environment.<sup>10</sup> (R-31, p. 29). Because the parents wanted a residential placement for the Student, the Parents disagreed with this IEP. (R-31, p. 31, and Testimony of Parents.) A Notice of Intent to Implement IEP was provided to the Parents on April 23, 2025. (R-31, p. 32).

48. The Specialty School is a public specialty school operated by the School District. It does not serve general education students. It serves only special education students. It focuses on students with disabilities that have significant behavioral issues. (Testimony of Coordinator).

49. The Student started school at the Specialty School on May 6, 2025. The Student has attended the Specialty School since that date. (Testimony of Mother and Coordinator).

50. The IEP goals did not change much from IEP to IEP. The benchmarks for measuring progress on those goals did change. For example, the IEP dated September 15, 2023, had a nearly identical writing goal, (R-10, p. 15), as the IEP dated May 1, 2024, (R-11, p. 19). However, the benchmarks being measured as progress toward that goal were substantially different. (See R-10, pp. 15-16 and R-11, p. 19). The IEP dated November 5, 2024, did have the same goals and

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<sup>10</sup> The parents were concerned that this placement at the Specialty School would be permanent. (See R-29). The parties stipulated at the start of this hearing that the Student's "stay put" rights under the IDEA would be at the High School.

benchmarks as the IEP dated, May 1, 2024. (See, R-11, pp. 19-22, and R-12, pp. 18-21). However, the Student had been out of school since a few days after the May 1, 2024 IEP was drafted and implemented, until November 12, 2024. (Testimony of Mother).

51. The Student currently has 11.5 credits toward graduation and will be entering the junior year of education. (R-7 and Testimony of Coordinator).

52. The Student was first placed in a Residential Treatment Center, (“RTC 1”), in September of 2021 due to signs of suicidal ideations and homicidal ideations toward the Student’s father. RTC 1 provided academic, social and emotional skills. The Student was there until February 2022, when the Student was released. (Testimony of Father).

53. In May, 2022, the Student put the Student’s father in choke hold while swimming. The next morning the Student was taken to a local hospital and was admitted into the mental health wing. A police report was filed and the Student was placed in juvenile detention for a few months. The Student was then released to RTC 2 in August 2022. The Student was in RTC 2 until August 11, 2023. (R-25, Testimony of Father).

54. The Student was admitted to RTC 2 due to physical aggression, homicidal threats, and impulsivity. The Student had a history of physical

aggression including the incident mentioned in the previous paragraph. (R-25, p. 2).

55. The Student showed mild improvement at RTC 2. The Student was released from RTC 2 having reached “maximum benefit . . . for patient at this level of care.” (R-25, p. 1).

56. Following the Student’s elopement at a track meet, the Student was admitted to RTC 3 on May 20, 2024. The Student was admitted due to the increased severity and frequency of mental health and behavioral issues, including suicidal ideations, since the Student’s release from RTC 2. (R-27).

57. The Student was released from RTC 3 on November 12, 2024. The Student was released having “progressed well.” He had also met the medical necessity to step down to a lower level of care. (R-27, pp. 1, 6).

58. The Student was admitted to RTC 4 on December 7, 2024. The Student was admitted due to high risk behaviors and aggression, particularly toward Student’s father. (R-29, pp.1-2).

59. The Student was released from RTC 4 on April 28, 2025 showing improvement. (R-29, pp. 2, 3).

60. None of the Student’s admissions into the four different Residential Treatment Centers was due to education problems. The admissions arose out of

non-educational issues, including aggression toward Student's father, suicidal ideations, and fetal alcohol syndrome. (See. R-25, R-27, and R-29).

61. The Parents are not seeking reimbursement from the School District for the Student's prior placements in Residential Treatment Centers. (Testimony of Parents and argument of Parent's counsel).

### **CONCLUSIONS OF LAW**

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

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

2. The IDEA grants federal funds to state and local agencies to provide a special education to children with disabilities. 20 U.S.C. § 1412(a); *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993).

3. The main purposes of the IDEA are

(A) 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 employment and independent living; (B) to ensure that the rights of children with disabilities and parents of such children are protected; and (C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.

20 U.S.C. § 1400(d)(1)(A)-(C).

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

5. The term “free appropriate public education” (“FAPE”), means special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate pre-school, elementary



school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title. (20 U.S.C. § 1401(9)).

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

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

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

8. "Special education" is defined by the IDEA as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education." 20 U.S.C. § 1401(29).

9. "Related services" are defined by the IDEA as transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. 20 U.S.C. § 1401(26)(A).

10. The burden of proof as to providing a student FAPE lies with the School District. NRS 388.467.

11. The goals of the IDEA are implemented through the development of an individualized education program or "IEP," which is a "written statement for each child with a disability," that includes the student's present level of performance, annual goals, short and long term objectives, specific services to be provided, the extent to which the student may participate in regular education programs, and criteria for measuring the student's progress. 20 U.S.C. §§ 1401(14), 1414(d)(1)(A).

12. The IEP, which is developed by a team that includes a student's parents and school personnel, is thus, in effect, a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.”

*K.D. ex rel. C.L. v. Dep't of Educ. Hawaii*, 665 F.3d 1110, 1114 (9<sup>th</sup> Cir. 2011), citing *School Committee of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 368, 105 S.Ct. 1996 (1985).

13. Every IEP begins by describing a child's present level of achievement, including explaining "how the child's disability affects the child's involvement and progress in the general education curriculum." It then sets out "a statement of measurable annual goals . . . designed to . . . enable the child to be involved in and make progress in the general education curriculum," along with a description of specialized instruction and services that the child will receive. The instruction and

services must likewise be provided with an eye toward "progress in the general education curriculum." *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988, 1000 (2017).

14. The IDEA does not require a school to maximize the potential of each special needs child. Rather, "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 201 (1982).

15. The obligation to provide FAPE is met if "the education to which access is provided [is] sufficient to confer some educational benefit upon the" disabled child. *Id.* at 200; see *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 950-951 & n.10 (9th Cir. 2010) (recognizing that, despite post-Rowley changes to special education laws, the Rowley "educational benefit" standard remains the proper standard for determining whether a disabled child has received FAPE).

16. There is no evidence that the School District failed to appropriately evaluate the Student for areas of suspected disabilities. In fact, the evidence is to the contrary. The Student was evaluated when the Student came into the School District and then, pursuant to a request of the Parents, (Testimony of Facilitator and

Mother), was reevaluated and recategorized to a more appropriate disability which entitled the Student to receive special education services, and continue receiving services, under the IDEA.

17. When a child is fully integrated into a regular classroom, a FAPE generally requires an IEP "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Endrew F.*, 137 S. Ct. at 996 (quoting *Rowley*, 458 U.S. at 207).

18. For a child who is not fully integrated into a regular classroom, the IEP "need not aim for grade-level advancement," but instead "must be appropriately ambitious in light of [the child's] circumstances." *Id.* at 1000. However, an educational program that provides "merely more than de minimis progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to sitting idly . . . awaiting the time when they were old enough to drop out." *Id.* at 1001 (quoting *Rowley*, 458 U.S. at 179) (internal quotation marks omitted). "The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.*

19. “Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Id.* at 999.

20. Whether an IEP offers a student a FAPE is not judged in hindsight but is instead assessed in light of information available at the time the IEP is developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP “is a snapshot, not a retrospective. In striving for ‘appropriateness,’ an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.” *Id.* (citation omitted).

21. Moreover, the IDEA requires that “[d]isabled children, to the maximum extent appropriate, should be educated with children who are not disabled.” *Seattle Sch. Dist., No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (citing 20 U.S.C. § 1412(5); see *Rowley*, 458 U.S. at 202-03 (“The [IDEA] requires participating States to educate handicapped children with nonhandicapped children whenever possible.”). In other words, “[t]he education of a disabled child should take place in the least restrictive environment.” *B.S.*, 82 F.3d at 1500. (citing 34 C.F.R. § 300.552(d)).

22. *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H. By & Through Holland*, 14 F.3d 1398, 1404 (9th Cir. 1994), sets out the factors to be considered in determining whether a placement offers education in the least

restrictive environment: “(1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect [of the special education student] on the teacher and children in the regular class; and (4) the costs of mainstreaming [the special education student]”.

23. 34 C.F.R. 300.116 provides, as follows, with respect to placement:

In determining the educational placement of a child with a disability, .

. . . , each public agency must ensure that—

(a) The placement decision—

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

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

(b) The child's placement—

(1) Is determined at least annually;

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

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

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

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

24. Residential placement is, however, appropriate for a disabled child if it is necessary for the child to receive benefit from his or her education. *B.S.*, 82 F.3d at 1500. “If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.” *Id.* (citation omitted); see *M. S. v. Los Angeles Unified Sch. Dist.*, 2019 WL 334564, at \*9 (C.D. Cal. 2019), *aff’d sub nom. M. S. by & through R.H. v. Los Angeles Unified Sch. Dist.*, 913 F.3d 1119 (9th Cir. 2019).

25. The following considerations apply to determining whether the Student needs a residential placement under the IDEA.

Generally, in order to determine whether a residential placement under the IDEA is necessary to provide a student a FAPE, the relevant analysis in the Ninth Circuit “must focus on whether [the residential]



placement may be considered necessary for educational purposes or whether the placement is a response to medical, social or emotional problems that is necessary quite apart from the learning process.”

*Ashland Sch. Dist. v. Parents of Student E.H.*, 587 F.3d 1175, 1185 (9th Cir 2009) (emphasis added) (quoting *Clovis*, 903 F.2d 635, 643); see also *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996)

*M.S. v. LA Unified School District*, 913 F.3d 1119, 1136 (9<sup>th</sup> Cir. 2019).

26. As of November 5, 2024 IEP meeting it is clear the Parents believed that the Student needed to be placed in a residential placement to receive FAPE. (Testimony of Father and Mother, and R-12, p. 6). However, as of November 5, 2024, beyond the desire of the Parents, there is no evidence supporting the Student needed to be placed in a residential placement to receive FAPE. The Student was being released from RTC 3 just about a week after that meeting. The Student was being released from RTC 3, and returning to the School District because there was no longer a necessity that the Student be in RTC 3 any longer. The Student was ready to step down to a lower level of care. (R-27, p.1, R-12, pp. 26-27, and Testimony of Special Education Teacher 2).

27. Additionally, as noted in the Findings of Fact, *supra*, none of the Student's placements in RTCs was necessary for educational purposes. Those placements were all in response to the Student's medical and emotional issues.

28. There is no credible evidence supporting a finding that the Student must be educated in a residential placement to receive FAPE.

29. During the time the Student was attending the High School the Student was doing relatively well. The Student was earning credits toward graduation and was on track to graduate on time. (R-2, R-3, and Testimony of Coordinator).

30. The one failure of the November 5, 2024 IEP was a failure to provide that the Student was to be escorted everywhere due to a tendency of the Student to elope. This tendency was discussed at the November 5, 2024 IEP meeting. (R-4, pp. 7-10, Testimony of Father and Mother).

31. A residential placement is not required to remedy that error. This error was corrected in the December 3, 2024 IEP revision, (R-13, p. 26).

32. Based on the evidence available at that time, the evidence is that the IEP of November 5, 2024, except as noted in the prior paragraph, was designed to provide FAPE to the Student.

33. In the closing argument of the Parents' counsel, counsel orally moved to amend the issues to include an issue of predetermination regarding the November 5,

2024, IEP Meeting such that the Student would not be placed into a residential placement based on the evidence admitted during the hearing, or alternatively to reopen the hearing to submit evidence on predetermination regarding the November 5, 2024 IEP Meeting. The School District objected to the motion. The motion to amend or reopen is denied in that the Prehearing Order, (HO-11), clearly sets forth the issues to be determined in this hearing and provided an opportunity to object to those issues. No objection was made at that time. Additionally, the evidence submitted and testimonies established that a residential placement was discussed and determined to not be necessary for the Student to receive FAPE. Lastly, to reopen the hearing to take evidence on this issue would simply prolong this matter further and is not likely to lead to a finding of predetermination such that the Student would not be educated in a residential placement.

### **ORDER**

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

IT IS HEREBY ORDERED, as follows:

1. The Due Process Complaint shall be, and hereby is, denied.

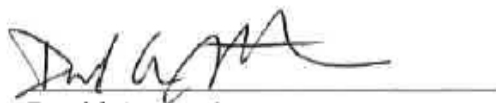
2. In view of the fact the Student is currently attending a Specialty School, rather than the High School to which Stay Put applies, the parties must hold an IEP meeting to determine the placement of the Student going forward.

3. The Motion to amend or reopen for evidence of predetermination shall be, and hereby is, denied.

### **NOTICE OF RIGHT TO APPEAL**

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision pursuant to NAC §388.315. A party to the hearing may file a cross-appeal within ten (10) days after receiving notice of the initial appeal. If there is an appeal, a state review officer appointed by the Superintendent from a list of officers maintained by the Department shall conduct an impartial review of the hearing pursuant to NAC 388.315. Since this decision is being delivered in both electronic and hard copy, receipt of a copy of this Decision and Order will be determined by either the date of actual delivery or the date of the first attempt to deliver by the U.S. Postal Service.

Dated this 18 day of July, 2025.



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