

STATE OF NEVADA DEPARTMENT OF EDUCATION
REVIEW OFFICER DECISION

In the matter of

STUDENT by and through his¹ PARENTS,²
Petitioner-Appellant

v.

Perry A. Zirkel, State Review Officer

DISTRICT,
Respondent-Appellee

I. GLOSSARY OF ACRONYMS AND ROLES

As a prefatory matter, the acronyms that appear in this decision are as follows: ADHD = attention deficit hyperactivity disorder; BCBA = board certified behavior analyst; ED = emotional disturbance; FAPE = free appropriate public education; FF = factual finding; IDEA = Individuals with Disabilities Education Act; IEP = individualized education program; HO = hearing officer; OHI = other health impairment³; LRE = least restrictive environment; MDT = multi-disciplinary team; PLAAFP = present levels of academic achievement and functional performance; RTC = residential treatment center; SEIF = special education instructional facilitator; SLD = specific learning disabilities; and SRO = state review officer. For clarity, this decision uses “District” in place of “Petitioner” and “Parents” in place of “Respondent.”

¹ The terms “he,” “his,” “him,” “they,” and “them” are used generically herein instead of designating the actual gender of Student or the Parent(s).

² “Parents” is also used generically herein without differentiation of father, mother, or guardian and, thus, as to singular or plural.

³ With the same definition as in the IDEA, the Nevada regulations refer to this classification as “health impairment.” NEV. ADMIN. CODE § 388.046.

II. PROCEDURAL BACKGROUND⁴

On November 25, 2024, the District received the Parents' complaint in this matter (HO-1) under the IDEA⁵ and Nevada's corresponding state statute and regulations.⁶ After an insufficiency determination (HO-5), the Parents issued successive amended complaints on December 5, 2024 (HO-6) and December 24, 2025 (HO-11). After several subsequent status conferences, the HO issued a pre-hearing order that memorialized the two agreed-upon issues for the hearing (HO-22): (1) "Whether from November 25, 2022, the ... District failed to evaluate the Student [in] all areas of suspected disability, and if so, was the student denied FAPE?" and (2) "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?" (*Id.* at 1-2). The prehearing order also documented that the primary, although not exclusive remedy, that the Parents sought was residential placement of the Student. (*Id.* at 2). Subsequently, the HO conducted five hearing sessions on May 20, 21, 22, 29, and July 10, 2025.

On July 18, 2025, the HO issued a final decision that ruled in favor of the District. (HO-30). For the first of the two issues reiterated from the aforementioned prehearing order (*id.* at 4–5), the HO concluded that the Student was evaluated in all areas of suspected disability (*id.*

⁴ The record in this matter includes the four sets of exhibits: (a) HO exhibits 1–31 (including HO decision as HO-30) and overlapping Appendix C; (b) District exhibits 1–31, referenced herein with a "D" rather than an "R"; (c) Parent exhibits 1–15; and (d) SRO exhibits 1–6 (including this decision as SRO-6). The record also includes a transcript consisting of five volumes corresponding to the hearing sessions. Because the pagination is not consecutive across the five volumes of the transcript, the citations are respectively to "Tr. I" and "Tr. II") followed by the page number(s). Cross references in this decision are, per legal citation style, via "*supra*" (above) or "*infra*" (below) to identified footnotes or parts of the text.

⁵ 20 U.S.C. §§ 1401 *et seq.*; 34 C.F.R. §§ 300.1 *et seq.*

⁶ NEV. REV. STAT. §§ 388.419 *et seq.*; NEV. ADMIN. CODE §§ 388.001 *et seq.* This decision refers to this corollary state statute and administrative code only to the limited extent that they add in relevant respect to the IDEA legislation and regulations.

at 21). For the second issue, the HO concluded that the designated IEPs were faulty only with respect to the November 5, 2024 IEP's lack of an escort for the Student based on the then-known tendency of the Student to elope and that this fault did not amount to a remediable denial of FAPE because "a residential placement is not required to remedy that error ... [and it] was corrected in the December 3, 2024 revision." (*Id.* at 25–26). Finally, the HO denied the Parents' motion, in their closing arguments, to amend the issues to include alleged predetermination of the Student's placement at the November 5, 2024 IEP meeting. (*Id.*). The two reasons that the HO that provided were that (1) the prehearing order clearly set forth the issues without any timely objection, and, in any event, (2) the evidence was preponderant that the District did not engage in the alleged predetermination.

On August 19, 2025, based on receiving the Parents' appeal of the HO decision on August 18, 2025, the state superintendent appointed me as the SRO, specifying the due date for my decision as September 17, 2025. (SRO-1).

Later on August 19, 2025, I sent the parties an email requesting information for a status conference, with a deadline of August 22, 2025 for their respective responses. (SRO-2, at 3–4).⁷

On August 21, 2025, based on their responses for availability, I held a status conference with the parties. As documented in a summary email to the parties later that day (SRO-3, at 1), (a) the only objection to the fundamental fairness of the hearing process the Parents' challenge to the HO's refusal to identify procedural FAPE as an additional issue; (b) neither party sought to proffer additional evidence, and (c) the two issues for this appeal are as stated *infra* in Section IV if this decision.

⁷ In alignment with the requirements for SROs (34 C.F.R. § 300.514(b)(2); NEV. ADMIN. CODE § 388.315(1)), the announced agenda for the status conference included whether the parties (1) took issue with the procedures of the impartial hearing; (2) sought additional evidence; and (3) preferred oral or written arguments.

On their deadline date of September 5, 2025, the Parents (SRO-4) and the District (SRO-5) timely submitted their respective written arguments.

III. STANDARD OF REVIEW

The standard of review for a SRO under the IDEA is for an “independent decision” after examining the entire record.⁸ The SRO finds persuasive the interpretation of the Third Circuit in *Carlisle Area School District v. Scott P.*, 62 F.3d 520 (3d Cir. 1995), requiring “plenary review” with one narrow exception: “[the SRO] should defer to the hearing officer's findings based on credibility judgments unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion.” (*Id.* at 529).⁹

IV. ISSUES

The issues for this appeal are as follows:

1. Whether the District failed to evaluate the Student in all areas of suspected disability and, if so, whether this failure resulted in the denial of FAPE?
2. Whether May 1, 2024 IEP and its November 5, 2024 revision met the *Endrew F.* standard for substantive FAPE, or, instead, whether the Student was entitled to residential placement under the applicable standard in the Ninth Circuit?

⁸ 34 C.F.R. §§ 300.514(b)(2)(i) & 300.514(b)(2)(v).

⁹ In this decision, the Third Circuit explained that “beyond this rather narrow class of record-supported, credibility-based factual findings, we think that, to give the statute's language about ‘independent’ decisions effect, the [SRO] must have much more leeway in reviewing other non-credibility based findings of the hearing officer.” *Carlisle Area Sch. Dist.*, 62 F.3d at 528–29 (citing Perry A. Zirkel, *The Standard of Review Applicable to Pennsylvania’s Special Education Appeal Panel*, 3 WIDENER J. PUB. L. 871, 892 (1994)). The Ninth Circuit indirectly appeared to approve of this approach. *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 888–89 (9th Cir. 2001). More recently and more directly, the federal district court of Nevada directly upheld this standard of review. *HPB v. Washoe Cnty. Sch. Dist.*, 2024 WL 4368227 (D. Nev. Sept. 30, 2024).

V. FINDINGS OF FACT¹⁰

1. The Student was born in another country on December 31, 2007. The Parents adopted him when he was almost two years old.

2. During the 2016–17 school year, upon the family moving from another state,¹¹ the Parents enrolled the Student in the District in second grade.

3. Starting in the 2017–18, they enrolled the Student in a local charter school, which is not part of the District. He received his first IEP while at the charter school. (NT-III at 56).

4. In September 2021, the Parents placed him in RTC-1 in Utah due to signs of suicidal ideation and homicidal ideations toward one of his Parents.

5. In February 2022, upon his release from RTC-1, the Student returned to the charter school, which issued an updated IEP. (P-1).

6. In May 2022, the Student placed the same Parent in a chokehold while swimming. The next morning he was admitted in the mental health wing of a local hospital. As a result of police report, he was then placed in juvenile detention for a few months. While there, an August 3, 2022 neuropsychological evaluation reported his previous behavioral history, ongoing medications, and assessed diagnoses. (D-17).

7. Next, from August 2022 until August 2023, the Student was in an RTC-2 in Texas, where he had an IEP at an affiliated charter school under the IDEA eligibility classification of SLD. (D-23). The stated reason on the application for RTC-2 was the Student’s need for “intensive inpatient mental health treatment.” (P-6).

¹⁰ Based on the applicable review standard, these factual findings are independent of those of the IHO with the limited exception of those warranting deference due to being credibility-based. Moreover, for the sake of cross-referencing, they are numbered here for selected subsequent cross-referencing (with the prefix “FF #”) in the “Legal Conclusions” section.

¹¹ During the prior year, the Parents received a private diagnosis for the Student of ADHD and the Student repeated first grade, although he did not have an IEP at the time. (NT-III at 52 & 180).

8. In mid-August 2023, upon his release from RTC-2, the Parents enrolled the Student in the District as a ninth grader in the comprehensive high school in the attendance zone for their residence. At a meeting on August 21, the IEP team, which included the Parents, developed an interim IEP based on the Texas IEP.¹² The IEP identified the Student's classification as SLD and placed him in self-contained special education classes, with specially designed instruction in written expression, math, and social/emotional skills for 800 minutes per week, with the remainder in general education classes. (D-9).

9. On August 23, 2023, the SEIF and school psychologist for the Student received and reviewed the discharge paperwork from RTC-2. (D-4, at 2; D-25).

10. On September 15, 2023, directly after an MDT meeting and report (D-15), the IEP team, which included the Parents, met and issued a new IEP. This IEP differed from the interim IEP in various ways, including (a) a determination that his behavior did not impede his learning or the learning of others; (b) more specific goals and benchmarks; and (c) doubling the minutes for written expression in the self-contained special education class while changing the content area and location for half of the minutes for social/emotional skills. (D-10). Although not included in the interim IEP, the new IEP specified that the extent of the school days in general education was 38%. (*Id.* at 25).

11. For the first three quarters of the 2023–24 school year, the Student's behavior and academic performance were satisfactory at school. (E.g., NT-I at 91–92; NT-II at 80; D-7). His special education teacher for self-contained classes was part of a District program with a focus on emotional behavioral issues. (NT-II at 67 & 69). She diligently responded to his relatively limited behavioral violations. (E.g., NT-II at 94–95; D-5).

¹² At the interim IEP meeting, the Parents summarized the Student's problems and diagnoses, apparently without providing his records other than the charter school IEP. (E.g., NT-III at 97–99).

12. On February 9, 2024, per the Parents' initiative, a private multidisciplinary clinic that specializes in assessing adolescents who may have been prenatally exposed to harmful substances provided a confidential report that included diagnoses for the Student of fetal alcohol syndrome, ADHD, and SLD. (D-18/P-9).

13. On March 19, 2024, after the Parents shared the report with the District, the MDT determined that a reevaluation was warranted "in light of his diagnoses and hospitalizations this year." (D-4, at 5).

14. On May 1, the MDT issued the reevaluation report, which included (a) the findings of the private clinic's diagnostic report and the August 2022 neuropsychological evaluation; (b) review of the RTC-2 discharge report, which contained overlapping diagnoses extending to reactive attachment disorder; (c) the case manager's identification of Student's concerning behaviors, which included sleeping in class, stealing money from his grandparents, and reacting inappropriately when taken to task for misconduct; and (d) the results of various administered assessment instruments. The reevaluation recommended that the Student's classification be changed from SLD to ED and/or OHI. (D-16/P-15) .

15. On the same day, directly after reviewing the reevaluation report, the IEP team, which included the Parents, met and agreed to a new IEP, which identified the Student's primary classification as OHI and secondary classification as ED. The changes from the previous IEP were limited, particularly with regard to social/emotional and behavioral services. For example, while halving the minutes for specially designed instruction in written expression, the minutes previously allocated to social-emotional skills were increased by a corresponding amount but changed to study/organizational skills, and the related services continued to be limited to transportation. Yet, the reported extent of time in general education changed to 52% (D-11/P-2).

16. Not long thereafter, the Parents spoke to the Student at home, at the special education teacher's request, about the importance of completing assignments on time. Although the Parents did not issue any punishment, the Student was displeased with their admonishment. The Parents and the Student then went to a track meet for one of his siblings. Upon arriving there, the Student asked to go to the bathroom. When he did not return in a reasonable amount of time, the Parents searched for him to no avail. They contacted the police, but he was not found until the next day at a casino at the other end of the valley. When the Student expressed suicidal thoughts to a casino security guard, EMS was summoned and, with parental permission, transported the Student to a local emergency room, which kept him after performing the suicidal protocol. After learning that he had panhandled for energy drinks, cigarettes, and transportation to the casino and determining that his kidneys had shut down from excessive energy drinks, the emergency room arranged for a ten-day hospital stay followed first by release to an acute care center for another four days. The next placement, with the Parents' consent, was for mental health reasons in RTC-3, which included an education arm.

17. As a result, the Student did not attend the District for the remainder of the school year, or for the first few months of the 2024–25 school year (grade 11).

18. On November 5, 2024, upon learning from the Parents that the RTC-3 had decided to discharge the Student¹³ and that they requested residential placement for the Student (e.g., NT-I at 90), the District convened an IEP meeting, which included not only the Parents in person but also, via video, two members of the RTC-3 staff, to revise the May 1 IEP. Although the Parents

¹³ According to the testimony of the RTC-3's special education teacher, insurance was not willing to pay for further treatment because it was no longer medically necessary. In her opinion, the facility was no longer appropriate for the Student due to his academic apathy and behavioral aggression. Apparently, her input and that of the RTC-3 representative at the IEP meeting was limited to reporting that the Student was no longer suicidal or homicidal, was no longer eloping, and was meeting his RTC-3 goals. Moreover, IEP team did not have the records from RTC-3, including its connected school. (E.g., NT-II at 104 & 136–37; NT-III at 42; NT-IV at 72–73; NT-V at 20).

expressed their opinion that another RTC was the appropriate placement, the rest of the team decided that it was not necessary and that the May 1 IEP, including the placement at the comprehensive high school, provided FAPE for the Student.¹⁴ The revisions from the May 1 2024 IEP were limited, such as updating the PLAAFPs and eliminating the 800 minutes of specially designed instruction in study/organizational skills in the self-contained science classroom. Yet, the extent of time in general education remained the same at 52%. (D-12/P-3).

19. On November 12, upon his discharge from RTC-3, the Student returned to his previous placement at the comprehensive high school.¹⁵

20. On November 20, however, after an argument at home, the Student eloped soon after arriving at school, having cut off his tracker and travelled to a local casino. (E.g., D-5, at 1; NT-III at 186–87). After a search found him there, the Student was transported to an acute care facility, which did not include any education services and where he remained until his next placement.

21. On November 25, the Parents filed for the due process hearing.

22. On December 3–4, the IEP team met at the special education teacher's request to include other agreed-upon provisions for the November 5 IEP, specifically for an escort at school upon moving outside the classroom and for resource room for science. (NT-I at 95–98; NT-III at 13–15; D-13; D-14).

23. On December 7, the Student, with parental consent, was admitted to RTC-4, which was out-of-state, due to mental health concerns and high-risk behaviors.

¹⁴ The general education PE teacher effectively abstained from this placement decision. (E.g., NT-III at 169).

¹⁵ The Parents did not receive and thus could not share the RTC-3 discharge report, which recommended return to the high school, until approximately a week after the November 5 IEP meeting. (E.g., R-27/P-11; NT-III, at 78).

24. On January 17, 2025, the high school principal formally notified the Parents that the District denied financial responsibility for any costs of RTC-4 (D-22).

25. On April 23, upon learning of the Student's imminent release from RTC-4, the IEP team, which included the Parents, met and decided to place the Student at a District specialty school, that serves only special education students with significant behavioral issues. (D-31). This school provides pervasive social/emotional programming, regular behavioral feedback and interventionists, mental health services, small classes, and secure facility features. (E.g., NT-I at 169–70 & 174–75).

26. On April 28, 2025, the Student was released from RTC-4. He received high school credit for some of his classes in the education arm of that RTC.

27. On May 6, the Student started his attendance under the April 23, 2025 IEP.

VI. CONCLUSIONS OF LAW

Procedural Challenge

Before addressing the merits, the SRO rules against the Parents' challenge to the HO's limitation of the issues to the two identified in the prehearing order. In this case, the order was the culmination of a rather prolonged prehearing process in which the Parents were represented by two separate attorneys. Neither of the two attorneys raised any objection to the two stated issues, which did not include any procedural FAPE issue except to the limited extent that the first issue starts as a procedural matter and potentially culminates with FAPE in a substantive sense. The HO's refusal to allow the Parents' to pose any separate procedural FAPE claims belatedly during the ensuing hearing sessions was entirely appropriate in light of the convoluted and rather confused nature of the original and amended complaints and the applicable regulations' prohibition of unilateral issue additions. (34 C.F.R. § 300.511(d)). Indeed, the SRO finds that

the HO was patiently generous in providing the parties with appropriate latitude in time and scope for their questioning of witnesses and presentation of evidence.¹⁶

Issue 1 (Evaluation in All Areas of Suspected Disability)

The IDEA requires that the evaluation obligation extends to “all areas of suspected disability.” (20 U.S.C. § 1414(b)(3)(B)). This language has been subject to two prevailing interpretations. The narrow interpretation is that it refers, as is more clearly inferable in the context of initial evaluations, is limited to the areas of the disability classification that was the suspected basis and thus focus of the evaluation. For example, in *J.W. v. Fresno Unified School District*, 626 F.3d 431, 443–44 (9th Cir. 2010), the Ninth Circuit ruled that the reevaluation of a child classified with a hearing impairment assessed its subclassification area of audition skills.

The broader and generally more accepted interpretation is that, like in cases of “pure” child find (i.e., the ongoing evaluation obligation for students not previously identified as eligible under the IDEA), it extends to any other recognized classifications of the IDEA beyond the already identified classification for the child upon reasonable suspicion of said additional eligibility area. For example, *N.B. v. Hellgate Elementary School District*, 541 F.3d 1202, 1208–10 (9th Cir. 2008), the Ninth Circuit ruled that the defendant-district’s failure to assess autism upon the reevaluation of child with an IEP for speech/language impairment upon being put “on notice” by a credible outside diagnosis of this additional classification was a violation of this obligation.

However, the prevailing view is that this broader interpretation does not extend to diagnostic areas that are not recognized classifications under the IDEA. For example, in *Crofts v. Issaquah School District*, 22 F.4th 1048, 1055–56 (9th Cir. 2022), the Ninth Circuit ruled that

¹⁶ This HO’s latitude was more pronounced for the Parents’ attorney than for the District’s attorney, which is understandable in light of the their apparent wide difference in experience specific to special education law.

the district did not violate the “all areas” obligation when its evaluation identified the child with SLD but did not extend to assess whether the child specifically had dyslexia.

In either event, the courts are agreed that this obligation is procedural, thus subject to a second step, as stated in the conditional part of issue 1 in this case.¹⁷ For example, in *Butte School District v. C.S.*, 817 F. App’x 321, 325–25 (9th Cir. 2020), the Ninth Circuit ruled even if that the district’s failure to assess reasonably suspected SLD in the reevaluation of a child with an IEP for autism and ED was a violation, the IEP’s specialized instruction in SLD rendered it harmless error rather than a FAPE denial. Conversely, in *Timothy O. v. Paso Robles Unified School District*, 822 F.3d 1105 (9th Cir. 2016), the Ninth Circuit ruled that the district’s “all areas” violation resulted in substantive loss.

Thus, the applicable criteria for analysis of the first, foundational part of this issue is whether the District had reasonable suspicion during the relevant period of the classifications of OHI and ED and, if so, whether the District timely responded by assessing these areas. Moreover, the applicable approach for the requisite triggering suspicion is the same as for pure child find cases—an objective determination of what the District personnel knew or had reason to know at the specific time at issue, not with the present benefit of hindsight.¹⁸

As determined *supra* in the Factual Findings, the District’s immediate response in August 21, 2023, upon the Student’s enrollment was to develop an interim IEP comparable to the IEP for SLD from the charter school at RTC 2. (FF# 8). This response was in accord with the applicable federal and state regulations, which also require a development of a new IEP within 30 days,

¹⁷ Per the “Issues” section *supra*, the statement of the first issue, as a second part conditional upon a violation of the first part, is “if so, whether this failure resulted in the denial of FAPE?”

¹⁸ See, e.g., *J.M. v. Summit City Bd. of Educ.*, 39 F.4th 126, 144 (3d Cir. 2022) (citing *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 214 (5th Cir. 2019); cf. *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2017)).

including a timely intervening evaluation (34 C.F.R. § 300.323(f); NAC 388.275). Given the short time period and the immediacy of the regulatory obligation, an objective assessment of the context and contents of the charter school IEP and the Parents’ oral overview of the Student’s history did not give the District reason to suspect OHI or ED. (FF# 8; *supra* note 12). The September 23, 2023 IEP meeting, after intervening receipt of the RTC 2 discharge paperwork and the MDT evaluation (FF## 9–10), came closer to reasonable suspicion, but the “red flags” focused on mental health issues in the home environment. The behaviors at school, such as work avoidance and resistance, were not uncommon for students with SLD, and no marked need for special education at that time separately indicative of OHI and ED surfaced in either the formal data collection or the first month behavior at the high school.

The Student’s behaviors for the next six months of the 2023–24 school year served to confirm the conclusion as to what school officials knew or had reason to know at the time. (FF# 11). The turning point for reasonable suspicion, especially for OHI, was the private clinic’s evaluation that yielded various credible diagnoses, including fetal alcohol syndrome, and that the Parents shared with the District in late February or early March 2024. (FF## 12–13). The reasonably prompt MDT reevaluation report and IEP team determination on May 1, 2024 of OHI as the Student’s primary classification and ED as the secondary classification (FF# 14) met the District’s requisite “all areas” obligation.

This affirmance of the HO’s Issue 1 ruling is even clearer by proceeding to the second, “if so” step of this issue. More specifically, even if the HO erred in finding no violation of the District’s “all areas” evaluation obligation, the ultimately controlling test is based on the

individual needs of, not the labels or diagnoses for, the child.¹⁹ Thus, if the immediately resulting IEP on May 1, 2024 met the substantive standard for FAPE, the procedural violation would be harmless. (*E.g., Butte Sch. Dist. v. C.S.*, 817 F. App'x at 326). The analysis under Issue 2 for the May 1, 2024 provides the answer to this assuming *arguendo*, “if so” question (*Supra* note 17).

Issue 2 (Substantive FAPE for May 1, 2024 & November 5, 2024)

The applicable standard for substantive FAPE, per the Supreme Court’s decision in *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 399 (2017), is whether these IEPs are “reasonably calculated to enable [the] child to make progress appropriate under the circumstances.” The Court clarified that “the ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials.” (*Id.*). This clarification effectively confirmed the “snapshot” approach that has long applied in the Ninth Circuit and which requires determining substantive FAPE as of the time of the IEP rather than with hindsight.²⁰ The application of this same standard merits separate analysis for each of the two successive IEPs at issue, which amount to closer calls than Issue 1.

The May 1, 2024 IEP

On May 1, 2024, in the immediate wake of reclassifying the Student with OHI and, secondarily, ED, within the recommendations of the MDT reevaluation, the IEP team reduced

¹⁹ See, e.g., *Fort Osage R-1 Sch. Dist. v. Sims*, 641 F.3d 996, 1004 (8th Cir. 2012). The individual needs of the child is an implicit and integral part of the “under the circumstances” qualifier in the *Endrew F.* standard *infra* and thus a superfluous explicit part of the HO’s original statement of issue 2 *supra*.

²⁰ See, e.g., *Adams v. State of Or.*, 195 F.3d 1141, 1149 (9th Cir. 1999) (citing *Fuhrmann v. E. Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993):

Actions of the school systems cannot ... be judged exclusively in hindsight....
[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.

the allocation of specialized instruction associated with SLD and increased the corresponding allocation associated with social-emotional and behavioral skills. (FF# 15). Their specific choices of written expression and study/organizational skills are not as clearly “reasonably calculated,” but they survive scrutiny based on the deference due to school authorities in such matters,²¹ thus resulting in affirmance of the HO’s ruling for the May 1 IEP.

The November 5, 2024 IEP

However, after the intervening off-campus and partially-connected incident that led to the extended stay at RTC-3 (FF# 16), the November 5, 2024 IEP does not pass substantive muster. Although not a blatant black-and-white contrast, the balance of considerations for the May 1 IEP shift in the Parents’ favor for the November 5 IEP because despite knowing that the Student was returning from another extended RTC stay (FF# 18), this one being in the immediate wake of the previous IEP that was based on more clearly behavior-related classifications, the IEP’s revisions were largely limited to reducing the specially designed instruction related to socio-emotional or behavioral needs and not adding any counseling or other related services for socio-emotional support.²² Responding to the Parents’ expressed concerns for obviously more extensive services in light of what the District knew or had reason to know at this point about the Student’s relevant record, the net weakening rather than strengthening of the May 1 IEP with respect to the Student’s OHI and ED needs did not comport with the applicable reasonably-calculated standard. Contributing to, if not confirming this conclusion, the failure to provide the escort, as the hearing officer observed, was a substantive FAPE defect upon the Student’s return to school about a week later.

²¹ See, e.g., *Crofts v. Issaquah Sch. Dist.* 22 F.4th at 1056 (collected Ninth Circuit cases).

²² The District’s routine recommendations for the Parents to seek identified outside services amounted to token efforts that in no significant way fulfilled its own substantive FAPE obligation. (E.g., NT-III at 133).

Remedy

The determination of the resulting remedy makes the denial of FAPE clearer. First, contrary to the HO's ruling, the subsequent correction of the IEP did not cure the substantive FAPE flaw because (a) the District failed to provide the escort during the intervening period, (b) the Student's elopement on the seventh school day was what the escort provision was intended to prevent; and (c) the omission was supplemental to the central basis of the FAPE denial, which was the reduction rather than enhancement and sharpening of the goals and services in the November IEP to focus on the emotional-dysregulation and work-avoidance behaviors of the Student upon learning of the intervening school-related incident and RTC-3 stay.

The appropriate remedy in this case is compensatory education, but not, as explained *infra*, residential placement. Although the filing party's relief request does not preclude or limit the broad equitable remedial authority under the IDEA,²³ the Parents' complaint specifically requested compensatory education in addition to other relief. (HO-11, at 17). Moreover, regardless of the approach for calculating compensatory education, it is well-established that awards may be for relatively short periods.²⁴ The approach in the Ninth Circuit is flexible rather than hour for hour. (*Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006); *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994)).²⁵

²³ See, e.g., *Albuquerque Pub. Schs. v. Sledge*, 2019 WL 3755954, at *14 (D.N.M. Aug. 8, 2019); see also Letter to Zirkel (OSEP Apr. 15, 2022), <https://sites.ed.gov/idea/idea-files/policy-letter-22-04-april-15-2022-to-zirkel/>.

²⁴ See, e.g., *G.D. v. Utica Cmty. Schs.*, 2023 WL 2719426, at *6 (E.D. Mich. Mar. 30, 2023) (upholding award of 18 hours of compensatory education); *G.D. v. Wissahickon Sch. Dist.*, 832 F. Supp. 2d 455, 468 (E.D. Pa. 2011) (upholding award equating to approximately 12 days of compensatory education); *Moubry v. Indep. Sch. Dist.*, 696 F. Supp. 2d 1086, 1107 (D. Minn. 1998) (upholding award of 20 hours of compensatory education); *Madeline P. v. Anchorage Sch. Dist.*, 265 P.3d 308, 320 (Alaska 2011) (upholding award of 15 hours of compensatory education).

²⁵ In dicta, the Ninth Circuit seemed to adopt the qualitative approach of equitably estimated to restoring the position the child would have been in but for the denial of FAPE. *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).

Rather than remanding the case for further proceedings, which would increase both the transaction costs and already prolonged period, the SRO equitably estimates that 40 hours of 1:1 specialized services from a BCBA would make up for the lack of FAPE for the period from the Student's return to the District and the Parents' filing for the hearing, which amounts to 10 school days (FF## 19–21).²⁶

Residential Placement

On the other hand, the Student was not entitled to residential placement as a threshold matter because the proof is preponderant that the reason for his previous and the proposed residential placements was mental health safety, rather than education, concerns. Although OHI and ED encompass more overlap between such concerns, the severe safety-related mental health issues for the Student were in the home and other settings outside of school. Despite the variance in its evolution, the Ninth Circuit's standard on an overall basis is that school districts are not responsible for residential placements that are primarily for broadly medical instead of specifically educational reasons.²⁷ Thus, as a threshold matter, the Parents do not prevail as a matter of prospective placement as of the November 5, 2023 meeting.²⁸

²⁶ The ten-day period was a framework consideration here without being an hour-for-hour or day-for-day calculation. Moreover, in lieu of this compensatory education award, parties may promptly and mutually agree upon a service specialist other than a BCBA or a different amount of social/emotional support or behavioral intervention services.

²⁷ *N.G. v. Placentia Yorba Linda Unified Sch. Dist.*, 807 F. App'x 648, 650 (9th Cir. 2020); *Edmonds Sch. Dist. v. A.T.*, 780 F. App'x 491, 494–95 (9th Cir. 2019); *Forest Grove Sch. Dist. v. T.A.*, 638 F.3d 1234, 1240–41 (9th Cir. 2011); *Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1009 (9th Cir. 2009); *Ashland Sch. Dist. v. Parents of Student E.H.*, 587 F.3d 1175, 1185 (9th Cir. 2009); *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996); *Cnty. of San Diego v. Cal. Special Educ. Hearing Off.*, 93 F.3d 1458, 1468 (9th Cir. 1996); *Clovis Unified Sch. Dist. v. Cal. Off. of Admin. Hearings*, 903 F.2d 635, 645 (9th Cir. 1990). The variance is largely a matter expressing the distinction in terms of reasons, purposes, problems, or necessity. For a federal district court decision that synthesized the test in terms of problems and necessity, see *SPB v. Washoe Cnty. Sch. Dist.*, 2024 WL 4368227 (D. Nev. Sept. 30, 2024).

²⁸ This issue is distinguishable from whether, either as a retrospective matter in a reimbursement case or prospectively in other circumstances, including settlement, a school district is liable for the education costs of a residential placement that is primarily necessitated for noneducation reasons. For a nonprecedential example of a case in which, unlike here, this was an identified issue and it arose in the reimbursement context, see *CLO32024* (Mar. 20, 2024), <https://doe.nv.gov/offices/office-of-comprehensive-student-services/dispute-resolution/due-process-review-decisions>.

The Parents' reliance on *M.S. v. L.A. Unified Sch. Dist.*, 913 F.3d 1119 (9th Cir. 2019), does not change this conclusion. First, the case was factually distinguishable because another agency had residentially placed the child for mental health treatment under state law and pursuant to a juvenile court order. (*Id.* at 1121). Alternatively, even if not distinguishable on those grounds, the court's ruling in *M.S.* was that the defendant-district violated its obligation to consider whether the residential placement was necessary for education reasons. (*Id.*). Instead, in the instant case, the proof was preponderant that the IEP team considered this matter and, despite the Parents' dissent, concluded that residential placement was not educationally necessary. (FF# 18).

Similarly, LRE is not the linchpin or fulcrum of this November 5 IEP ruling. Instead, LRE is at most a secondary issue to the limited extent of its intersection with substantive FAPE, which neither party in this case clearly articulated and persuasively applied. More specifically, LRE is implicit in the reasonable calculation for "appropriate" progress under the circumstances to the extent that the placement provide education with nondisabled peers "to the maximum extent appropriate" (*id.* § 300.114(a)(2)(i)). Within this overlap, the choice is an individualized determination within the required continuum (e.g., *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994)). Here, contrary to the Parents' position, the specific educational circumstances of the Student as of November 5 did not require residential placement as a matter of LRE to the limited extent it was at issue in this case.

On other hand, contrary to the position in this case of more than one District witness, the continuum of LRE placements is not a lockstep sequence that automatically applies in all circumstances, thus precluding residential placement as skipping, or "jumping," earlier options.

The district's obligation is for availability, not successiveness. (34 C.F.R. § 300.115).²⁹ Thus, although the Student was not entitled to the Parents' proposed placement on November 5, 2024, the reason is not a misconceived prohibition against "jumping" the options within the LRE continuum.

Predetermination

Finally, to whatever extent, if any, it may be regarded as an allowable procedural FAPE issue, in this case the Parents' claim of predetermination does not come close to the prevailing high judicial standard.³⁰ Although the November 5, 2024 IEP meeting did not provide the Parents with their preferred allocation and sequence of time for their arguments in favor of residential placement and although the District's resistance to this choice was inferable, the proof was preponderant that they had a reasonable, albeit not optimal, opportunity to present their position. Conversely and more specifically, the evidence was notably short of establishing that the District had a closed mind in this matter.

DECISION AND ORDERS

The IHO's decision is partially reversed as to the second issue. The District shall provide the Student with 40 hours of 1:1 BCBA services outside his school day within one calendar year from this decision, subject to prompt mutual agreement for either the

²⁹ For example, despite the general presumption or preference under the IDEA, a child in individual circumstances other than those of the Student on November 5 may be entitled to an entirely segregated placement in the District, such as the aforementioned specialty school, or, instead, a private day or residential placement as his or her LRE, without having exhausted the other alternatives that are more inclusionary on the continuum.

³⁰ The prevailing standard is proof that the district's came to the IEP team with a "closed mind" and thus, deprived the parents with a meaningful opportunity to participate in the IEP process. *See, e.g., R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) (collected cases). For the most part, the Ninth Circuit rulings have variously found that plaintiffs have not met this rather strict standard. *See, e.g., L.A.S. v. Dep't of Educ., Haw.*, 692 F. App'x 842, 843 (9th Cir. 2017) (ruling that the parents failed to prove that the district was unwilling to consider private placement); *K.D. v. Dep't of Educ., Haw.*, 665 F.3d 1110, 1123 (9th Cir. 2011) (ruling that parents failed to prove that the district based the IEP on the placement rather than vice versa); *J.L. v. Mercer* 592 F.3d 938, 952 (9th Cir. 2010) (ruling that the parents failed to prove that the district made its final placement decisions before the IEP meeting).

implementation details of this remedy or the substitution of a different remedy.

A handwritten signature in black ink, appearing to read "Perry Zirkel", with a stylized, cursive script.

Dated: September 11, 2025

Perry A. Zirkel, State Review Officer

NOTICE OF APPEAL RIGHTS

The decision of this SRO is final unless a party appeals the decision. A party may appeal from the decision of this SRO by initiating a civil action in a court of competent jurisdiction within ninety (90) days receipt of this decision (NAC § 388.315).