

STATE OF NEVADA
DEPARTMENT OF EDUCATION
DUE PROCESS HEARING
IN THE MATTER OF

STUDENT, by and through his Parents,)

Petitioner,)

vs.)

LYON COUNTY SCHOOL DISTRICT,)

Respondent,)

Nilsine Hansen
Impartial Hearing Officer

Hearing conducted on:
May 24 and 25, 2010

Hearing conducted at:
Jeanne Dini Center
120 North California Street
Yerington, NV

Petitioner represented by:
Jeffrey S. Blanck, Esq.

Respondent represented by:
Paul J. Anderson, Esq.

Personally identifiable information is included in Appendix A.

DECISION AND ORDER

INTRODUCTION

On April 14, 2010, Lyon County School District (LCSD or District) received a due process complaint in the above-captioned matter. This Hearing Officer was appointed on April 16, 2010. The Respondent/District filed a request for due process in order to defend its evaluation of the Student as completed on April 29, 2010. This Hearing Officer was appointed on May 4, 2010. The hearings were consolidated by order of the Hearing Officer on May 7, 2010.

This action arises under the Individuals with Disabilities Education Act, as amended (IDEA), 20 U.S.C. § 1400, et seq., and Chapter 388 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC).

PROCEDURAL BACKGROUND

An initial contact with the parties was made by letter on April 16, 2010, requesting a status conference call on April 26, 2010. The call was held and dates for hearing set for May 24, 25 and 27, 2010. In addition to the issues cited in the original request, the Petitioner requested an Independent Educational Evaluation. The District was in the process of completing its evaluation and chose instead to complete that evaluation and defend it with a due process request. The Respondent/District requested that the two due processes be combined. The Petitioner did not object to that request. This Hearing Officer ordered consolidation of the two requests on May 7, 2010. The original dates for hearing were kept. The parties exchanged documents and witness lists on May 17, 2010. A witness-scheduling conference call was held on May 18, 2010, between representatives for the parties and the Hearing Officer.

Petitioner and Respondent both waived the right to opening statements. Respondent/District by agreement proceeded first and bears the burden of proof with respect to its defense of the appropriateness of its evaluation of the Student as evidenced by the April 29, 2010, report of the multidisciplinary team. The Petitioner/Student bears the burden of proof on all other matters that are the subject of this hearing.

The Student was present on each day of hearing for approximately one hour. The Mother was present at all times and the Father for the majority of the hearing. The Director of Special Education who was present at all times represented the District at the hearing. Although testimony was elicited from the Mother and the Director of Special Education, neither party objected to the other's presence in the hearing room throughout the hearing. All other witnesses were excluded until their testimony had been concluded and they were then excused.

Testimony for the Respondent/District was offered by two school psychologists, the special education teacher/case manager, the regular education teacher, two para-professionals, a physical therapist, two occupational therapists, a speech/language specialist, an autism specialist, and the Director of Special Services. The Mother of the Student offered testimony for the Petitioner/Student. The Petitioner's attorney stated that they would rely on the reports and documents without the presence or testimony of the Psychologist and the Psychiatrist who authored them. The hearing was open to the public and a number of individuals were present at various times throughout the hearing.

The Hearing Officer chose to provisionally admit all exhibits as submitted. The Petitioner submitted an additional exhibit on day two of the hearing. The Respondent objected to the admission of this exhibit as it was not submitted within the five-day limit. The objection was upheld and the exhibit was not admitted. All exhibits were admitted as submitted with the one exception.

The hearing of testimony began on May 24 and was concluded on May 25, 2010. The attorneys for each party presented oral closing arguments at the end of testimony on that day. The record was closed at the end of the oral arguments. Having heard the witnesses, reviewed all the documentary evidence and heard the parties' oral closing arguments, the Hearing Officer renders this final decision.

ISSUES

1. Was the determination of eligibility as a Student with Other Health Impairments conducted in February 2009 appropriate or was the Student eligible as a Student with autism?
2. Did the District consider the evaluations submitted by the parents subsequent to the February 2009 determination of eligibility with regard to a secondary determination as a Student with Autism?
3. Did the District provide an appropriate educational evaluation on or about April 29, 2010, thereby releasing it from the requirement that it provide an Independent Educational Evaluation at public expense as requested by the Parents?
4. If the Student is a Student with Autism, did the District fail to provide the Student with a free appropriate public education according the Nevada Revised Statutes 391.410, 391.415 and 391.420 including (a) training required for certain personnel to service pupils with autism; and (b) training required for certain personnel to assist parents and guardian of pupils with autism?

REQUESTED RELIEF

The proposed remedies requested by the Parents are:

1. That the Student be found eligible as a Student with Autism.
2. That the Student be provided educational services while not at school that will equal a full day's curriculum.
3. That the classroom aides working with the Student be trained in working with a Student with Autism.
4. That compensatory educational services be provided for the time the Student is at home equivalent to a full day's instruction.
5. For attorney's fees and costs. A court of appropriate jurisdiction must determine this.

The proposed remedies for the District are that the District be found to have conducted an appropriate evaluation culminating on April 29, 2010, and that the District be relieved of the responsibility for an Individual Educational Evaluation at public expense.

FINDINGS OF FACT

1. The Student is a resident of Lyon County, was born on [], and is attending [] Elementary School.
2. The Medical Director of Nevada Early Intervention Services saw the Student on August 20, 2004, on referral from his Pediatrician. The doctor's evaluation indicated delays in several areas "including language, fine motor, cognition and social/emotional." The Student has "some features suggestive of pervasive developmental delay (PDD)." P 35

JSB

3. A Neurologist who saw the Student wrote on December 19, 2005, that "This is to confirm that [the Student] has severe hyperactivity + autistic behaviors secondary to prenatal methamphetamine exposure." P 57 JSB
4. The Student was made eligible by a Lyon County School District eligibility team as a Student with a Developmental Delay on April 6, 2006. The Student was under the age of six and demonstrated a delay of at least one standard deviation in receptive or expressive language, self-help and social or emotional condition. The Parent signed the Eligibility Team Report in agreement. LCSD 309
5. A referral was made by a Neurologist's office on May 12, 2007, to evaluate the Student for autistic behaviors, ADHD and developmental delays. P 34 JSB
6. The Pediatrician's fee sheet indicates diagnoses of developmental delay, ADHD, behavioral problems, WU (?) and autism. Four fee sheets were provided in the documents submitted by Petitioner indicating visits on June 18, July 9, July 31 and August 20, 2007. There are no reports of any evaluative instruments that may have been used in making this determination. The Student was four years of age at the time. P 30-33 JSB
7. The Student was made eligible under the category of Autism on November 2, 2007, based on the following criteria: "Per Dr. Wang's diagnosis." The additional category was included at the parent's request. LCSD 311, T 238; T 427
8. A Behavioral Plan was developed for the Student on September 9, 2008, by the school psychologist, with input from the mother, the first grade and special education teachers working with the Student, the school nurse, the classroom aide assigned to the Student and the Director of Special Education for the District. The plan dealt with oppositional defiant behaviors associated with ADHD and physical aggression. A contingency management system was put in place as well as provision for time out. LCSD 142 - 143
9. The Parent signed the Consent for Evaluation on February 10, 2009 allowing assessment as requested by the District in the following areas: adaptive skills; cognitive abilities and essential learning processes; social and emotional condition; and speech and language. The Parent requested assessment of performance in the current educational setting but did not consent to assessment of academic achievement or health. LCSD 153
10. The Parent and Psychologist A discussed the evaluation plan for the evaluation completed in February of 2009 over the phone and the parent stated that she wanted a current cognitive evaluation, assessment of current academic achievement in the regular education setting, social emotional assessment and assessments of progress made in physical therapy and occupational therapy. She stated that she had just completed arrangements for a comprehensive evaluation to determine the level of the Student's autism and that "it was not available at this time." She declined the request of the assessment team to conduct an ADIR questionnaire with her. LCSD 271
11. A speech/language evaluation was performed on the Student by the Speech/language Pathologist on February 17 and 26, 2009. He had been participating in a program of speech/language therapy in order to increase his pragmatic skills with his peers. The results of this examination showed a gain in pragmatic judgment on the Comprehensive Assessment of Spoken Language from an 82 Standard Score in October of 2008 to a 98 SS in February of 2009. On the Social Language Development Test he obtained a SS of 77 in Supporting Peers in October of 2008 and a SS of 83 in February of 2009. On a prior assessment of articulation in October of 2008 the Student earned a SS of 109, which is

- above expectation for his age. His receptive and expressive language scores were at or above normal limits. LCSD 284-285
12. The BASC-2 scores reveal behaviors of the Student that were not atypical. Students who are autistic usually have unique, atypical, disengaged behaviors such as staring blankly into space, talking to one's self or babbling. The Student did not display those traits. T 189
 13. The Pervasive Developmental Delay (PDD) assessment form that was filled out by the Mother indicated that those areas that would have suggested autism were mild in nature. The Student tended not to be compulsive, did not walk on his tiptoes but sometimes engaged in hand or finger flapping and was mildly obsessed with objects. T 189-190
 14. An assessment of the Student's cognitive ability placed him at the average range of functioning with a SS of 93 and a percentile rank of 58. His ability to retain information learned from his schooling and environment was much higher than either his sequencing processing or simultaneous processing cognitive abilities would dictate. He had difficulty with tasks presented verbally and had a strength in visualization skills and the ability to make inductions. LCSD 272
 15. The Wechsler Individual Achievement Test was used to evaluate the Student's present level of achievement. His standard scores were: word reading 104; Numerical operations 99; math reasoning 108; spelling 91 and listening comprehension 113. His math reasoning skills were quite good and his listening comprehension is very good. LCSD 274
 16. The evaluation included observation in his regular education classroom, the special education classroom, an assessment of his cognitive ability, and behavior-rating scales completed by both the Parent and the teacher. Also completed by the Parent was a Pervasive Developmental Disorder Scale/Screening Questionnaire. An achievement assessment was also used. The results of these assessments are summarized as follows: The Student has average to above average cognitive abilities. The Student has a significant medical history. He has behavior issues that require support services and adult monitoring at all times. He has made significant progress in terms of his socialization skills and achievement. The eligibility team is to determine his eligibility status and the Student's well-documented medical records support his ADHD condition and continued services of specialized instruction as Other Health Impaired. LCSD 270-274
 17. No written reports had been received from either the Psychiatrist or the Psychologist privately treating the Student as of February 27, 2009. T 176
 18. A report of the psycho-educational assessment was developed and an eligibility statement signed on February 27, 2009. The conclusion of the team was that the Student's behavioral issues surrounded his Oppositional Defiant Behaviors associated with ADHD and physical aggression (not toward peers but toward adults.) P 42 JSB
 19. The psycho-educational report states that the team is prepared to consider a diagnosis of autism when the results from the physician (the Psychiatrist) are available. Psychologist B recommended that the Treatment Plan from Alliance Family Services should also be incorporated into his IEP when applicable to the school setting. LCSD 312; LCSD 274
 20. The eligibility team consisted of the parents, a school psychologist, a regular education teacher, a speech/language specialist, a physical therapist, an occupational therapist, the director of special services and the school nurse. The Parent signed in agreement. LCSD 313

21. On February 27, 2009, the mother signed the eligibility statement as agreeing with the category of Health Impairment. In testimony, the mother disavowed that signature stating that she was only signing because the secondary eligibility was considered as autism. The second signatures do not indicate whether the signees agreed or disagreed. LCSD 313 and T 620
22. Reports from [the Student's] Psychiatrist are included from the initial contact on March 25, 2008 through the present time are included. These reports were only made available to the LCSD upon the exchange of information associated with this due process despite repeated requests by LCSD for information from and participation by the Psychiatrist. P 62-84 JSB; T 500-501
23. In a letter to the Parents dated September 18, 2009, the Psychiatrist states: "I am referring you to Dr. [] [the Psychologist] to get a better estimate of the severity of the autism and specific recommendations regarding [the Student's] care for family and school. P 26 JSB
24. A Psychologist in private practice assessed the Student on November 6, 2009, on referral from the Student's Psychiatrist. The results of the administration of the Wechsler Intelligence Scale for Children-IV indicate that [the Student's] overall intellectual abilities fall within normal limits. "In sum, the information provided by [the Psychiatrist], a review of [the Student's] IEP, and the results of the measures completed by [the Student's] parents all appear to be supportive of a primary diagnosis of Autistic Disorder. At the same time, many of [the Student's] symptoms appear to be fairly mild or 'borderline' For example, [the Student's] use of eye contact, our general level of social interaction during this assessment, and the presence of creative play and social relationships all seem to be very unusual for a child with Autistic Disorder. In addition, [the Student's] teacher has indicated (on the BASC 2) that [the Student] seems to be well adjusted to the school environment. Thus, while [the Student] currently appears to qualify for the diagnosis of Autistic Disorder, I would recommend ongoing clinical assessment to continue to evaluate whether or not [the Student] meets the specific criteria for this diagnosis over time. If [the Student's] symptoms significantly improve, it is likely that his diagnosis would be changed to Pervasive Developmental Disorder, Not Otherwise Specified, previously classified as 'Atypical Autism'). In addition to his autistic symptoms, [the Student] appears to have a number of sensory and motor skills difficulties that may indicate the presence of a sensory processing disorder." P 46-52 JSB
25. The District extended an invitation on November 10, 2009, to the Student's Psychiatrist asking him to participate in the IEP meeting, either by phone or in person, to be held on November 20, 2010. The District issued the invitation through a letter to the Parents and offered to pay for the Psychiatrist's time. (P 14 JSB)
26. The District offered to pay or reimburse all assessments completed by the Student's current doctors in a letter dated November 10, 2009. P 14 JSB
27. The District said in a letter dated November 10, 2009, that it would consider all assessments completed regarding the identification of autism. P 14 JSB
28. A health care plan was developed by LCSD for the Student on November 16, 2009, with specific reference to cardiovascular disorder and anaphylaxis. The Student has elevated blood pressure and pulse rate and possible allergy to cantaloupe. The School Nurse, according to the report, attempted to gather information from the parent but as of April 28, 2010, had been unable to obtain updated information from the parent. LCSD 1-4
29. In a memorandum dated December 11, 2009, the Student's Psychiatrist states:

- a. "I have had a chance to review the recent psychological evaluation by [the Student's Psychologist] which confirms the diagnosis of Autism. It is clear that [the Student] has an additional diagnosis of Post Traumatic Stress Disorder... I am greatly concerned about his mental physical health as a result of the Post Traumatic Stress Disorder and have not recommended a reduced school day. It is so bad that I may need to recommend stopping school attendance entirely.

My concern is that he appears to have been traumatized by searches done by school personnel, evidenced by torn underwear and a reversal of the clothing from the direction it was put on at home. There has been increased oppositional behavior on his part, by family report. The family reports that the school has been 'sugar-coating' their classroom reports to make him appear nearly perfect. [The Student] has told his family about these searches. He has become more fearful when away from home. His medication dosages have had to be increased, and he has been more agitated at home and sleeps poorly/wets the bed more." P 25 JSB

30. The Psychiatrist recommended on January 29, 2010, that "(1) [the Student] will benefit from a communication board. (2) Consider increasing training of [the Student's] aide ± teachers. Caughtlin Ranch Elementary in Reno has some very excellent educations for autism. They'd be a resource. (3) [The Student] needs full homebound education from 2/1/10 to 2/15/10 inclusive. Stay in A+ program." P 58 JSB
31. An IEP revision was developed on February 5, 2010, with parent participation. The parents did not agree with the category of eligibility or the behavior plan. The Student was to be on homebound until February 17, 2010. According to the Psychiatrist writing on February 16, 2010, "[the Student] continues to show anxiety, agitation and stress reactions. He will need to be maintained on homebound education through 3/22/2010. Thanks." P 59 JSB; LCSD 31-47
32. An IEP revision was completed on March 31, 2010, to provide special education services as guided by a positive behavior support plan and instruction in reading and language arts. Supplementary aids and services include (1) a home note between home and school; (2) allowance for a break if the Student indicates a need for one; (3) a seat belt on the bus to and from school and (4) one-to-one adult support during structured and unstructured times in class and to and from school on the bus. He is to receive assessment as to the Student's need for physical therapy; occupational therapy on a consultative basis, daily transportation to and from school; a health care plan on file and implemented by the nurse; and direct physical therapy 1 time per week for 30 minutes. The Student is to spend 95% of his time in the regular education environment. The parent participated in the development of this IEP but did not sign the document, neither agreeing with nor disagreeing with the program set forth. A positive behavior support plan to deal with physical or verbal aggression toward other students is included. LCSD 5-15
33. Parent signed the consent for reevaluation on March 31, 2010. LCSD 172
34. The ADOS was administered with the Student on March 31, 2010, at Yerington Elementary School. The Student is reported by School Psychologist A as being engaged once he became more comfortable in the setting, asking for things which he needed and interested in the process. T 64-65
35. On April 16, 2010, Psychologist A from LCSD wrote to the parents to explain the reason for the request to do an Autism Diagnostic Interview-revised in order to obtain the full scope of an Autism Spectrum evaluation when coupled with the ADOS. P 85 JSB

36. A request was sent by the SE teacher and [] Elementary to schedule an IEP meeting with the Psychiatrist present. An exchange of information form for this professional was also enclosed. The District was willing to pay for the professional's time. LCSD 165; LCSD 326 – 328; LCSD 329-334
37. School Psychologist A testified to the information to be gleaned from the administration of the Autism Diagnostic Interview Revised. This instrument is meant to go along with the ADOS and is an opportunity for the parent to provide information on the child from birth to three, the parent's observations of the child currently, as well as between the ages of four and five. T 89-90
38. The LCSD completed a psycho-educational evaluation of the Student to determine eligibility under Nevada Administrative Code 388.387 on April 29, 2010. A panel of professionals who had had no prior contact with the Student was selected in order to give an unbiased fresh look at the Student. The process was as follows:
 - a. An Autism Diagnostic Observation Scale was completed on March 31, 2010 by School Psychologist A, School Psychologist B, LCSD Autism Specialist, Occupational Therapist B, and Physical Therapist B. On this particular instrument, the Student did not meet the criteria for Autism in the area of communication, reciprocal social interaction, and restrictive interests and for Autism. The cut-off score for communication is three and the Student scored a one. The cut-off score for social interaction is six and the Student scored a one. The total cut-off score for Autism is ten and the Student scored a two. The Student did not show any issues with imagination, creativity or stereotyped behaviors and restrictive interests. In conversation, speech included some spontaneous elaboration of the child's own responses for the examiner's benefit but he did not elaborate as much as other children his age. In the social interaction section there appeared to be a slightly unusual level of social overtures. Overtures may be restricted to the child's interests but with some attempt to involve the examiner in his social overtures.
 - b. A complete file review of the Student's confidential folder was completed by School Psychologist B. T 33; LCSD 191 – 269
 - c. Areas of evaluation to be included (as mandated by NAC 388.387):
 - i. **Health and medical status:** Various medical professionals have seen the Student over time with the resulting diagnoses of ADHD, autism, PDD, FAS, violent behaviors, developmental delays, sleep issues, two of three measures for gigantism, pre-natal exposure to methamphetamine and alcohol, hypertension and primary insomnia. Hearing and vision screening by the District revealed those areas within normal limits on November 12, 2008. (LCSD 198-200)
 - ii. **Developmental history,** including, without limitation the rate and sequence of development and a clear statement of strengths and weaknesses A review of the file revealed the following information: the Student was born on March 12, 2003, weighing 8 pounds 10 ounces and high levels of methamphetamines in his system. His mother received no prenatal care. The Mother (grandmother) reported he walked at 9 months, said his first words at 23 months and could feed himself at 18 months. He was in two foster homes before being placed with the grandmother. NEIS' developmental specialist found him to be at the 9 – 11 month level on August 5, 2004 and nine months (May 1, 2005) later to be at the 20-27 month level of development. He was described as being ready to expand upon his imitation skills and follow directions with physical prompting. (LCSD 200)

- iii. **Cognitive abilities:** Psychologist B assessed the Student on February 26, 2009, with a Kaufman Assessment Battery for Children and the Student scored an FCI of 91. The Psychologist assessed the Student with the Wechsler Intelligence Scale for Children and found a Full Scale IQ of 92. (LCSD 201-202)
- iv. **Social and emotional condition in multiple settings:** The NEIS developmental specialist on August 5, 2004, found the Student able to participate in the assessment process providing his grandmother was sitting next to him. He enjoyed playing with the toys. On May 1, 2005, she found that "the aggressive and non-compliant behavior that his grandmother describes has not been seen when we have done our home visits. In fact [the Student] seems to enjoy our visits and demonstrates nice turn-taking and imaginative play skills." (LCSD 202-216)
- v. **Academic achievement:** The Student was assessed with the Wechsler Individual Achievement Test Second Edition on February 2, 2009. His standard scores were: word reading 104; numerical operations 99; math reasoning 108; spelling 91; listening comprehension 113; math composite 103. The Student participated in the A+ on-line program to supplement his school program. He completed the first-grade curriculum and began the second-grade curriculum. The supervisor of the program lauds his cooperative spirit and that of those who work with him. (LCSD 216-225)
- vi. **Adaptive skills, self-help and independent living skills:** The NEIS developmental specialist who observed him at 17 months of age assessed his skills at the six to eight month level. At 26 months of age he was performing tasks such as feeding himself, removing his clothes, drinking from a cup and assisting with dressing at the 24-27 month level. An assessment by Psychologist B utilizing the Vineland with the Mother as informant revealed standard scores in communication of 63, daily living skills 64, socialization 74, motor skills 88 and a composite SS of 64. An assessment by the Psychologist utilizing the Mother as informant yielded SSs of communication 74, daily living 64, socialization 74, motor skills 72 with an adaptive composite of 68. (LCSD 225 - 226)
- vii. **Speech language and other communication skills:** The NEIS developmental specialist was assessed using the Early Intervention Developmental Profile on August 5, 2004, with results indicating a 6 to 8 month functioning level. When this specialist next assessed the Student on May 1, 2005, he was found to be at the 24-27 month level. The specialist observed that the child produced 5-word sentences, repeated new words and phrases and could follow directions. A speech pathologist using the Preschool Language Scale Fourth Edition found SSs of auditory comprehension 104 and expressive communication of 102 in April 2006. In October of 2008, another speech pathologist found him to be at the 62 percentile in articulation, vocabulary SS 109; the Comprehensive Assessment of Spoken Language SS was 92 and the Social Language Development Test yielded a SS of 105 with an area of difficulty (SS of 77) in supporting peers. This same speech pathologist assessed him in January of 2010 with a resulting vocabulary standard score of 116; comprehension of spoken language SS 93 and social language development of 101. (LCSD 226 - 228)
- viii. **Sensory regulation:** Occupational Therapist B utilized the Sensory Profile Caregiver and School Companion Questionnaires in February and March of 2010. The Student presented mixed responses that appear to be related to his comfort with his daily activities:

Auditory processing: He has trouble functioning in a noisy environment and participating in group activities where there is a lot of noise.

Visual Processing: He looks away from tasks to notice all the other activity in the room. He has difficulty putting puzzles together.

Touch Processing: He expresses discomfort during grooming and at dental work or tooth brushing.

He frequently reacts aggressively to touch, while he also frequently touches people and objects to the point of irritating others. He frequently displays an unusual need for touching certain toys, surfaces or textures. He touches people and objects frequently.

Modulation: He frequently has poor endurance and tires easily. He frequently prefers quiet sedentary play, and needs more protection from life than other children.

Movement: He frequently gets up and moves around more than other students. He is "on the go." He seems to find excessive reasons for approaching the teacher. He frequently slouches and slumps and rests his head on his hands/desk or table during seatwork. He is frequently clumsy.

Behavior and emotional responses: He frequently has temper tantrums and a poor frustration tolerance. He displays emotional outbursts when unsuccessful at a task. He has trouble "growing up." He has difficulty making friends. He has difficulty tolerating changes in plans, routines and expectations. (LCSD 228-231)

- ix. **Behavior problems:** The Student was observed in the classroom by Psychologist A on April 4, 2010, who observed him participating in the activities, completing his assignment without prompting and waiting for direction from the teacher. Psychologist B observed on April 2, 2010. The Student displayed some avoidance behaviors and a teasing attitude toward his aide. He conversed with another student. The Autism Specialist observed the Student on the playground on April 6. He initiated contact with peers and adults, responded to contact initiated by peers and adults. He reciprocated in 28 of 29 interactions. He made eye contact with peers 10 times with no avoidances. Psychologist A observed him in the classroom on April 6, 2010, with the resulting incidents: He interacted one on one with both peers and adults, initiated contact with an adult, answered a question, had eye contact 31 times and smiled at others 16 times in less than one hour. The classroom activity changed and he was able to redirect without agitation; waited quietly for the bathroom; was able to transition from one activity to another; able to follow a two-step direction; and did not walk on his tiptoes, rock in his chair, move much in chair nor had any odd hand movements. (LCSD 231 - 237)
- x. **Motor skills of the pupil:** The Physical Therapist assessed the Student in September 2008 with the Developmental Motor Scales and had findings of muscle tone within normal limits; primitive reflexes integrated and automatic reactions elicited and fairly good functional mobility skills. He was an independent ambulator. This Physical Therapist assessed him with essentially the same results in February of 2009. Occupational Therapist A assessed him in February 2009 with the Bruininks-Oseretsky Test of Motor Proficiency and found average manual coordinator overall. Occupational Therapist B assessed him using the same instrument in April of 2010 and found him to be functioning well within the average range in manual dexterity skills. The Test of Gross Motor Development was administered with scores in the average range. On the Bruininks-Oseretsky Test of Motor Proficiency at this same time he was found to

have normal muscle strength throughout his upper extremities. He sat independently but tends to lean on his desk when tired. (LCSD 238 - 242)

- xi. **Symbolic and imaginative play, activities and special interests:** Psychologist B utilized the Pervasive Developmental Delay Assessment Screening Instrument in December of 2005. The information was supplied by the Parent. He was found to have many areas which would indicate autism in the mild category with several in the moderate area including temper tantrums, ignoring when called, voice louder than required difficulty in understanding things, speaking the same to adults and children and using language inappropriately. He did not lose acquired speech nor did he engage in head banging, self mutilation, toe walking, arranging toys in rows, spinning objects, or self attachment to unusual objects or savant ability. The Gilliam Autism Rating Scale was completed by the Mother in February of 2009 with a SS of 90, indicating a likely probability of autism. The Psychologist used the Gilliam Asperger's Rating Scale filled out by the Father in November of 2009 with the results indicating that while he exhibits a number of behaviors consistent with Asperger's Disorder, "his history of speech difficulties as well as his high level of overall adaptive deficits preclude this diagnosis." The Psychologist states that "In sum, the information provided by [the Psychiatrist], a review of [the Student's] IEP, and the results of the measures completed by [the Student's] parents all appear to be supportive of a primary diagnosis of Autistic Disorder. At the same time, many of [the Student's] symptoms appear to be mild or borderline." The Autism Diagnostic Observation Scale was administered to the Student on March 31, 2010, by a team consisting of Psychologists A and B, the Autism Specialist and Speech Pathologist, and an Occupational Therapist. All five scored independently and then collaborated on a final score. The Student did not meet the criteria for Autism in the area of communication or reciprocal social interaction. The cutoff for communication is a 3 and the Student scored a 1. The cutoff for reciprocal social interaction is a 6 and the Student scored a 1. The total score for both is a cutoff of 10 and the Student scored a 2. The Student did not show any issues with imagination/creativity or stereotyped behaviors and restricted interests. In the area of communication the Student was found not to elaborate in conversation as much as others his age. The quality of his social overtures appeared to be restricted to his interests. (LCSD 196-197; LCSD 242 - 247)

- d. The evaluation team answered the question: Is there a disability in the area of Autism Spectrum Disorder in accordance with the Nevada State Administrative Code 388.387 thusly:

i. Does the Student have a spectrum disorder which significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner?

At school, the Student was not assessed to have any delays related to ASD by the results of the ADOS. The Student was not observed nor was he assessed to have repetitive activities and stereotyped movements, resistance to changes in environment or daily routine. The Student did not display a deficit in the area of symbolic or

imaginative play and activities and special interests. The Student was rated as struggling with sensory needs.

ii. Does the Student have a spectrum disorder which is usually apparent before the age of 3 years?

There was medical documentation indicating Pervasive Developmental Delay (PDD) before the age of three. No formal assessments were completed before the age of three which were directly aimed or met the requirements to formally address the educational criteria of ASD.

iii. Does the Student have a spectrum disorder which affects the educational performance of a pupil causing significant delays or irregular patterns in learning or both?

The Student's cognitive abilities are within the average range as demonstrated by the KABC-2 and the WISC-IV. The Student's academic achievement was formally assessed by the WIAT-2. His academic abilities in reading, math, spelling and listening comprehension are within the average to above average range. The Student is currently approaching or has met the first grade standards according to his current report card in language arts. The Student has completed the first grade requirements on the A+ program and is currently working on the second grade modules. Therefore, the Student's cognitive abilities and ability to perform educational tasks do not adversely affect his ability to learn or cause the Student significant delays.

iv. Does the Student have a spectrum disorder in which the pupil's educational performance is not adversely affected primarily because the pupil has an emotional disturbance?

The eligibility of emotionally disturbed was considered in a report by [Psychologist B] on February 22, 2009. He stated that the Student did not meet the criteria for a student with an emotional disturbance.

v. Does the Student have a spectrum disorder in which the controlling factor for the pupil's eligibility is lack of appropriate instruction in reading, including the essential components of reading, or lack of appropriate instruction in math?

The Student's teachers report that they are teaching to the state standards for a first grade student. The Student has been provided with learning experiences and instruction for his age. The Student's academic achievement was formally assessed by the WIAT-2 and his abilities found to be within the average to above average range. The Student is currently approaching or has met the first grade standards according to his current report card in language arts. The Student has completed he first grade requirements on the A+ program and is currently working on the second grade modules.

vi. Does the Student has a spectrum disorder in which the controlling factor for the student's eligibility is not limited English proficiency?

The Mother completed the home language survey several times and in each instance indicated that English was the only language spoken at home. LCS D 254-255

39. The services that a student needs are determined based on his current levels of performance, not on his "label." T 246; T 256; T 296; T 322; T 331; T 433; T 504
40. Psychologist A testified that it was based on the results of the ADOS that he did not demonstrate autistic behaviors that affected his social skills, communication skills, characteristics, he did not have stereotypical movements, he didn't have any of the autistic-like characteristics that would put him in the category of autism which affected his educational experience. T 217
41. The Student was receiving services through Lyon County School District while he was on homebound in January through March 2010. The program he was using was the A Plus computer-based learning program. He had completed the first grade program and was beginning to work on the second grade level. T 43
42. By order of the Psychiatrist, the Student was on a reduced school day. He was receiving instruction in reading and language arts. He was approaching or meeting standard for a first-grade student in both areas. T 44; LCS D 191
43. The Mother rated the Student as struggling to express wants and needs, to perform activities of daily living such as eating, feeding, toileting, picking up toys, to play with other children or to interact with adults in a playful manner. His motor skills were normal according to the Mother. T 45-46; LCS D 225
44. The Student was observed to interact socially with both children and adults in the environment, both in the classroom and on the playground. He made eye contact multiple times, smiled at a fellow student and easily transitioned to a task rather than the one that was anticipated. He was able to listen and follow directions without any prompts. T 52 – 56
45. The Student showed evidence of reciprocal social behaviors and social humor exhibited during the administration of the ADOS on March 31, 2010, according to the Autism Specialist. T 272-273
46. Occupational Therapist A describes the Student as a "child who is very witty, he initiates conversation all the time, he is social, he enjoys participating in conversation with me, there is give and take in the conversation. He gives good eye contact." T 318
47. According to Psychologist A the criteria for a medical diagnosis of autism and an educational diagnosis of autism are not mutually exclusive. A student may be classified as autistic according to the DSM IV but not necessarily qualify according to NAC 388.387. T 106-107
48. An eligibility team should consider what conditions are most profoundly impacting the student in terms of his education and that would be ruled to be his eligibility category. Psychologist B stated, "I would not have two eligibilities, no." T 239
49. An eligibility determination's purpose is not to "diagnose" a student; the team's responsibility is to determine eligibility based on the requirements of the Nevada Administrative Code. T 241

APPLICABLE LAW

IDEA C.F.R. § 300.8 defines a child with a disability as:

(a) General. (1) Child with a disability means a child evaluated in accordance with Sec. 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

N.A.C. 388.330 to 388.440 inclusive states that:

For purposes of special education eligibility, the term "child with a disability" means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, requires instruction, services, or both, which cannot be provided with modification of the regular school program.

Pursuant to IDEA U.S.C. § 1414 and the Nevada Administrative Code 388.387, a pupil is eligible for special services and programs of instruction if the eligibility team conducts an evaluation of the pupil which must assess the health and medical status; developmental history, including without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses; cognitive abilities; social and emotional condition in multiple settings; academic achievement; adaptive skills; and speech language and other communication skills of the pupil; and considers the sensory regulation; self-help and independent living skills; behavior problems; symbolic and imaginative play; activities and special interests; and motor skills of the pupil.

Nevada Administrative Code, 388.028 defines autism as: as a spectrum disorder which:

(a) Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;

(b) is usually apparent before the age of 3 years; and

(c) adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

The term includes, without limitation, a group of developmental disorders such as autistic disorder, Asperger's disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described in this subsection. The term does not apply to a pupil if the pupil's educational performance is adversely affected primarily because the pupil has a serious emotional disturbance.

Health impairment is defined at N.A.C. 388.046 as an "impairment that limits the strength, vitality or alertness of the pupil, including, without limitation, a heightened alertness to environmental stimuli which results in limited alertness with respect to the educational environment and which:

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

(2) adversely affects the educational performance of the pupil.

N.A.C. 388.402 states that a student is eligible as a student with health impairment other than orthopedic if the student is determined to have a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational

performance of a pupil which includes, without limitation, difficulty concentrating, chronic fatigue and impulsiveness which interfere with a pupil's ability to be educated.

The eligibility team shall conduct an evaluation which assesses the health of the pupil; analyzes the ability of the pupil to perform in a regular classroom and may also include an assessment of the developmental history, cognitive abilities, social and emotional condition, academic achievement and language and motor skills of the pupil. (U.S.C. § 1414 ; N.A.C. 388.4020)

Students with special needs must be reassessed not more frequently than once a year and shall be assessed at least once every three years, unless the parent and the local educational agency agree otherwise. (20 U.S.C. § 1414(A)(2)(A); N.A.C. 388.340)

Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producers of the tests. (20 U.S.C. § 1414(a)(2), (3); N.A.C. 388.340)

Assessments must be conducted by individuals who are both knowledgeable of the Student's disability" and "competent to perform the assessment." (20 U.S.C. § 1414(b)(3)(B)(ii); N.A.C. 388.340)

The Student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability. (20 U.S.C. § 1414(a)(2), (3); N.A.C. 388.340)

Under IDEA if a parent disagrees with an assessment obtained by the public education agency, the parent has the right to obtain, at public expense, an independent educational evaluation (IEE) under certain circumstances. The parent must notify the school district that the parent disagrees with the assessment and request that the district conduct an IEE at public expense. Faced with that request, the school district must: (a) file a due process complaint and prove at a hearing that its assessment is appropriate; or (b) insure that an IEE is provided at public expense. (U.S.C. § 1414 ; N.A.C. 388.450)

As required by N.A.C. 388.171, a public agency shall appropriately and adequately prepare and train all personnel employed by the public agency who assist in carrying out the provisions of this chapter and N.R.S. 388.440 TO 388.5315, inclusive, including, without limitation, special education teachers, personnel who provide related services and paraprofessionals, to ensure that the personnel have the content knowledge and skills necessary to serve pupils with disabilities. A public agency shall take measurable steps to recruit, hire, train and retain highly qualified personnel to provide special education and related services to pupils with disabilities. Notwithstanding a right of action that a parent or pupil may maintain pursuant to this chapter, N.R.S. 388.440 to 388.5315, inclusive, or 20 U.S.C. §§ 1400 et seq., this section does not: (a) create a right of action on behalf of a pupil or group of pupils for the failure of an employee of a public agency to be highly qualified. (b) Prevent a parent from filing a complaint with the Department in accordance with this chapter concerning the qualifications of personnel.

The 2009 session of the Nevada Legislature passed Nevada Revised Statutes (N.R.S.) 391.400 to 391.420 which concerns the training and education of personnel who work with pupils with autism. N.R.S. 391.410, 391.414 and 391.4209 concern the training required for certain personnel to serve pupils with autism; training required for certain personnel to assist parents and guardians of pupils with autism; and the training required for certain paraprofessionals to provide assistance to pupils with autism. All requirements are limited based on the extent of available money for which school districts and charter school are authorized to apply to contract for the provision of training. According to the 2009 Nevada Legislative history, the Autism Task Force statute (N.R.S. 391.400 et seq.) was not funded.

Under the Family Educational Rights and Privacy Act (FERPA) regulations at 34 C.F.R. 99.3, "disclosure" means to "permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written or electronic means to any party except the party identified as the party that provided or created the record.

CONCLUSIONS OF LAW

Issue No. 1: Was the determination of eligibility as a Student with Other Health Impairments conducted in February 2009 appropriate or was the Student eligible as a Student with autism?

Throughout this hearing it was apparent that a number of facts both united and divided the participants. Both parties expressed a desire to do what is in the best interests of the Student. They differ in the relative importance which each party assigns to the category of eligibility under which the Student is eligible for services. The Parents insist that only an eligibility category of autism is appropriate. The District on the other hand sees the Student as other health impaired but with a program guided not by the label assigned to the Student but rather by the Student's demonstrated present levels of performance. The statement of eligibility is the doorway through which the pupil enters special education. Once inside the "room," the student is entitled to whatever is required to provide him or her with a free appropriate public education. The Act has a long history of resistance to the concept of the category dictating services. (Letter to Anonymous, 37 IDELR 126 and Letter to Williams 33 IDELR 249)

From this Student's first associations with medical professionals, those individuals have assigned a variety of labels to this child. The Director of Medical Services of Nevada Early Intervention Services saw him on referral from his Pediatrician and found delays in several areas including "language, fine motor, cognition and social/emotional" with "some features suggestive of pervasive developmental delay." A Neurologist saw him as having "severe hyperactivity with autistic behaviors secondary to prenatal methamphetamine exposure." Later in 2007, this same Neurologist made a referral to evaluate this Student for "autistic behaviors, Attention Deficit Hyperactivity Disorder (ADHD), and developmental delays." His Pediatrician indicated diagnoses of "developmental delay, ADHD, behavioral problems and autism." FOF 2; FOF 3; FOF 5; FOF 6

The Student was made eligible on April 6, 2006, by Lyon County School District at the age of three as a pupil with developmental delays. On November 2, 2007, the District acceded to the Mother's insistence that the Student be eligible as a pupil with autism based solely on the Pediatrician's fee sheets that contained a variety of labels, one of which was autism. No additional evaluation was done; only the label was changed. FOF 4; FOF 7

The Student has a history of difficulties suggestive of health impairments brought on by methamphetamine and alcohol use by his biological mother during her pregnancy. He was deposited in a trash bin on the mother's way out of the hospital and rescued by hospital personnel. He has a history of diagnosis as outlined above with various labels being attached to his condition. FOF 2; FOF 3; FOF 4; FOF 5; FOF 6; FOF 7

The District was required to re-evaluate him in the spring of 2009 because he was turning six years of age in March of that year and could no longer qualify under the label of "developmentally delayed." It was for this reason that the District obtained permission from the Mother to evaluate the Student. The Mother signed the Consent for Evaluation on February 10, 2009, allowing assessment in the following areas: adaptive skills; cognitive abilities and essential learning processes; social and emotional condition; and speech and language development. The Mother requested assessment of performance in the current educational setting. The Mother and Psychologist B discussed the evaluation plan and academic achievement in the classroom was added to the areas to be evaluated. She also stated that the Student was to be assessed to determine the level of the Student's autism. She declined to do an interview form with the District

that would have brought information forward to assess the level of the Student's autism. This information was to be shared with the District when available. FOF 9; FOF 10

The reassessment focused on a number of areas:

Cognitive functioning: The Student's performance on the KABC placed his general cognitive ability in the average range with a SS of 93. FOF 14

Speech and language: The Student had been participating in a program of speech/language therapy to increase his pragmatic skills with his peers provided through the District. He had standard scores in October of 2008 on the Comprehensive Assessment of Spoken Language (CASL) showing a gain in pragmatic judgment from 82 to 98 in February of 2009. He also showed gains in supporting peers of a SS of 77 in October 2008 to a SS of 83 in February 2009. His articulation skills were above the norms for his age. FOF 11

Developmental delays: The Pervasive Developmental Delay (PDD) assessment form that was filled out by the Mother indicated that those areas that would have suggested autism were mild in nature. The Student tended not to be compulsive, did not walk on his tiptoes, sometimes engaged in finger flapping and was mildly obsessed with objects. FOF 13

Observation in the educational setting: The Student was observed in his regular classroom as well as the special education setting. He got along well with his aide in both settings. He has behavior issues that require adult monitoring and support at all times. FOF 16

Behavior and emotional assessment: The Behavior Assessment System for Children (BASC) is a multi-dimensional system used to evaluate the behavior of children. The Mother reported that the Student displayed disruptive, impulsive and uncontrolled behaviors including difficulties adapting to changing situations and difficulties in recovering from difficult situations. The Special Education Teacher reported that he was restless, overactive and had difficulty in controlling his impulses. He could be defiant and threatening to others. However, he displayed clear, logical thought patterns and was generally aware of his surroundings. He did not avoid social situations and appeared capable of developing and maintaining friendships. The scores on this instrument did not reveal the atypical disengaged behaviors usually associated with autism. FOF 12

Achievement Testing: His scores on the WIAT, Second Edition, indicate that he is at Kindergarten level which was his then-current placement. FOF 15

There is a requirement that a student be assessed in all areas of suspected disability. The District did not wait until the results of the assessments of the Psychologist and the Psychiatrist were available. In two of the screening instruments used by the District which are intended to reveal characteristics of autism (the BASC-2 and the PDD) the District found that the behaviors typically associated with autism were either absent or mild.) On the other hand, the behaviors with which the teachers and other personnel were dealing with daily were more likely to be associated with the documented Attention Deficit Hyperactivity Disorder and the effects of methamphetamines and alcohol consumed by the birth mother during her pregnancy. The District had developed a Behavior Plan for the Student in December 2008. The Student had a full-time one-to-one aide to assist with outbursts in the classroom. The Student did not display the classic signs of autism in the classroom. FOF 2; FOF 8; FOF 11; FOF 12; FOF 13

The District appropriately classified the Student as other health impaired in its February 27, 2009, statement of eligibility. The Student has Attention Deficit Disorder which adversely affects the educational performance of the Student. He is subject to outbursts in the classroom directed toward adults rather than his peers. He has additional problems with hypertension which limits

his strength and vitality. A one-to-one para-professional is assigned to the Student at all times when he is in attendance at school. FOF 16; FOF 28

The Petitioner offered no documentation or testimony that the category of other health impaired was not appropriate and therefore did not meet his burden of proof as to why this category of eligibility would not be applicable. Petitioner was assigned the burden of proof as to the allegations of this issue and did not meet their burden. (*Shaffer v. Weast*, 44 IDELR 150, (U.S. 2005))

Held: for the District/Respondent

Issue No. 2: Did the District consider the evaluations submitted by the parents subsequent to the February 2009 determination of eligibility with regard to a secondary determination as a Student with Autism?

Guidance is given in the case of *T.S. ex rel SS. v. Board of Education of the Town of Ridgefield*. 20 IDELR 889 (2nd Cir. 1993), when the Second Circuit was confronted with a situation in which only two members of the IEP team had been provided with the subject IEE or had read it before the meeting. One of these members then read a portion of the IEE and summarized other portions of the IEE to the IEP team. The student argued that all of the members of the IEP team had to be provided with a copy of the IEE in order to "consider" it.

As noted in this case, no definition of "considered" is found in either federal or state regulations. Utilizing the plain meaning of the term found in Webster's Dictionary, the *T.S. Ridgefield* court concluded that "consider" meant "to reflect on; think about with a degree of care or caution." The court found that nothing in that definition suggested that every member of the IEP team must read the document in order for the body to collectively "consider" it. The court noted that the First and Eighth Circuits have likewise found it acceptable if less than all of the members of the IEP team had read the IEE being discussed. On that basis, while being somewhat critical of the school district for its failure to distribute the (publicly financed) IEE to all members of the team, the court considered that the IEE had been sufficiently "considered" to satisfy the student's due process rights.

The Parent stated during the eligibility meeting on February 27, 2009, that she was in the process of obtaining an evaluation for autism from an outside source and that she would make it available to the District for its consideration. On November 6, 2009, a Private Psychologist completed a report. A written copy of this report was subsequently shared with the District personnel and was considered by the IEP team on January 15, 2010, in determining what additional information was needed to complete its evaluation and by the entire eligibility team at the conclusion of its evaluation on April 29, 2010. Therefore, the District did consider and act upon the information provided to them by the Mother. FOF 38

The Student's Psychiatrist wrote on December 11, 2009, that he had had "a chance to review the recent psychological evaluation by [the Psychologist]. ...It is clear that [the Student] has an additional diagnosis of Post Traumatic Stress Disorder. He has been highly anxious and evidencing fear reactions out of proportion to the situation. These highly elevate his already problematic pulse and blood pressure. I am greatly concerned about his mental and physical health as a result of the Post Traumatic Stress Disorder and have now recommended a reduced school day." The Student's day was reduced and the Student was provided with supplemental instruction utilizing the A+ Curriculum with one-to-one assistance. Again, the District acted upon the information provided by the Mother. FOF 44

The District contacted the Parent with several requests, both written and oral, asking the Parent for permission to speak with the Psychiatrist and inviting him to participate in the Student's IEP

meetings at District expense. The Parent did not sign a consent allowing the District to exchange information with the Psychiatrist. The District was only privy to a small percentage of the information available to the Parent. The Psychiatrist was limited in his knowledge of the District's operations due to his lack of direct interaction with any personnel employed by the District. FOF 37; FOF 38

Much of the written information included in the documentation for this due process was only made available at the exchange of information on May 17, 2010, five days prior to the beginning of the hearing; thus the eligibility team on April 29, 2010, was unable to consider it in its deliberations.

The District asked for information from the Mother and from other sources. It considered the information with which it was provided.

Held: for the District/Respondent

Issue No. 3: Did the District provide an appropriate educational evaluation on or about April 29, 2010, thereby releasing it from the requirement that it provide an Independent Educational Evaluation at public expense as requested by the Parents?

If a parent disagrees with an evaluation provided by the District and requests an Independent Educational Evaluation, the District must either fund the evaluation or file for a due process hearing to defend its evaluation. FOF 38

The Mother requested an evaluation to determine whether or not the Student qualified as a Student with Autism. There was no other purpose for this evaluation.

Psychologist A performed a complete review of the file of the Student. The results are summarized in the Findings of Fact.

N.A.C. 388.387 specifies the standards that must be met in order for a pupil to qualify as a student with autism. The eligibility team did conduct an evaluation that assessed:

1. The health and medical status of the pupil;
2. Developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;
3. Cognitive abilities;
4. Social and emotional condition in multiple settings;
5. Academic achievement;
6. Adaptive skills; and
7. Speech, language and other communication skills of the pupil; and consider the
8. Sensory regulation;
9. Self-help and independent living skills;
10. Behavior problems;
11. Symbolic and imaginative play;
12. Activities and special interests; and
13. Motor skills of the pupil. FOF 38

After a review of the transcript of testimony and the documentation provided as outlined in the Findings of Fact, it is the finding of this Hearing Officer that the Lyon County School District has completed an appropriate educational evaluation and is not required to provide an Independent Educational Evaluation at public expense.

Held: For the District/Petitioner

Issue No. 4: If the Student is a Student with Autism, did the District fail to provide

the Student with a free appropriate public education according the Nevada Revised Statutes 391.410, 391.415 and 391.420 including (a) training required for certain personnel to service pupils with autism; and (b) training required for certain personnel to assist parents and guardian of pupils with autism?

The Student does not qualify as Autistic under the Nevada Administrative Code 388.387. Therefore, the District is not under any obligation to provide the Student with services according to Nevada Revised Statutes 391.410, 391.415 or 391.420.

Had the Student been found to be eligible under N.A.C. 388.387, the District would still have been under no obligation to provide said services as directed in N.R.S. 391.410 – 391-320.. No regulations have been written to enforce these statutes and they are permissive in nature; to-wit: "To the extent money is available from the Grant Fund, the board of trustees of each school district and the governing board of each charter school may apply for funds to provide training to personnel who work with pupils with autism."

Petitioner presented no evidence of any funding available to Districts and/or charter schools for the current biennium.

Held: For the District/Respondent

DECISION AND ORDER

With regard to Issue 1, the Respondent/District prevails.

With regard to Issue 2, the Respondent/District prevails.

With regard to Issue 3, the Petitioner/District prevails.

With regard to Issue 4, the Respondent/District prevails.

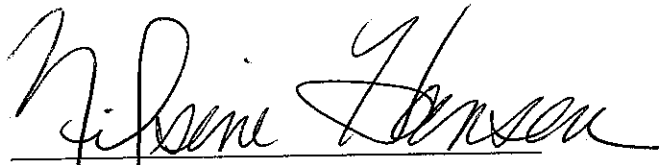
It is hereby ordered that the District's evaluation is appropriate and that the District is not liable for an Independent Educational Evaluation at public expense with regard to the April 29, 2010 evaluation.

All relief requested by Petitioner/Student is denied. It is so ordered.

APPEAL RIGHTS

This decision and order will be binding on all parties to this hearing. Either party may appeal this decision made pursuant to Nevada Administrative Code 388.310 in writing within thirty (30) days after receipt of the Decision. Such a request should be sent to the State Superintendent of Public Instruction who will then appoint a review officer. A cross-appeal may be filed within ten (10) days of receipt of the appeal.

June 28, 2010


Nilsine Hansen
Independent Hearing Officer