

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

In the Matter of

Date: November 4, 2024

STUDENT¹, by and through
Educational Decision Maker
Petitioners,

v.

Hearing Officer

SCHOOL DISTRICT

Colleen Platt

Respondent

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION AND ORDER

This matter came for a hearing on October 21, 2024. The School District was represented by [], counsel for the School District, and the Student, by and through the Educational Decision Maker (“EDM”) was represented by Marina Dalia-Hunt. Colleen Platt, Esq. served as the hearing officer (“Hearing Officer”) in this matter. The following Findings of Facts, Conclusions of Law and Decision are hereby rendered by the Hearing Officer.

I. PROCEDURAL HISTORY

On October 3, 2024, the Petitioner filed a due process complaint (“Complaint”) requesting an impartial due process hearing to resolve issues of the discipline actions taken against the Student. This Complaint was heard on an expedited timeline. Pursuant to 20 USC §1415(k)(4), 34 C.F.R. §300.532(c)(2) and NAC 388.308, a hearing must be expedited to resolve a dispute concerning: (1) the determination of whether the conduct of a student with a disability was a manifestation of the student’s disability; or (2) regarding the disciplinary change of placement of the student pursuant to 34 C.F.R. §300.530 or 300.531. Such hearing must be

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

conducted within 20 school days of the due process complaint being filed and the decision of the hearing officer assigned to the hearing must be rendered within 10 school days of the hearing being conducted. (NAC 388.308, 24 C.F.R. 300.532(c)(2)). On October 4, 2024, this Hearing Officer was appointed to hear the Complaint. On October 4, 2024, this Hearing Officer filed a Preliminary Order and Notice of Status Conference setting a status conference for October 8, 2024. On October 8, 2024, the School District filed its answer to the Complaint.

On October 8, 2024, a status conference was held in this matter wherein a prehearing conference was scheduled for October 14, 2024, and a hearing was scheduled for October 21, 2024. A Status Conference Report and Order was filed on October 8, 2024. On October 9, 2024, this Hearing Officer sent a Notice of Prehearing Conference and draft issues for the hearing. On October 14, 2024, a Prehearing Conference was held wherein the parties discussed the issues that would be heard at the hearing, as well as other formalities related to the hearing. A Pre-Hearing Conference Report and Order was filed by this Hearing Officer on October 14, 2024. On October 15, 2024, the School District, via email, objected to the issues for the hearing contained in the Pre-Hearing Conference Report and Order, wherein the School District objected to this Hearing Officer's interpretation of NRS 432B.462 and the characterization in the issue that the manifestation determination review ("MDR") team determined that the Student should be expelled. On October 15, 2024, this Hearing Officer filed an Amended Pre-Hearing Conference Report and Order.

On October 21, 2024, beginning at 9:00 am, a hearing was held on the Complaint. The School District presented three witnesses: (1) High School's Assistant Principal []; (2) Student's Special Education Teacher; and (3) Student's Foster Parent. Counsel for the Petitioner presented six witnesses: (1) Student's Special Education Teacher from Middle School 2; (2)

Student's General Education Teacher; (3) High School's Special Education Instructional Facilitator ("SEIF"); (4) School District's Coordinator for Foster Care ("CFC"); (5) High School's Assistant Principal []; and (6) High School's Assistant Principal []. Counsel for the School District and counsel for the Petitioner each presented opening and closing statements. At the hearing, the following exhibits were admitted: Respondent's Exhibits 1 through 5, 7 through 10, and 12 through 15, and Petitioner's Exhibits 1, 2, 4, 9 and 11 through 19.

At the hearing, the School District sought to enter Respondent's Exhibit 11, the Discipline Removal Referral Packet, into evidence when the Assistant Principal BC testified. Counsel for the EDM objected to its admission on the grounds that it was hearsay. This Hearing Officer reviewed Exhibit 11 and asked Assistant Principal [] questions regarding the document. Upon review, this Hearing Officer noted that the document was not signed and there appeared to be inconsistencies in the document. Upon questioning, Assistant Principal BC stated that the document proffered as Respondent's Exhibit 11 is not the complete document and there was a complete document, which was signed and located on Infinite Campus. This Hearing Officer did not admit Respondent's Exhibit 11 because this Hearing Officer could not determine whether Respondent's Exhibit 11 was a true and accurate copy of the document.

At the beginning of the hearing, counsel for the School District noted that as a preliminary matter, the School District had tried to contact the Foster Parent regarding the Foster Parent's testimony at the hearing, but when they reached out, counsel for the Petitioner sent an email regarding the School District's attempt to reach the Foster Parent. Counsel for the School District further stated that after the email from counsel for the EDM, the Foster Parent refused to speak to the School District and the School District was concerned that the Foster Parent would not be present at the hearing. Counsel for the Petitioner stated that she was simply explaining

that the Foster Parent had a death in the family and that the Foster Parent thought that she was being subpoenaed to testify at the hearing despite the death in the family. Counsel for the Petitioner indicated that she felt that the School District was accusing her of witness tampering and wanted to read the email in its totality into the record. This Hearing Officer declined to hear the email and explained that she did not believe the School District's counsel was accusing her of witness tampering. This Hearing Officer inquired when the Parties knew about the death in the family of the Foster Parent, the School District indicated that they spoke with the Foster Parent on October 15, 2024, and learned that there was a death in the family. Counsel for the Petitioner indicated that she learned of the death in the family on October 17, 2024.

This Hearing Officer inquired whether the Foster Parent would be able to testify in the hearing. Counsel for the Petitioner indicated she did not know if the Foster Parent would be in attendance at the hearing to testify, but that she could reach out to the Foster Parent to so inquire. It was agreed that the witnesses would be taken out of order to allow time for counsel for the Petitioner to attempt to locate the Foster Parent and determine whether she would be able to testify at the hearing. The Foster Parent was eventually contacted and was scheduled to testify at the hearing.

II. ISSUES TO BE DECIDED

The issues to be determined are as follows:

1. Did the School District deny the Student a FAPE when it held the manifestation determination meeting on October 1, 2024, without the Educational Decision Maker present at the meeting as required by NAC 388.265(3)?
2. Did the School District deny the Student a FAPE when it determined that the Student's conduct, for which the Student was to be expelled from school, was not a manifestation of the Student's disability?

III. FINDINGS OF FACT

After considering the testimony presented at the hearing and the admitted exhibits, this Hearing Officer makes the following findings of fact:

1. The Student was appointed an Education Volunteer Advocate on or about January 2, 2019, by an order issued by the Judicial District Court Family Division-Juvenile in and for County (“Court”) which named an individual as the Student’s Education Volunteer Advocate to act as the Educational Surrogate Parent in all matters relating to the identification, evaluation, and educational placement of the Student and the provision of a free, appropriate public education. (Petitioner’s Exhibit 1, p. 3-4)
2. On or about June 25, 2019, the Court appointed the EDM as the Student’s Education Volunteer Advocate to act as the Educational Surrogate Parent in all matters relating to the identification, evaluation, and educational placement of the Student and the provision of a free, appropriate public education. (Petitioner’s Exhibit 2, p. 9-10)
3. The order appointing the EDM was sent to Middle School 2 on or about September 19, 2023. (Petitioner’s Exhibit 2, p. 1)
4. On August 12, 2024, Student was enrolled at High School in the 9th grade. (Respondent’s Exhibit 3, p. 1)
5. On or about September 24, 2024, the Student was arrested with two other students on the corner of two streets adjacent to the High School, but not on the High School, for being in possession of a firearm. (Respondent’s Exhibit 14, Testimony of Principal [], and Assistant Principal [])
6. On or about March 7, 2019, Student was determined to be eligible for special education in the areas of emotional disturbance and specific learning disability. (Respondent’s Exhibit 4, p. 1)

7. On or about September 4, 2020, the Student was enrolled in Elementary School, a multidisciplinary team (“MDT”) for the Student had a meeting regarding the Student’s Individualized Education Plan (“IEP”). The IEP that was created on September 4, 2020, indicates that the “Parent/Guardian/Surrogate” of the Student was a woman who was notated at the “Foster Mother” of Student and a “Temporary Guardian” was also notated and indicated that Student would be in a regular class and special education class combination and that Student would spend 82% of the school day in the regular education environment. (Respondent’s Exhibit 4, p. 1, 13)
8. On or about May 5, 2022, Student was enrolled in Middle School 1 and the MDT met regarding Student’s IEP and an IEP was created on or about that date. That IEP indicates that the “Parent/Guardian/Surrogate” of the Student was the Foster Parent notated as “Foster Mother” and it indicates that the EDM participated in the meeting by videoconference. The Foster Parent did not participate in the meeting. (Respondent’s Exhibit 5, p. 1, 2 and 15)
9. The May 5, 2022, IEP notes that Student has a “diagnosis of ADHD, ODD, Disruptive mood dysregulation disorder, PTSD and FAS” and that the Student was on medication for mood regulation, anxiety, attention and focus and that Student would be in a self-contained program and spend 33% of the school day in the regular education environment.. (Respondent’s Exhibit 5, p. 6, 14)
10. On September 28, 2023, Student was enrolled in Middle School 2 in the 8th grade, the MDT met regarding Student’s IEP and an IEP was created on or about that date. (Respondent’s Exhibit 7, p. 1)

11. The September 28, 2023, IEP noted the Foster Parent as the “Parent/Guardian/Surrogate” and that the Student’s eligibility category was emotional disturbance and specific learning disability (Respondent’s Exhibit 7, p. 1)
12. The September 28, 2023, IEP indicated that the Foster Parent and EDM participated in the meeting by videoconference and that Student would be in a self-contained program and spend 39% of the school day in the regular education environment. (Respondent’s Exhibit 7, p. 1, and 16)
13. On May 16, 2024, Student was enrolled in Middle School 2, the MDT met regarding Student’s IEP and an IEP was created on or about that date. (Respondent’s Exhibit 8, p. 1)
14. The Student’s eligibility category for the May 16, 2024, IEP was emotional disturbance and specific learning disability. (Respondent’s Exhibit 8, p. 1)
15. The May 16, 2024, IEP indicated that the Foster Parent participated in the meeting by videoconference and does not indicate that the EDM was present. (Respondent’s Exhibit 8, p. 1)
16. The May 16, 2024, IEP indicated that Student would be in a self-contained program and spend 39% of the school day in the regular education environment. (Respondent’s Exhibit 8, p. 17)
17. An MDR was conducted on October 1, 2024, as a result of the police department contacting the High School indicating that Student, along with two other students, was found on the backside of the High School in possession of a firearm. (Respondent’s Exhibit 10, p. 1)

18. The MDRT consisted of the Foster Parent, SEIF, Special Education Teacher, and General Education Teacher. (Respondent's Exhibit 10, p. 2)
19. An IEP was created on October 1, 2024, as a result of the MDR. The IEP does not indicate that the Student participated in its development.
20. The Student's eligibility category for the October 1, 2024, IEP was emotional disturbance and specific learning disability. (Respondent's Exhibit 9, p. 1)
21. The October 1, 2024, IEP notated that the amendments to the IEP were the result of disciplinary action. (Respondent's Exhibit 9, p. 2)
22. The October 1, 2024, IEP indicates that on September 24, 2024, the School District reviewed the Student's "Confidential Folder" and that the administration of the High School was contacted by a police department that indicated that 3 students were "found on the backside of the school [street location] in possession of a firearm" and that the Student was one of the three students. (Respondent's Exhibit 9, p. 11)
23. The October 1, 2024, IEP notated that the Student was being placed in Alternative Instructional Arrangements for up to 15 hours because the nature and severity of the infractions and would not spend any time of the school day in the regular education environment from October 1, 2024, through October 21, 2024. (Respondent's Exhibit 9, p. 21)
24. The October 1, 2024, IEP notated that the Student would be returned to the self-contained program and spend 42% of the school day in the regular education environment beginning on October 22, 2024, through May 15, 2025. (Respondent's Exhibit 9, p. 22)
25. It is unclear whether the October 1, 2024, IEP was implemented.

26. On October 1, 2024, a Manifestation Determination Summary (“Summary”) was prepared by the Student’s Special Education Teacher. (Respondent’s Exhibit 10, p. 2 and testimony by Special Education Teacher)

27. The Summary indicates that:

- a. The Student’s disability was Primary: emotional disturbance and Secondary: Specific Learning Disability. (Respondent’s Exhibit 10, p. 1)
- b. The High School administration was contacted by the police department indicating that Student, along with two other students, was found on the backside of the High School in possession of a firearm. (Respondent’s Exhibit 10, p. 1)
- c. A functional behavior assessment was not conducted. (Respondent’s Exhibit 10, p. 1)
- d. When Student is overwhelmed, Student will “display non-compliant behavior, withdrawing from completing classroom assignments, engage in verbal and/or physical aggression towards peers.” (Respondent’s Exhibit 10, p. 1)
- e. The action taken at the time of the offense was a suspension and expulsion. (Respondent’s Exhibit 10, p. 2)
- f. After considering the relevant information, the team reached the conclusion that the behavior for which the Student was being disciplined was not caused by nor did it have a direct and substantial relationship to the Student’s disability nor was it the direct result of the School District’s failure to implement the IEP and as a result is not a manifestation of the Student’s disability. (Respondent’s Exhibit 10, p. 2)

- g. The Foster Parent, the SEIF, Special Education Teacher and Regular Education Teacher participated in the MDR, with the Foster Parent participating by videoconference. (Respondent's Exhibit 10, p. 2)
 - h. The EDM was not present at the MDR.
28. At the time of the September 24, 2024, incident, Student had been at High School for just over one month. (Respondent's Exhibit 3, p. 1, testimony of Assistant Principal [], SEIF, Student's Special Education Teacher)
29. When a student engages in conduct that is a violation of a school's code of conduct, the school makes a recommendation concerning the discipline to be implemented, that recommendation is then sent to the School District's Educational Services Division ("ESD") and the ESD makes the final decision regarding discipline. (Testimony of Assistant Principal [])
30. Upon receiving the recommendation from the school, the ESD meets with the parents of the student, discusses the evidence and the behavior that resulted in the proposed discipline, any options regarding the student and then the ESD makes a decision regarding the discipline. (Testimony of Assistant Principal [])
31. The code of conduct requires the consequences for some acts a mandatory expulsion of a student. Such acts are battery on school staff or students; possession of a weapon; sexual assault; and distribution of controlled substances. (Testimony of Assistant Principal [])
32. Some acts result in discretionary expulsion where the principal can decide whether the conduct warrants that a student is expelled. (Testimony of Assistant Principal [])

33. Police Department contacted the administration of the High School on September 24, 2024, and stated that they arrested three students on the corner of two streets by the High School with a firearm. The corner where the Student was arrested was not on the High School premises but was directly across the street from the High School. Student was one of the three students arrested. (Respondent's Exhibit 14, Testimony of Assistant Principal [], and Assistant Principal [])
34. The day after September 24, 2024, incident, the Student returned to school and Student was in class talking about being arrested with other students who had a gun. (Testimony of Assistant Principal [], Respondent's Exhibit 12, p. 1-4)
35. Student was not flagged in Infinite Campus as a child in foster care at the beginning of the school year but sometime in September the Student was flagged as being a child in foster care. (Testimony of Assistant Principal [], SEIF, Special Education Teacher)
36. It is unknown if the flag in Infinite Campus denoting a student as a child in foster care carries over from one year to the next. (Testimony of Assistant Principal [] and CFC)
37. Generally, a student's file within Infinite Campus will contain a flag which indicates that the student is a student in foster care. (Testimony of Assistant Principal [], SEIF, CFC)
38. In generally, there are different ways that the School District is notified that a student is a child in foster care: (1) through a letter from the county child services; or (2) caseworker reaches out to the School District. (Testimony of CFC)

39. Every child in foster care must have an educational decision maker appointed to the child. A number of people may qualify for the appointment, but the court appoints the position and every child in foster care must have an educational decision maker.
(Testimony of CFC)
40. The School District provides training to employees of the School District regarding students in foster care and such training provides information on educational decision makers. (Testimony of CFC)
41. The training regarding the educational decision maker consists of the roles, responsibilities, presence in disciplinary and other educational meetings, and that the educational decision maker must be present at all meetings involving the education of the student. (Testimony of CFC)
42. All children in foster care must have a court appointed educational decision maker. The educational decision maker must be present at all meetings concerning the education and discipline of a student at the school. (Testimony of CFC)
43. On October 1, 2024, after the MDR was conducted, the High School learned that the Student had an educational decision maker and the High School reached out to the CFC to determine whether the educational decision maker was a required individual for the MDR (Testimony of Assistant Principal [], CFC)
44. After the CFC informed Assistant Principal [] that the EDM must be present at all meetings involving the education of the Student, a second MDR was scheduled for October 4, 2024, and the EDM was notified of the MDR. (Testimony of CFC, Assistant Principal [])

45. The EDM was not notified of the MDR on October 1, 2024, because the High School did not know that the Student had an EDM. (Testimony of Assistant Principal [])
46. Prior to an MDR, the MDRT must review all relevant information in the student's file, which includes, the confidential folder which is comprised of: (1) the current and all prior evaluations; (2) current and all prior IEPs; (3) supplementary aids and services; (4) plan implementation data; (5) functional behavior assessments; and (6) behavior plan. (Petitioner's Exhibit 16, p. 1; Testimony of Student's Special Education Teacher; SEIF)
47. In addition, the MDRT must also review the student's: cumulative folder; discipline folder; health file/medical history; academic records; attendance records; independent/community reports/documentation; other records; history of behavioral interventions; conduct interviews prior to the meeting of the teachers, parents, specialists, SPTAs, other staff; student's cognitive ability; student's behavior motivations; and must consider student's disability broadly. (Petitioner's Exhibit 16; Testimony of SEIF)
48. While the SEIF indicated on the Manifestation Determination Compliance Protocol and Review Checklist ("Checklist") that the confidential folder had been reviewed by her prior to participating in the MDR, she did not in fact review all of the Student's IEPs or evaluations or assessments because only 2 or 3 IEPs were contained in the Student's confidential folder at the time of review and while the SEIF did not have everything indicated on the Checklist, she proceeded with the MDR anyway. (Petitioner's Exhibit 16, Testimony of SEIF)

49. The Special Education Teacher did not review the Student's entire records ahead of the MDR because the prior school only provided a partial confidential. The only documents reviewed in preparation for the MDR was the May 16, 2024 IEP. (Testimony of Student's Special Education Teacher)
50. The Special Education Teacher and SEIF only knew the Student had a diagnosis of ADHD and were unaware that the Student had other diagnoses such as oppositional defiant disorder; disruptive mood dysregulation disorder; PTSD; and fetal alcohol syndrome, despite those diagnoses being notated in the Student's May 5, 2022, IEP. Those other diagnosis were not considered during the MDR. (Respondent's Exhibit 5, p. 6, Testimony of Special Education Teacher and SEIF)
51. Children who are eligible for emotional disturbance or specific learning disability generally exhibit struggles with coping and are frustrated easily. (Testimony of Special Education Teacher)
52. The SEIF requested the Student's full confidential folder through the School District's "Scribble" system, the full confidential folder was not provided before the October 1, 2024, MDR nor did the SEIF have it prior to the scheduled October 4, 2024, manifestation determination meeting, but would have continued with the meeting regardless because they had some documents, but she would have liked to have the full record. (Testimony of SEIF)
53. The SEIF was aware that an educational decision maker should be invited to the MDR and that the educational decision maker makes all decisions regarding a student's education. (Testimony of SEIF)

54. The SEIF determined to hold the MDR despite not having or reviewing the Student's full confidential folder or educational record because they are required to hold the MDR by the 10th day of a student's suspension and they were close to the 10-day suspension period. (Testimony of SEIF)
55. The General Education Teacher participated in the MDR, but did not recall the Student but knew the Student was a Student in her class. (Testimony of Student's General Education Teacher)
56. In preparation for the MDR, the Student's General Education Teacher reviewed the Student's IEP and current class test scores, but in general the Student's General Education Teacher agrees with the special education teachers because they know more about it than she does. (Testimony of Student's General Education Teacher)
57. The Foster Parent participated in the MDR but was confused as to why the EDM was not present. (Testimony of Foster Parent)
58. It is unclear whether the Foster Parent notified the MDRT that the Student had an educational decision maker.
59. Foster Parent does not serve as the educational decision maker for any of the children she is the Foster Parent for and is unfamiliar with the disciplinary process in the education setting. (Testimony of Foster Parent)
60. After the October 1, 2024, MDR, the Foster Parent emailed the Student's team to inform them of the situation. (Testimony of Foster Parent)
61. Foster Parent only agreed that the behavior was not a manifestation of the Student's disability because she did not believe that he had a gun and was confused by the process. (Testimony of Foster Parent)

62. The Special Education Teacher, the SEIF, and the General Education Teacher determined that the behavior was not a manifestation of the Student's disability nor the result of a failure of the School District to implement the Student's IEP. (Respondent's Exhibit 10, p. 2)
63. A subsequent MDR was scheduled as a courtesy for October 4, 2024, but the Special Education Teacher was planning on voting the same way as she did at the MDR held on October 1, 2024, which was that the behavior was not a manifestation of the Student's disability nor the failure of the School District to implement the Student's IEP because being in possession of a gun is not a manifestation of a disability, it's a choice. (Testimony of Special Education Teacher)
64. In preparation for the October 4, 2024, MDR, the Special Education Teacher prepared a second manifestation determination summary wherein the Special Education Teacher prefilled in the answers to Sections I and II with the same information that was found in the Summary. She preselected the action taken as suspension in Section III but left the answers to Section IV blank. (Petitioner's Exhibit 18, p. 126-127 and Testimony of Special Education Teacher)
65. The EDM was provided notice of the scheduled October 4, 2024, MDR, but the MDR was not held on that date. (Testimony of Special Education Teacher)
66. The charges that were initially brought by the police department on September 24, 2024, were dropped so Student does not have any criminal charges relating to the September 24, 2024, incident. (Testimony of Foster Parent)

IV. CONCLUSIONS OF LAW

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

The Individuals with Disabilities Education Act (“IDEA”) was enacted for, among other reasons, to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” (20 U.S.C. §1400(d)(1)(A) A school district’s compliance with the procedural safeguards set forth in the IDEA is “essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parental participation are particularly important.” *Mrs. S. v. Vashon Island School District*, 337 F.3d 1115, 1129 (9th Cir. 2003) (citing *Amanda J. v. Clark County School District*, 267 F.3d 887, 891 (9th Cir. 2001)). Though a school district may have engaged in a procedural violation of the IDEA, not every procedural violation will be the denial of a FAPE to a student. (*Amanda J.*, 267 F.3d at 892). “Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.” *Id.* at 882. However, where the procedural violation of the IDEA results in the “loss of educational opportunity” or “seriously infringes the parents’ opportunity to participate” in the process or “caused a deprivation of educational benefits” the procedural violation is a denial of a student’s FAPE. *Id.* (citing *W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992) and *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990)).

NRS 432B.462 provides that a court must appoint an educational decision maker for a child that is in need of protection (child in foster care) pursuant to NRS 432B.490. The educational decision maker shall “address any disciplinary issues relating to the education of the child with the child and the school in which the child is enrolled;” “ensure the child receives a

free and appropriate education. . . ;” and “participate in any meeting relating to the education of the child. . .” (NRS 432B.267(7)(b), (c), and (e)). An educational decision maker is deemed to be the surrogate parent for the purposes of 34 C.F.R. § 300.519. (NRS 432B.462(9)).

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

The MDRT shall:

- (a) Consider all information relevant to the behavior subject to disciplinary action, including, without limitation:
 - (1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil;
 - (2) Observations of the pupil; and
 - (3) The pupil's individualized educational program and placement.
- (b) Determine whether the behavior of the pupil was a manifestation of the disability of the pupil. In carrying out the requirements of this paragraph, it must be determined whether the conduct in question was:
 - (1) Caused by or directly and substantially related to the disability of the pupil; or
 - (2) The direct result of the public agency's failure to implement the pupil's individualized educational program.→If the public agency, the parent and the relevant members of the committee determine that either subparagraph (1) or (2) is applicable to the pupil, the conduct must be determined to be a manifestation of the disability of the pupil.
- (c) Prepare a report containing their findings and conclusions. (NAC 388.265(3)(a), (b) and (c)).

34 C.F.R. 300.30 defines the term “parent” to mean, among other individuals, a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; or a surrogate parent who has been appointed in accordance applicable federal regulation or statutes. (34 C.F.R. 300.30(a)(2) and (5)). It goes on to provide that if a judicial decree or order identifies a **specific person** to act as the parent of a child or make educational decision on behalf of the child, then such person **shall be deemed** to be the parent. (34 C.F.R. 300.30(b)(2))(emphasis added)).

NAC 388.071 defines the term “parent” as the “surrogate parent appointed pursuant to NAC 388.283;” and the “foster parent” if the foster parent is “willing to make the educational decisions required of parents pursuant to Part B of the [IDEA] . . .” (NAC 388.071(4) and (5)). NAC 388.283 requires a school district to appoint a surrogate parent in certain circumstances and authorizes a judge overseeing the care of the pupil to appoint a surrogate parent if the pupil is a ward of the State. The surrogate parent “represents the pupil in **all matters** relating to identification of the pupil, in the assessment of any special education needs of the pupil, the educational placement of the pupil” and the provisions of a FAPE. (NAC 388.283(5)) (emphasis added).

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

A. Did the School District deny the Student a FAPE when it held the manifestation determination meeting on October 1, 2024, without the Educational Decision Maker present at the meeting as required by NAC 388.265(3)?

This Hearing Officer finds that the School District denied the Student a FAPE when it held the manifestation determination meeting on October 1, 2024, without the EDM. NAC 388.265(3) requires the parent of the pupil with a disability to participate in the manifestation determination meeting. The School District argued that the Foster Parent was a “parent” within the meaning of 34 C.F.R. §300.30. Counsel argued that 34 C.F.R. §300.30 allows many individuals to be deemed the parent for the purposes of the IDEA and that any one of those individuals may satisfy the term “parent” for the purposes of the IDEA. While the School District is correct, that 34 C.F.R. §300.30 sets forth a number of individuals who may be the “parent” for the purposes of the IDEA, the School District fails to recognize that 34 C.F.R. 300.30(b)(2) provides that if a judicial decree or order identifies a specific person to act as the parent of the child **or to make educational decision on behalf of the child**, then that person shall be the parent. (emphasis added). In this case, we not only have a court order which identifies the EDM as the person to make the educational decision of the Student. This was even supported in testimony by the School District’s CFC. In this case, the Court appointed the EDM on or about June 25, 2019, to serve as the “Educational Surrogate Parent” for the Student.

NRS 432B.462 provides that an educational decision maker is required to be appointed by the court for certain children and the educational decision maker is required to be at every meeting involving the student’s education, including disciplinary matters. NAC 388.071 clearly states that if a foster parent is not willing to make the educational decision regarding the student, then the foster parent cannot be considered the “parent” under NAC 388.071. In this case, the

Foster Parent testified that she was not willing to make the educational decisions for the Student or any other child for which she is the foster parent. Furthermore, NRS 432B.462 clearly states that the educational decision maker is the surrogate parent for purposes of the IDEA. Lastly, the School District's Coordinator for Foster Care testified that an educational decision maker is required to be appointed for any child in foster care, that the Student is a child in foster care, and that the EDM is a required participant at **any** meeting regarding the Student's education.

In this case, based on the testimony of the SEIF, Special Education Teacher, and General Education Teacher, the High School had between 1 and 3 IEPs in the Student's confidential folder and the SEIF, the Special Education Teacher, and the General Education Teacher reviewed one or more of those IEPs prior to the October 1, 2024, MDR. The May 16, 2024, IEP, which was the most recent IEP in effect for the Student, and was reviewed by the Special Education Teacher and the SEIF ahead of the October 1, 2024, MDR. That IEP clearly states that there is a foster parent for the Student and there was a legal advocate present for the May 16, 2024, IEP meeting. Additionally, the May 16, 2024, IEP indicates that the Student's "Guardian is concerned" that the Student's IEP will follow the Student to another state in the next school year. The SEIF and Special Education Teacher testified that they were familiar that an educational decision maker is responsible for the educational decision of a student in foster care. The CFC testified that his office provides training to schools regarding students who are children in foster care. That training covers the educational decision maker and their roles, responsibilities and that the educational decision maker was required to be at each meeting involving the education of a student who is a child in foster care. The SEIF and Assistant Principal [] testified that they had taken training on students who are children in foster care, though none of them could recall if the training included discussion on the educational decision maker. The Special Education Teacher

testified that the Student was flagged as a child in foster care at the time of the October 1, 2024, MDR. The SEIF knew that an educational decision maker should be at each meeting involving a student, but no evidence was presented that the SEIF asked the Foster Parent if she was the educational decision maker for the Student or if it was another individual when the October 1, 2024, MDR was conducted. The May 16, 2024, IEP contained enough information that would have alerted both the SEIF and the Special Education Teacher that the Student was a child in foster care and that further inquiry regarding the Student's record was necessary before conducting the October 1, 2024, MDR.

Despite this knowledge or constructive knowledge that the Student was a child in foster care, the Student's full educational record was not in the possession of the High School, the SEIF and Special Education Teacher determined to proceed with conducting the October 1, 2024, MDR. The SEIF testified that the reason for moving forward was that they were approaching the 10-day requirement to hold the MDR. "When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination." (*Doug C. ex rel. Spencer C. v. State of Hawaii, Dep't of Educ.*, 720 F.3d 1038; 1046 (9th Cir. 2013)). Once the School District learned that it had erred in excluding the EDM, it scheduled a second MDR for October 4, 2024. However, the testimony of the Special Education Teacher indicated she would make the same determination as she did at the October 4, 2024, MDR and the General Education Teacher testified that she defers to the opinion of the special education teachers. The October 4,

2024, meeting is not enough to remedy the School District's decision to hold the October 1, 2024, MDR without the EDM. (*See Doug C.*, 720 F. 3d at 1047).

The October 1, 2024, MDR did not have the required individuals at the meeting, namely the EDM, and while the failure to have the EDM is a procedural violation, the procedural violation seriously infringed the EDM's opportunity to participate in the process and caused a deprivation of educational benefits for the Student. As such, the School District denied the Student a FAPE when it held the October 1, 2024, MDR and did not notify the EDM nor have the EDM present at the MDR.

B. Did the School District deny the Student a FAPE when it determined that the Student's conduct, for which the Student was to be expelled from school, was not a manifestation of the Student's disability?

Before a School District can suspend, expel, or exclude a pupil with a disability that would result in a change of placement of that pupil, the School District must consider all information that is relevant to the behavior subject to the disciplinary action, which includes, without limitation, the evaluations, diagnostic results of the pupil, observations of the pupil, the pupil's IEP and placement. (see 20 U.S.C. §1415(k)(1)(E)(i) and NAC 388.265(3)) In this case, the SEIF and Special Education Teacher testified that they did not have the Student's full education record and as such did not review the Student's full confidential folder, any assessments or evaluations of the Student, or even know the diagnoses of the Student. In fact, they both testified that they knew that they did not have the full file, yet they proceeded with the MDR on October 1, 2024, where they determined that the conduct of the Student was not a manifestation of the Student's disability. Additionally, the Special Education Teacher testified that she did not believe that the behavior was a manifestation of his disability because it involved

a weapon and that regardless of the disability, possessing a weapon was a choice and not related to a disability.

The Special Education Teacher testified that she had reviewed the May 16, 2024, IEP, however, in reviewing the May 16, 2024, the Student's eligibility category is "emotional disturbance" and "specific learning disability." NAC 388.0417 defines "emotional disturbance" as 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 388.117 defines the term "specific learning disability" "[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." In this case, the Summary contains no documentation that the Student's eligibility categories were considered at the October 1, 2024, MDR. The Special Education

Teacher's testimony seems to indicate that she entered the October 1, 2024, MDR with a predetermined decision regarding that the conduct was not a manifestation of the Student's disability. Additionally, the SEIF testified that she reviewed what they had in the Student's confidential file, but could not testify as to what exactly she had reviewed other than vague statements that she reviewed one or two IEPs, but did not testify as to which ones were reviewed.

The purpose of the October 1, 2024, MDR was to determine whether the "conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the [School District's] failure to implement the IEP." (34 C.F.R. §300.530(e)(1)(I) and (II)) The "conduct in question" in this case was the Student being arrested with two other students near the High School, but not on school grounds, because one of the students was in possession of a weapon. No evidence was presented that the MDRT discussed the Student's IEP, diagnoses, assessments or evaluations of the Student as required by NAC 388.265(3). Testimony clearly indicates that the MDRT discussed the conduct in question but there was no evidence presented that any discussion or analysis was conducted regarding the Student's disabilities and whether those disabilities had any relation to the Student's conduct in question. The MDRT is required to "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents." (20 U.S.C. §1415(k)(1)(E)(i)) Each member of the MDRT is not required to review "every piece of information in the student's file" but is required to review the relevant information. *Fitzgerald v. Fairfax County School Board*, 556 F. Supp. 2d, 543, 559 (E.D. Va. 2008). In this case, the evidence, specifically the testimony from the SEIF, Special Education Teacher, and General Education Teacher, clearly indicates that they did not review the relevant information in the Student's file because they did not have the relevant information.

While not every procedural violation of the IDEA will be the denial of a FAPE to a student, here, the Student has demonstrated that this procedural violation is a denial of FAPE. *Amanda J.*, 267 F.3d at 892. Procedural violations must “actually interfere with the provisions of a FAPE to that child.” *Dibuo v. Board of Education of Worcester County*, 309 F.3d 184, 190 (4th Cir. 2002). In this case, the SEIF testified that she did not know of the Student’s diagnoses and further testified that such diagnoses would have been useful information in the October 1, 2024, MDR. Additionally, the Special Education Teacher testified that while she did not know the Student’s diagnoses, she believed the disability was irrelevant to the conduct in question. Furthermore, the General Education Teacher testified that she defers to the special education individuals because she is not familiar with the nuances of special education. As a result of the October 1, 2024, MDR, the Student was removed from his current placement. This decision was made without all relevant information and the MDRT knew that they did not have all of the relevant information regarding the Student, but they proceeded to hold the October 1, 2024, MDR anyway. This process and ultimate decision directly interferes with the provision of a FAPE to the Student.

Contrast this case with that in *Fitzgerald*. In *Fitzgerald*, the student, along with some other friends, shot at the windows of the school, school buses, and cars parked at the school with paintball guns. *Fitzgerald*, 556 F. Supp. 2d at 547. On the way home, the student was stopped by a police officer who noticed the paintball guns, but let the student to continue driving home. *Id.* The police officer heard about the vandalism at the school and contacted the school administration. *Id.* The school, pursuant to its policy, suspended the student and recommended expulsion. *Id.* Because the student was a student with disabilities, the school scheduled a manifestation determination review to determine if the conduct was a manifestation of the

student's emotional disability. *Id.* at 547-548. The manifestation determination meeting was held, with five members of the school, the student and his parents. *Id.* at 548. The manifestation determination meeting included a "careful review of [the student's] record." *Id.* The members presented a history of the student's disability, qualifications for special education services, disciplinary history, reports from teachers, and certain test results. *Id.* At the conclusion of the manifestation review meeting, the parents stated that the conduct was a manifestation of the student's disability, but the members of the school team did not agree, and ultimately determined that the conduct was not a manifestation of the student's disability. *Id.* The parents filed a due process complaint alleging that the behavior was a manifestation of the student's disability and that the school engaged in procedural violations during the manifestation determination review process. *Id.* at 549. The hearing officer determined no violations had occurred during the manifestation determination review process and that even if one had occurred, it did not deny the student a FAPE. *Id.* In coming to this conclusion, the hearing officer determined that they had conducted a "reasonable review of relevant information" and that "each school member of the team had access to information commensurate with that member's background." *Id.* at 558.

In this case, the evidence admitted shows that the members of the MDRT did not have the relevant information to determine whether the Student's conduct was a manifestation of his disability. The testimony is clear, the members of the MDRT knew they did not have all of the relevant information nor did they know enough about the Student in order to conduct a proper manifestation determination review. This procedural violation actually interfered with the provision of FAPE to the Student and was a denial of the Student's right to a FAPE.

V. DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, this Hearing Officer's decision is that the School District denied the Student a FAPE when it held the manifestation

determination meeting on October 1, 2024, without the Educational Decision Maker present at the meeting as required by NAC 388.265(3) and the School District denied the Student a FAPE when it determined that the Student's conduct, for which the Student was to be expelled from school, was not a manifestation of the Student's disability. It is hereby ordered:

IT IS HEREBY ORDERED that the Student shall return to the education setting set forth in the May 16, 2024, IEP at the High School upon the entry of this Decision and Order.

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-appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within 10 days after receiving notice of the initial appeal. At the parties' request, this decision is being delivered to the parties both by e-mail and U.S. Postal Service. Receipt of this Decision and Order will be determined by either the date of actual delivery, or the date of the first attempt to deliver, by the U.S. Postal Service.

Date: November 4, 2024



Colleen Platt
Hearing Officer
11025 Bondshire Drive
Reno, NV 89511
(775) 303-6005
cplatt@plattlawgroupreno.com