Judson W. Tolman
[redacted]
Hearing Officer

BEFORE THE OFFICER FOR THE

IDAHO DEPARTMENT OF EDUCATION

COEUR D'ALENE SCHOOL DISTRICT No. 271, Petitioner, vs. [redacted] and [redacted] as legal guardians and parents of [redacted], a minor, Respondent.	)	Case No. H-19-10-10a MEMORANDUM DECISION

INTRODUCTION

The Due Process Hearing Request ("Complaint") in this matter was submitted by the Coeur d'Alene School District ("Petitioner") to the State Department of Education ("SDE") on October 10, 2019. The issue raised in the Complaint is whether Petitioner's denial of Respondent's request for an Independent Educational Evaluation ("IEE") was appropriate. Respondent did not submit a response to the Complaint. Following the resolution period an order dated December 3, 2019, consolidated this hearing with another pending due process hearing for Student [redacted] The other due process hearing is identified by the case number SDE H-19-05-08a.

DUE PROCESS HEARING

A Scheduling Order dated December 3, 2019, set forth the due process hearing dates and pre-hearing disclosure dates. Pursuant to this Scheduling Order a list of all exhibits and witnesses were to be disclosed to the opposing party and submitted to the hearing officer on or before January 6, 2020. Copies of proposed exhibits were to be provided to the opposing party by the same date.

On January 6, 2020, Petitioner served upon Respondent and submitted to the hearing officer Petitioner's list of exhibits and witnesses, and copies of all Petitioner's proposed exhibits were emailed to Respondent.

Respondent did not serve or submit a list of exhibits or witnesses, and copies of Respondent's proposed exhibits were not provided to Petitioner.

On Monday, January 13, 2020, Petitioner appeared at the hearing. Neither Respondent [redacted] or [redacted] appeared for the hearing. At 9:05 a.m., five minutes after the time to begin the hearing, Respondent [redacted] sent an email to the hearing officer and Petitioner's legal counsel indicating that Respondent [redacted] could not proceed with the due process hearing. The hearing officer with Petitioner's legal counsel called Respondent. On the call Respondent [redacted] stated that he was having health issues and could not attend the hearing. When the hearing officer asked if Respondent [redacted] would be coming to participate in the hearing Respondent [redacted]. disconnected the phone call.

BURDEN OF PROOF

The Ninth Circuit has ruled that: "[T]he ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims, … [a]bsent some reason to believe that Congress intended otherwise, … we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief." Van Duyn v. Baker School Dist. 5J, 502 F.3d 811, 820 (9th Cir. 2007).

Applying the Ninth Circuit opinion in Van Duyn, Petitioner bears the burden of proof on the issue for determination in this matter.

FINDING OF FACTS

1. Prior to April 12, 2019, Petitioner determined that [redacted] qualified for special education and was entitled to a Free and Appropriate Public Education ("FAPE") and qualified to receive special education under the Individuals with Disabilities Education Act ("IDEA") with a disability of emotional disturbance. Tr. 19:20-24.

2. Petitioner's psychologist completed an Eligibility Re-evaluation Report for [redacted] on April 12, 2019. Exhibit 109.

3. An Individual Educational Plan ("IEP") team meeting was held on April 12, 2019. Respondent and [redacted] participated in the meeting. The IEP meeting was held for the purpose of reviewing the Eligibility Re-evaluation Report. At the meeting, the IEP team determined that [redacted] was not eligible for special education under the IDEA and discontinued [redacted].'s IEP. In making this determination, the IEP team considered the Eligibility Re-evaluation Report, input from Respondent and a consultant working with Respondent, input from [redacted]'s math teacher and case manager, [redacted]'s grades, and [redacted]'s current IEP. Tr. 16-17; Exhibit 109.

4. In April 2019, [redacted] did not have the school failure and behavior difficulties which she experienced in the prior school years. [redacted] was attending general education classes and receiving mostly "A" grades. Tr. 15-21.

4. On September 6, 2019, Respondent requested an IEE for [redacted]

5. On September 26, 2019, Petitioner provided written notice to Respondent that Respondent's request for an IEE was denied. Exhibit 102.

CONCLUSIONS OF LAW

Under the IDEA and corresponding regulations a Local Education Agency (e.g., School District) shall conduct an eligibility re-evaluation for a student receiving special education at least every three years. 34 CFR 300.303. The Eligibility Re-evaluation completed by Petitioner on April 12, 2019, was done in compliance with this 3-year re-evaluation requirement.

A parent may request an IEE at public expense if the parent disagrees with the school district's evaluation. 34 CFR 300.502. If the school district denies the parent's request for an IEE at public expense then the district must initiate a due process hearing without unnecessary delay to show that the district's evaluation is appropriate. Id. Petitioner submitted the Complaint without unreasonable delay for the purpose of showing that the district's evaluation is appropriate.

IDEA regulations at 34 CFR 300.301 through 300.311 set forth the requirements in conducting evaluations and re-evaluations. Specifically, the regulations state that "a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability." The Eligibility Re-evaluation completed by Petitioner and in written form as Exhibit 109, comports with the requirements of sections §§ 300.304 through 300.311 and the evaluation was done before determining that [redacted] was no longer a child with a disability.

CONCLUSION

Accordingly, the Eligibility Re-evaluation conducted by Petitioner followed the applicable IDEA regulations and was appropriate for determining [redacted]'s eligibility; therefore, Petitioner's denial of Respondent's request for an IEE is warranted and Petitioner is not required in this case to provide an IEE at public expense.

So ORDERED this 27TH day of January, 2020.

/s/
Hearing Officer

NOTICE

Any party aggrieved by the findings and decision herein has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under 20 U.S.C. §1415(i)(1). The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. (See 20 U.S.C. §1415(1)(2)). 20 U.S.C. §1415(i)(2)(a) provides that: Time limitation: The party bringing the action shall have 90 days from the date of this decision to file a civil action**, or if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by State law. (Emphasis Added)**. IDAPA 08.02.03.109.05(g) provides that "An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision."

CERTIFICATE OF SERVICE

I DO HEREBY certify that on the 27th day of January, 2020, I caused to be served on the following a true and correct copy of the foregoing document by the method indicated below:

Chris Hansen
[redacted]
chansen@ajhlaw.com

☒ U.S. Mail, postage prepaid
☐ Overnight Mail
☐ Facsimile
☒ Email

[redacted]

☒ U.S. Mail, postage prepaid
☐ Overnight Mail
☐ Facsimile
☒ Email

Dispute Resolution Coordinator
Idaho State Department of Education
650 W. State Street
Boise, ID 83702
jbrandt@sde.idaho.gov

☐ U.S. Mail, postage prepaid
☐ Overnight Mail
☐ Facsimile
☒ Email

By: /s/
Hearing Officer