

# IMPARTIAL DUE PROCESS HEARING

BEFORE THE HEARING OFFICER  
APPOINTED BY THE STATE SUPERINTENDENT OF PUBLIC SCHOOLS

STATE OF NEVADA

In the matter of

STUDENT<sup>1</sup>, by and through STUDENT'S  
Parents;

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT;

Respondent.

## DECISION

Hearing Dates: April 9 & 10, 2019

### Hearing Officer

Kevin P. Ryan, Esq.

### Parties and Representatives:

Marianne C. Lanuti, Esq., Gregg A. Hubley,  
Esq., and Eugene Feldman, Esq., on behalf of  
Parents / Petitioner.

Daniel D. Ebihara, Esq., on behalf of  
Respondent.

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## I.

### INTRODUCTION

Petitioner's Request for Due Process ("RDP") was received by respondent (sometimes referred to herein as the "district") on September 24, 2018. The IHO was appointed and received the RDP on October 3, 2018. The Preliminary Order was entered on October 4, 2018. The first Status Conference was scheduled for October 11, 2018, but

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

as a result of a scheduling issue with petitioner, it did not occur until October 22, 2018. At the Status Conference, the parties demonstrated good cause and also stipulated that the deadline for decision in the case would be extended from December 8, 2018, until January 28, 2019.

The Notice of Pre-Hearing Conference was entered on October 29, 2018. On December 18, 2018, this matter came on for a Pre-Hearing Conference (“PHC”). At the conference, the parties indicated that a revised written offer of resolution was to be sent by respondent to petitioner. In addition, and as a result of the holidays, the parties requested and stipulated to continue the PHC.

On December 27, 2018, this matter came on for the continued PHC. At the conference a discovery issue was raised and the district indicated that the previously agreed upon hearing dates were no longer workable. As a result of stipulation between the parties and a demonstration of good cause, the deadline for decision was extended until March 15, 2019. In addition, the December 27, 2018, Order After Pre-Hearing Conference included a deadline for production of information by the district and a briefing schedule if a motion to compel was necessary.

An additional PHC took place on January 24, 2019. At the PHC, the IHO put legal counsel on notice that in order to justify an award of compensatory education, evidence must be presented regarding the focus and the amount of compensatory education requested. On February 1, 2019, the IHO issued his Pre-Hearing Conference Report and Order. Thereafter, following receipt of Petitioner’s February 2, 2019, written Reply to Pre-Hearing Conference Report and Order dated February 1, 2019 (“Reply”), a follow up PHC was conducted on February 12, 2019. The purpose of this PHC was to address the objections raised by Petitioner in the Reply. At this PHC, the parties were able to agree on the 4 issues to be heard at the hearing. The Amended Pre-Hearing Conference Report and Order was entered on February 13, 2019.

On February 20, 2019, based upon the joint request and stipulation of the parties, as well as a finding of good cause, the IHO entered the Order After Telephonic Conference extending the deadline for decision to April 22, 2019.

On March 27, 2019, the district filed its Statement of Concession of Issues (“Concession”). As a result of this filing, the IHO issued a Pre-Hearing Order dated March 29, 2019. This Order provided in relevant part that, “on or before April 3, 2019, Petitioner and Respondent shall submit Stipulated Findings of Fact and Conclusions of Law to the IHO to be incorporated into the IHO’s Order After Hearing. At the hearing, the only issue for consideration shall be what if any remedy is Petitioner entitled to.”

On April 3, 2019, the IHO received petitioner’s proposed Stipulated Facts and Stipulated Conclusions of Law. The district did not provide the IHO with either. Also, on April 3, 2019, the district filed Respondent’s Motion to Strike Witnesses and Exhibits. This motion was opposed by petitioner on April 5, 2019. By way of email dated April 8, 2019, the district withdrew its original objection to the timeliness of petitioner’s disclosures, but reserved potential objections to exhibits presented at the hearing. The district’s request to strike petitioner’s witnesses resolved itself at the hearing when petitioner’s only witnesses were Student’s parents.

The hearing was conducted on April 9<sup>th</sup> and 10<sup>th</sup>, 2019, in Las Vegas, Nevada. The record was closed on April 10, 2019, after each party presented a closing argument. No additional briefing was requested or ordered. Present at the hearing were Student’s parents / petitioner, who were represented by Marianne C. Lanuti, Esq., Gregg A. Hubley, Esq., and Eugene Feldman, Esq. Daniel D. Ebiara, Esq., appeared on behalf of respondent. Presiding over the hearing was independent hearing officer, Kevin P. Ryan, Esq. (“IHO”).

Student entered the district educational system during the 2016 - 2017 school

year<sup>2</sup> before he was four (4) years of age. Student is presently six (6) years of age and eligible to receive special education and related services from the district under the eligibility category of Autism Spectrum Disorder<sup>3</sup> pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C §1400 et seq., 34 C.F.R. 300.100 et seq., the Nevada Revised Statutes (“NRS”), Chapter 388 and the Nevada Administrative Code (“NAC”), Chapter 388. Student is mostly non-verbal.<sup>4</sup>

## **II.**

### **PRELIMINARY MATTERS**

Prior to the hearing the IHO issued orders adjudicating petitioner’s Motion to Compel, Motion to Associate Counsel, Reply to Pre-Hearing Conference Report and Order, Request for Reconsideration and Request for Clarification, Second Motion to Compel Discovery and Requests for Subpoenas. In addition, prior to the hearing the IHO issued an order denying the district’s Motion to Exclude Consideration of Audio Surveillance Device.

On April 9, 2019, at the commencement of the hearing and on the record, legal counsel for the parties with the participation of the IHO spent approximately 2 hours working through and agreeing to stipulated facts and stipulated conclusions of law. Those stipulated facts and stipulated conclusions of law are set forth below. Thereafter on April 9, 2019, the evidentiary hearing commenced.

## **III.**

### **HEARING ISSUE**

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<sup>2</sup>See Petitioner’s Exhibit 9.

<sup>3</sup>See Petitioner’s Exhibit 9, p. 209

<sup>4</sup>See Petitioner’s Exhibit 9, pp. 214-229 (2016 IEP)

The petitioner requested an award of compensatory education and an order allowing Student to wear / use the Angel Sense device while attending school.<sup>5</sup> Based upon the district's Concession, the stipulated findings of fact and conclusions of law, and the IHO's additional findings of fact and conclusions of law, what if any remedy is petitioner entitled to?

#### IV.

#### STIPULATED FINDINGS OF FACT

The factual findings enumerated at 1 through 26 were stipulated to by the parties on April 9, 2019, prior to taking additional evidence at the hearing. With the exception of the IHO removing personally identifiable information and making minor, non-substantive modifications, at the request of the parties the stipulated findings of fact are included verbatim. The stipulated findings of fact were entered into the record together with additional evidence that was admitted at the hearing on April 9<sup>th</sup> and April 10<sup>th</sup>, 2019. The IHO's findings of fact begin at number 27.

1. On July 18, 2016, Student was enrolled at CCSD with eligibility for special education services based upon Autism Spectrum Disorder.
2. Respondent conducted an IEP on July 18, 2016. Present Levels of Performance were noted and included social/emotional deficits.
3. Student's July 18, 2016, IEP did not document any elopement behavior.
4. On July 18, 2016, Respondent completed Supplementary Aids and Services which included a home/school communication system(setting home/school) and the use of positive

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<sup>5</sup>The description of the Angel Sense device is set forth in the Supplementary Aids and Services section of this order.

behavioral strategies.

5. Student's May 17, 2017, IEP documented that Student was observed spending "...a great deal of time crying and screaming."

6. Respondent failed to adequately train and supervise relevant personnel in the delivery of positive behavioral strategies during the 2016-2017 academic year.

7. During the 2016-2017 academic school year, Student was educated at a CCSD school. The school's principal had a duty to supervise staff associated with the education of Student.

8. During the 2016-2017 academic school year, Student was periodically deprived of water at school in violation of NRS Chapter 388.<sup>6</sup>

9. During the 2016-2017 academic school year, Student was periodically deprived of food at school in violation of NRS Chapter 388.

10. During the 2016-2017 academic school year, Student's parent's notified the CCSD Superintendent concerning issues with food and water.

11. The CCSD failed to take corrective action during the 2016-2017 academic year to address the concerns raised by Student's parents as to food and water.

12. During the 2017-2018 academic school year, Student was assigned to a new teacher of

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<sup>6</sup>The parties' stipulated factual findings 8, 9, 14, and 22, are more accurately conclusions of law and will be treated as such by the IHO.

record (“TOR”).

13. During the 2017-2018 academic school year, the school’s principal where Student attended

school had a duty to supervise Student’s TOR.

14. During the 2017-2018 academic school year, Student’s school principal / respondent failed

to ensure proper training of relevant staff in Applied Behavioral Analysis, Positive Behavioral Strategies, Proper Restraint Training and Compliance with NRS Chapter 388.

15. During the 2017-2018 academic school year, Student was a victim of repeated corporal

punishment by his TOR including, but not limited to, being beaten across the ankles, lower legs and stomach region.

16. On May 2, 2018, Student’s TOR beat Student with a wooden pointer stick with such force

it caused the wooden stick to break in two. After the pointer broke, Student’s TOR was heard stating, “I have more of these.”

17. On May 3, 2018, a full day after the beating, respondent reported the beating to Student’s

parents. Student’s principal signed an incomplete CCF 624 Form<sup>7</sup> describing the event.

18. During the 2017-2018 academic school year, Student sustained injuries some of which

were a result of corporal punishment, requiring examination by a CCSD school nurse. The April 30, 2018, injury was not reported to Student’s parents. The May 2, 2018, injury to Student resulting from corporal punishment was not reported to Student’s

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<sup>7</sup>This is a form used by CCSD entitled Notice of Use of Physical Restraint, Mechanical Restraint or Aversive Intervention (CCF 624).

parents until the following day.

19. During the 2017-2018 academic school year, CCSD staff observed, but failed to report until the following day, the use of corporal punishment inflicted upon Student by Student's TOR.

20. During the 2017-2018 academic school year, Respondent had a duty to adequately train and supervise relevant CCSD teachers and staff.

21. During the 2017-2018 academic school year, Student engaged in acts of elopement that were not documented or reported to Student's parents.

22. Respondent is responsible to train all staff in completing the CCF 624 paperwork correctly and in compliance with NRS Chapter 388.

23. On May 3, 2018, respondent contacted CCSD Police to conduct an investigation. The broken pointer was not available for evidence due to the fact that the garbage was already placed in the dumpster the night before and picked up in the morning.

24. On May 3, 2018, CCSD Police discovered three (3) wooden pointer sticks in Student's TOR's room.

25. On May 3, 2018, a Child Protective Services investigator conducted an interview with a peer of Student's TOR who witnessed the abuse by Student's TOR. The witness said that Student's TOR would routinely hit Student with the pointer stick "when [Student] was mean," or when Student removed Student's shoes/socks.



26. On June 7, 2018, a Criminal Complaint against Student's TOR was issued pursuant to NRS 200.508.1B for the May 2, 2018, beating of Student.

27. During Student's first semester of the 2016-2017 school year Student was taken good care of, Student's teacher reported often to Student's parents, she kept her classroom clean and germ free, and Student suffered no injuries or mistreatment during this period of time.<sup>8</sup>

28. After Student's first semester of school, his education and care declined.<sup>9</sup>

29. During the second semester of the 2016-2017 school year, Student's parents packed food and water for Student that on many occasions came back home with student untouched. Student would return from school hungry and thirsty.<sup>10</sup>

30. During the second semester of Student's 2016-2017 school year, Student's diapers were not changed when necessary and he was required to be in soiled diapers for extended periods of time.<sup>11</sup>

31. During the 2016-2017 school year Student was absent a total of 67 times (34 times in the AM, 33 times in the PM). During the 2017-2018 school year Student was absent a total of 122 times (61 times in the AM, 61 times in the PM). And, during the 2018-2019

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<sup>8</sup>Testimony by Student's mother.

<sup>9</sup>Testimony by Student's parents.

<sup>10</sup>Testimony by Student's parents.

<sup>11</sup>Testimony by Student's parents.

school year Student was absent a total of 24 times (12 times in the AM, 12 times in the PM).<sup>12</sup>

32. Student's frequent health issues caused Student's absenteeism.<sup>13</sup>

33. No evidence was presented by either party regarding the appropriate amount of compensatory education to be awarded to Student.<sup>14</sup>

34. No evidence was presented regarding the specific focus of the compensatory education requested by petitioner to be awarded directly to Student.

35. Presently, Student continues to does elope on occasion.<sup>15</sup>

36. Regarding Student's elopement, at no time has Student been able to escape from the school's premises and Student is usually found inside in the school library, on the stairs, or in the teacher's lounge.<sup>16</sup>

37. Presently there is a safety plan in place at Student's school to address Student's elopement and locate Student when he gets out of the classroom.<sup>17</sup>

38. Student will bang his head against the floor or other objects when upset.<sup>18</sup>

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<sup>12</sup>District's admitted Exhibits 2-4.

<sup>13</sup>Testimony by Student's father.

<sup>14</sup>After the close of the evidence, but in petitioner's closing argument, petitioner requested 585 hours of compensatory education for Student to be divided equally between Student and Student's teachers, staff, and aides.

<sup>15</sup>Testimony by Student's current principal.

<sup>16</sup>Testimony by Student's current principal.

<sup>17</sup>Testimony by Student's current principal.

## V.

### **ANALYSIS / STIPULATED AND ADDITIONAL CONCLUSIONS OF LAW**

The conclusions of law set forth below and designated A through F were stipulated to by the parties on April 9, 2019, prior to taking evidence at the hearing and are included verbatim. The remainder of the conclusions of law were determined by the IHO based upon his independent legal research.

A. The Respondent's staff allowed Student to be subjected to interventions that were inconsistent with the Student's IEPs.

B. The Petitioner's right to meaningful participation in the Student's 2016, 2017, and 2018 IEP processes was significantly impeded due to the failure of the Respondent to report aversive interventions and interventions that were contrary to the Student's IEP.

C. The Respondent used inappropriate interventions that were contrary to the Student's IEP and failed to report the use of these interventions to the Student's parents.

D. The Respondent's failure to appropriately intervene resulted in a deprivation of the Student's educational benefits.

E. The Respondent failed to place the Student in the least restrictive environment, and this resulted in the denial of FAPE by Respondent.

F. The Respondent failed to provide staff who were properly trained and supervised in

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<sup>18</sup>Testimony by Student's parents and current principal.

appropriate behavioral interventions.

**Compensatory Education:**

Petitioner has requested compensatory education for Student as a part of the requested remedy. Petitioner's request has two prongs, direct compensatory education for Student and individualized training for Student's principal, teachers, aides and support staff. "Compensatory education is not a contractual remedy, but an equitable remedy, part of the court's resources in crafting 'appropriate relief.'" *Student W v. Puyallup School District, No. 3*, 31 F.3d 1489 (9<sup>th</sup> Cir.), 21 IDELR 723 (1994). "Appropriate relief is relief designed to ensure the student is appropriately educated within the meaning of the Individuals with Disabilities Education Act." *Student W*, 31 Fed.3d at 1497. Moreover, "there is no obligation to provide a day-for-day compensation for missed time." *Id.* In addition, compensatory education services for a student may be made in the form of individualized instruction for a student's teachers. *Park v. Anaheim Union High School District, Greater Anaheim SELPA*, 444F.3d 1149 (9<sup>th</sup> Cir.), 45 IDELR 178 (2006).

The stipulated facts indicate that during the 2016-2017 school year, Student was deprived of food and water on a number of occasions. Student's parents packed food and water for Student that on many instances came back home with student untouched. Thereafter, Student's mother resorted to sending Student with dyed water to see if it was actually being consumed by Student. In addition, the stipulated facts indicate that although these deprivations were reported to the district, no corrective measures were taken. The IHO also heard credible testimony from Student's parents that during the 2016-2017 school year, Student's diapers were not changed when necessary and Student was required to be in soiled diapers for extended periods of time.

With regard to Student's 2017-2018 school year, the stipulated facts provide that during this time period Student engaged in acts of elopement. Additionally, Student was

a victim of repeated corporal punishment by his teacher including, but not limited to, being beaten across the ankles, lower legs and stomach region with a wooden pointer. This conduct was witnessed by the teacher's peer who indicated that this physical punishment was "routine." The stipulated facts further indicate that a criminal complaint was brought against Student's teacher regarding the May 2, 2018, beating of Student.

Regarding the Student's special needs and development after the first semester of the 2016-2017 school year, Student's father indicated that Student's primary issues involved his delayed speech and lack of motor function. Student's father indicated that Student's motor function has not improved and that there has been no progress regarding Student's speech. This parent also indicated that Student's head banging has increased and become more violent. Finally, Student's father testified that presently Student does not want to get out of his vehicle to attend school and that generally Student has regressed.

However, Student's current principal testified that in the 2018-2019 school year, Student has shown growth. Student elopes less, Student's stemming behavior has decreased, Student sits in "circle time" and stays on task up to 10 minutes. Student's principal also testified that Student's absences have decreased.

The stipulated facts also provide that: (1) during the 2017-2018 academic school year the district failed to ensure proper training of relevant staff in Applied Behavioral Analysis, Positive Behavioral Strategies, Proper Restraint Training and Compliance with NRS Chapter 388; (2) during the 2017-2018 academic school year, district staff observed, but failed to timely report the use of corporal punishment inflicted by staff upon Student; (3) during the 2017-2018 academic school year, the district had a duty to adequately train and supervise its teachers and staff; and, (4) the district is responsible to train all staff in completing the CCF 624 paperwork correctly and in compliance with NRS Chapter 388, yet on May 3, 2018, a district administrator signed an incomplete CCF 624 describing the

May 2, 2018 event.

Regarding the focus and amount of direct compensatory education for Student, the IHO notes that no expert testimony was presented at the hearing regarding Student's loss of educational benefit or his present educational needs. In addition, no evidence was presented regarding the focus or the amount of compensatory education requested. The only mention of compensatory education or the appropriate amount of same occurred in the closing arguments of the parties.

In the district's closing argument, it conceded that an award of compensatory education was appropriate. Yet, it did not offer evidence regarding the focus of the compensatory education for Student. In addition, the district argued that the IHO should focus on the period of time following Student's first semester of the 2016-2017 school year because it was undisputed that Student was well cared for and appropriately educated during that period of time. Regarding the amount of compensatory education to be awarded, the district argued that the IHO should rely on its Exhibits 1-4 which included the school calendars for the 2016-2017, 2017-2018, 2018-2019 school years, as well as Student's attendance records for those periods of time.<sup>19</sup> Regarding this argument, Student's parents both testified that commencing the second semester of the 2016-2017 school year, due to the lack of cleanliness in Student's classroom, he was often sick which sicknesses included strep throat, thrush, whooping cough and fever. Student's parents further testified that they were required to take Student to urgent care on many occasions and that

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<sup>19</sup>According to the district's Exhibits 2-4, during the 2016-2017 school year Student was absent a total of 67 times (34 times in the AM, 33 times in the PM), during the 2017-2018 school year Student was absent a total of 122 times (61 times in the AM, 61 times in the PM), and during the 2018-2019 school year Student was absent a total of 24 times (12 times in the AM, 12 times in the PM).

Student's poor health was a result of the classroom conditions.

In petitioner's closing argument, petitioner argued that the IHO should award 585 hours of compensatory education which computes to ½ of a school year based upon 6.5 hours per day of education time. In addition, the petitioner argued that this amount of compensatory education should be divided equally between additional educational services for Student, and training for Student's principal, teachers, service providers and aides. No evidence or argument was offered regarding what educational areas were to be focused on and how much time would be devoted to each area.

To be clear, credible but general evidence was presented that student "regressed", that Student continues to elope, that Student continues to bang his head, that Student's motor function has not improved, and that there has been no progress regarding Student's speech. And, a reasonable person could logically and equitably conclude that any student who is physically abused, denied food and water, and not cared for in a clean / sanitary, and safe environment would have a difficult time receiving the education benefit mandated by the IDEA.<sup>20</sup> However, an unsupported and general request for an indiscriminate amount of compensatory education cannot be granted.

**Supplementary Aids and Services:**

As a part of petitioner's requested remedy, petitioner seeks an order allowing the use of "Angel Sense" by Student when at school. Angel Sense is an electronic device that is worn on the body which allows for electronic tracking of the user, and also transmits, but does not record conversations whereby any individual who is in possession of the monitor may listen in contemporaneously.

Pursuant to 34 CFR 300.42, *supplementary aids and services* means aids, services

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<sup>20</sup>The IHO also notes that pursuant to Conclusion of Law "C", the parties stipulated that the district's failure to appropriately intervene resulted in a deprivation of the Student's educational benefit.

and other supports that are provided in regular education classes, other educational-related settings, and in extracurricular and non-academic settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate with section 300.114 through section 300.116. (See also NAC 388.132) Moreover, pursuant to 34 CFR 300.5, an “assistive technology device” is defined as a piece of equipment, “that is used to increase, maintain, or improve the functional capabilities of a child with a disability.” Finally, regarding the definition of an IEP and the inclusion of *supplementary aids and services*, the use of same is to enable a student to, advance appropriately toward attaining annual goals, to be involved in and make progress in the general education curriculum..., and to be educated and participate with other children with disabilities and non-disabled children in the activities described in this section. (See 34 CFR 300.320(4))

In the State of Nevada, absent consent by one person to a conversation, for privacy reasons the law prohibits the surreptitious listening into any private conversation. (See NRS 200.650) Moreover, pursuant to NRS 393.400, it is unlawful to engage in any kind of surreptitious electronic surveillance at a public school without the knowledge of the person being observed. An exception to the rule is that electronic surveillance is allowed if necessary as a part of a system of security used to protect and ensure the safety of persons on the property of a public school. (See NRS 393.400(2)(d))

In the case *Pollack v. Regional School Unit 75*, 886 F.3d 75 (1<sup>st</sup> Cir.), 71 IDELR 206 (2018), a student’s parent requested that the student be allowed to wear an electronic recording device at school. The student was autistic and non-verbal. However, the student had been attending school in the district for 12 years and had made continuous educational progress; he was receiving a FAPE. In issuing the decision the IHO concluded that the recording device was not required under the IDEA. The IHO determined that the need for a recording device was not a safety issue, the student was



receiving a FAPE, and that it was unnecessary for the student to wear a recording device to benefit educationally.

In the present case, it is an undisputed fact that Student continues to elope. Student's desire to leave when over-stimulated and his need for supervision is documented as far back as his July 18, 2016, IEP.<sup>21</sup> In addition, Student's parents testified that Student continues to try and elope and on one occasion while Student's father was at Student's school, Student was left unattended and did elope. Student's father was the one who found Student in the school library.<sup>22</sup>

Furthermore, Student's current principal testified that although Student did elope from his classroom, at no time was Student able to leave the school's campus. This evidence was not contradicted and the IHO found Student's principal to be credible. In addition, Student's principal testified about the safety plan that is in place at Student's school to address Student's elopement. Pursuant to the safety plan, certain teachers, administrators and staff have 2-way radios. When Student elopes, all persons with radios are notified to be on the look out and the exit doors for the school are blocked. Consistent with Student's father's testimony, Student's principal confirmed that typically when student elopes Student ends up in the school library, on the stairs or in the teacher's lounge. Student's principal also confirmed that when the school day ends, Student is always picked up at the front desk by a parent of Student.

With regard to the elopement issue, the Angel Sense device is unnecessary. The undisputed evidence is that although Student tries to and sometimes does elope, he has never made it off school premises and is usually found in one of three quiet places inside the school. Furthermore, the Angel Sense device is also not necessary for the safety of

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<sup>21</sup>See Petitioner's Exhibit 9, pp. 214-229.

<sup>22</sup>Student's father's testimony.

the eloping Student because a safety plan is in place and to date the safety plan has worked. Finally, this product does not fall within the definition of a “supplementary aid or service”, or an “assistive technology device”. The use of Angel Sense will not further enable Student to be educated with non-disabled children to the maximum extent, it will not increase, maintain, or improve Student’s functional capabilities, and its use will not provide Student with an educational benefit.

As also discussed above, it is undisputed and ample evidence was presented proving that Student was physically abused by a former teacher while attending school during the 2017-2018 school year.<sup>23</sup> Petitioner offered and had admitted into evidence the criminal complaint against Student’s former teacher, the School Police Department Affidavit pertaining to its investigation, as well as images of Student’s injuries.<sup>24</sup> In addition, both Student’s mother and father testified about the unexplained bruising on Student’s body and the pointer shaped welts and poke marks that were discovered on Student’s torso and legs. Regarding the injuries to Student that were not reported to Student’s parents on May 3, 2018, upon inquiry Student’s parents testified that they were routinely told that these injuries happened “on the playground.”<sup>25</sup>

With regard to Student’s safety and the legality of the use of Angel Sense at a Nevada public school, the contemporaneous transmission of conversations is a complex issue. The gravity of the abuse of Student by his former teacher cannot be ignored or trivialized. The teacher’s conduct was deplorable and Student suffered at her hands. However, there is no evidence to prove how the use of Angel Sense could have in the

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<sup>23</sup>See Stipulated Facts, 15 and 19 above.

<sup>24</sup>See Petitioner’s Exhibits 2 and 8.

<sup>25</sup> Student’s parents were unable to confirm Student’s playground injuries, and Student’s principal admitted in her testimony that although there are surveillance cameras at Student’s current school that would cover the school’s playground, she believed that those cameras had been inoperable for more than 3 years.

past or will in the future protect Student from abuse. Even if someone is listening in at all times, it cannot be concluded that physical violence will be prevented. And, there is no practical way to obtain consent from or give notice to every person who may be overheard talking to another within range of the Angel Sense device. Because Nevada law precludes surreptitious electronic listening / surveillance, the Nevada legislature, not this IHO, should be tasked with deciding whether or not Nevada law should be modified.

## **VI.**

### **DECISION AND ORDER**

Based upon the foregoing, it is hereby ordered as follows:

1. Based upon the absence of evidence pertaining to the specific areas of Student's alleged educational deprivation, what specific services are needed to remedy the denial of a FAPE, and the appropriate amount of compensatory education for Student in each alleged area of educational deprivation, the IHO is without a basis to make an award whereby no direct compensatory education for Student is ordered.
2. Student is awarded compensatory education for Student's principal, teachers, service providers, and all other staff / aides that are assigned to work with Student in the present school year, as well as in the 2019-2020 school year. Each such individual shall receive a total of four (4) hours of compensatory education that shall be provided by the district. This compensatory education shall include individualized instruction pertaining to the definition of and prohibition against aversive interventions, the proper reporting and documentation of aversive interventions, the use of positive behavior plans and supports including those set forth in Student's current and future IEPs, proper restraint training, and compliance with NRS Chapter 388. For Student's current principal, teachers, service

providers, and all other staff / aides that are assigned to work with Student, this instruction / training shall be completed before the commencement of the 2019-2020 school year. For Student's future principal, teachers, service providers, and all other staff / aides that are assigned to work with Student, this instruction / training shall be completed before the conclusion of the first semester of the 2019-2020 school year.

3. Student shall not be allowed to wear / use the Angel Sense device while attending school.

## VII.

### NOTICE OF RIGHT TO APPEAL

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

Dated: April 22, 2019

  
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