

Judson W. Tolman

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Hearing Officer

BEFORE THE OFFICER FOR THE  
IDAHO DEPARTMENT OF EDUCATION

█████. and █████. as legal guardians and parents	)	Case No. H-23-10-26A
of █████., a minor,	)	
	)	
Petitioner,	)	<b>MEMORANDUM DECISION</b>
	)	
vs.	)	
	)	
MINIDOKA SCHOOL DISTRICT No. 331,	)	
	)	
Respondent.	)	
_____	)	

**Statement of Proceedings**

Petitioner’s<sup>1</sup> Due Process Hearing Request was received by the Idaho Department of Education on November 13, 2023. A stipulation was then submitted whereby the Parties agreed to the submission of an amended Complaint by Petitioner. Said Amended Complaint was submitted on December 20, 2023, thereby resetting the thirty-day Resolution Period. By way of a stipulation dated January 3, 2024, the Parties waived the Resolution Period. In response to Respondent’s prehearing motion to dismiss, the following causes of action and requests for relief were dismissed (i) the fourteenth cause of action in Petitioner’s Amended Complaint, (ii) all assertions, relief and claims set forth in the Amended Complaint under the heading of Notice of Claim, and (iii) the following requests for relief in Petitioner’s Complaint:

<sup>1</sup> Student’s parents are jointly referred to herein as Petitioner and individually as █████. and █████.

“Relief sought in the Amended Complaint under Requested Resolution which shall not be considered and are hereby DISMISSED include (using the numbering in Petitioner’s Requested Resolution):

1. Immediate [REDACTED] at [REDACTED].
2. Reversal of [REDACTED] and [REDACTED] and [REDACTED].
4. Reconstituted IEP Team approved by Parent.
5. [REDACTED].
6. District funded [REDACTED].
9. Attorney fees.”

(Order on Respondent’s Prehearing Motions, p. 5-6)

A due process hearing was held March [REDACTED], 2024. During such hearing a request for extension of time was granted extending the time in which a decision must be rendered until April 30, 2024. Both parties submitted written closing arguments on April 12, 2024.

### **Causes of Action**

The Amended Complaint sets forth fourteen causes of action. As indicated in the preceding section, the fourteenth cause of action was dismissed leaving thirteen causes of action for determination in this matter, namely (as stated in the Amended Complaint):

1. Respondent failed to consider parent input and all recent evaluations of the Student to develop an Individualized Education Program (IEP) for the Student to meet all of the Student’s academic, developmental, and functional needs.
2. Respondent failed to evaluate and/or revalue the [REDACTED] components of the Student’s IEP based on allegations of [REDACTED].

3. Respondent failed to review all relevant information about the student and [REDACTED] disability during the [REDACTED] as required IDEA. Respondent came to the wrong conclusion that [REDACTED] was [REDACTED] disability.
4. Respondent failed to implement [REDACTED] procedures according to IDEA, including [REDACTED] and [REDACTED]. Respondent failed to continue to provide educational services [REDACTED] to enable Student to participate in general education and progress toward goals in IEP.
5. Respondent failed to implement [REDACTED] according to IDEA after parents contested [REDACTED] [REDACTED], Respondent should have filed for Due Process Hearing.
6. Respondent failed to follow IDEA in [REDACTED] decisions when they predetermined the outcome of [REDACTED] different meetings in which Parents are entitled to contribute to decision making of [REDACTED] their disabled child.
7. Respondent failed to provide Prior Written Notice and Procedural Safeguards to Parents when they unilaterally [REDACTED]  
[REDACTED]
8. Respondent failed to provide educational services [REDACTED] [REDACTED] to enable Student to participate in the general education curriculum and to progress toward meeting IEP goals.
9. Respondent failed to provide Student FAPE and ensure parent participation in all IEP meetings.
10. Respondent failed to provide prior written notice before proposing to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.
11. Respondent failed to ensure that to the maximum extent appropriate, students with disabilities are educated with similar-aged students who are nondisabled.
12. Respondent failed to provide Student a Free Appropriate Public Education (FAPE).
13. Respondent completely failed to implement IDEA resulting in a denial of FAPE.

## Witnesses

The following witnesses testified at the due process hearing:

- [REDACTED], [REDACTED]
- [REDACTED], Petitioner.
- [REDACTED], special education teacher.
- [REDACTED], special education teacher.
- [REDACTED], school [REDACTED]
- [REDACTED], assistant principal.
- [REDACTED], [REDACTED] teacher.
- [REDACTED], assistant principal.
- [REDACTED], superintendent.
- [REDACTED], school board chairman.
- [REDACTED], special education director.
- [REDACTED], Petitioner

## Exhibits

Petitioner submitted Exhibits 1 through 68 and Respondent submitted Exhibits 201 through 242 at the due process hearing.

Petitioner's Exhibits that are admitted into the record include: Exhibits 1-4, 6-29, 31-33, 36, 38-40, 43-48, 50-52, 54-64, and 66-68.

Respondent's Exhibits that are admitted into the record include: Exhibits 201-225, 228, and 231-242.

## Burden of Proof

"The burden of proof in an administration hearing challenging an IEP is properly placed upon the party seeking relief." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). Commenting on *Schaffer*, the Ninth Circuit stated: "[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 (9<sup>th</sup> Cir. 2007). Applying *Schaffer*, and the Ninth Circuit opinion in *Van Duyn*, Petitioner bears the burden of proof on all issues for determination in this matter because Petitioner is the party challenging the IEP and the only party seeking relief.

### Findings of Fact

1. Student was first referred for special education services as [REDACTED] qualifying under the category of [REDACTED]. Student attended a [REDACTED] and an [REDACTED]. Student entered the Minidoka County School District [REDACTED] during [REDACTED] school year. Exh. 206.
2. At Student’s three-year reevaluation in [REDACTED] Student continued to qualify for special education services under the category of [REDACTED]. Ibid.
3. Upon reevaluation in October [REDACTED], Student’s eligibility category [REDACTED]. Exh. 11.
4. Student’s Individual Education Program (“IEP”) dated 9/[REDACTED]/21, shows Student’s eligibility category of [REDACTED] and provides for special education services in [REDACTED]. Exh. 1. The IEP allocated [REDACTED] for Specialized Instruction with [REDACTED] and [REDACTED] for Specialized Instruction [REDACTED]. Ibid.
5. Student’s IEP dated September [REDACTED], 2022, continued Student’s services for [REDACTED]. [REDACTED] of [REDACTED] in the Special Education Classroom was added. Exh. 2. Petitioner attended and participated in the September [REDACTED] 2022, IEP Team Meeting. Exh. 2
6. On January [REDACTED], 2023, Student [REDACTED]

[REDACTED] that Student [REDACTED] [REDACTED]  
[REDACTED]. After [REDACTED]  
[REDACTED] [REDACTED]. Student  
[REDACTED]  
[REDACTED] Exh. 206; TR 710-11.

7. Student had [REDACTED] the day before [REDACTED] [REDACTED], [REDACTED]  
[REDACTED]. TR 934.
8. Student later [REDACTED]. 710-11, 761
9. A [REDACTED] was held on January [REDACTED], 2023. Participants included Petitioner [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and Petitioner [REDACTED]. Exh. 15. Respondent determined that the action of [REDACTED] [REDACTED] was [REDACTED], that it was [REDACTED]  
[REDACTED] Respondent also determined that Student's IEP was being implemented in its entirety. Petitioner disagreed with Respondent's decision and felt that Student's disability impacted Student's [REDACTED] TR 165; Exh. 15.
10. Following [REDACTED] [REDACTED] Student [REDACTED]  
[REDACTED]. TR 208.
11. An [REDACTED] was held by the [REDACTED] on January [REDACTED], 2023. Exh. 3. Petitioner was given prior notice informing Petitioner [REDACTED] [REDACTED]. TR 200-01. Petitioner attended and participated. Exh. 3. The decision from this meeting is that Student [REDACTED]. TR 186-7.
12. [REDACTED] IEP Team Meeting was held on February [REDACTED], 2023. Student's IEP was amended taking into consideration [REDACTED]. Exh. 202; 14. The amended IEP indicates that services would be provided [REDACTED]  
[REDACTED]. Student would be receiving [REDACTED] minutes of services per week (approximately [REDACTED] per day). Ibid. In addition to the time allocations from the September [REDACTED], 2022, IEP, [REDACTED] minutes of [REDACTED] was added. Ibid..
13. Between February [REDACTED], 2023, and June [REDACTED], 2023, Respondent provided educational services to Student through [REDACTED] TR 435-38, 451.53; 512-14.

14. Pursuant to a corrective action plan Respondent provided [REDACTED] to Student for educational services which the complaint investigator found should have been provided to Student between January and June 2023. TR 207. [REDACTED] [REDACTED] were ordered which was completed in December 2023. TR 225-226.
15. An Eligibility Reassessment and IEP Meeting was held June [REDACTED], 2023, and Student's IEP was updated as of the same date. Ex. 27. Petitioner attended and participated in the June [REDACTED], 2023, IEP Team Meeting. Ibid. Meeting Minutes reflect an open and comprehensive discussion of student's strengths, needs, and goals. Ibid. It was agreed at this meeting not to complete the allocation of time for special education services and that the allocations would be completed at the August IEP Team Meeting. TR 477-83.
16. At the August [REDACTED], 2023, IEP Team Meeting the team agreed that "[Student] will receive [REDACTED] Specialized Instruction with [REDACTED] and [REDACTED] Specialized Instruction with [REDACTED] [Student] will also have [REDACTED] listed in the optional statement of service delivery." Exh. 26.
17. A [REDACTED] was completed on June [REDACTED], 2023. Exh. 4, 29.
18. A [REDACTED] was done on June [REDACTED], 2023. Ex. 24. Respondent determined that [REDACTED] [REDACTED] disability. TR 233-4; Exh. 24; 47.
19. A [REDACTED] meeting was held on October [REDACTED], 2023. Petitioner was invited to the [REDACTED] meeting [REDACTED]. TR 237-8. The [REDACTED] decision to recommend [REDACTED] was presented [REDACTED]. TR 238. Respondent was invited to [REDACTED] meeting held on October [REDACTED], 2023, for the purpose of reviewing the [REDACTED] recommendation. Exh. 57. Petitioner [REDACTED] [REDACTED]. TR 238. The [REDACTED]. TR 238; Exh. 55.
20. At the beginning of the 2023-2024 school year, Respondent designated [REDACTED] [REDACTED] educational services to the Student. [REDACTED] [REDACTED] TR 244, 247-8; 904-6; Ex. 51.
21. When Student attended [REDACTED] Student [REDACTED] [REDACTED]. [REDACTED] [REDACTED]. Ex. 56.

22. Student [REDACTED]. TR 545. From the beginning of the 2023-2024 school year through October 2023, Student [REDACTED]. Exh. 241.
23. Student [REDACTED] October 2023. TR 544-45.

### **Conclusions of Law**

The Individuals with Disabilities Education Act (“IDEA”) establishes a substantive right to a “free appropriate public education” for certain children with disabilities. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176 (1982). A State covered by the IDEA must provide a disabled child with such special education and related services “in conformity with the [child’s] individualized education program,” or IEP. 20 USC §1401(9)(D).

The IDEA requires that every IEP include “a statement of the child’s present levels of academic achievement and functional performance,” describe “how the child’s disability affects the child’s involvement and progress in the general education curriculum,” and set out “measurable annual goals, including academic and functional goals,” along with a “description of how the child’s progress toward meeting” those goals will be gauged. 20 USC §§1414(d)(1)(A)(i)(I)–(III). The IEP must also describe the “special education and related services . . . that will be provided” so that the child may “advance appropriately toward attaining the annual goals” and, when possible, “be involved in and make progress in the general education curriculum.” 20 USC §1414(d)(1)(A)(i)(IV).

Parents and educators often agree about what a child’s IEP should contain. But not always. When disagreement arises, parents may turn to dispute resolution procedures established by the



IDEA. The parties may resolve their differences informally, through a “[p]reliminary meeting,” or, somewhat more formally, through mediation. 20 USC §§1415(e), (f)(1)(B)(i). If these measures fail to produce an agreement, the parties may proceed to what the Act calls a “due process hearing” before a state or local educational agency. 20 USC §§1415(f)(1)(A), (g). The IDEA sets the scope of a due process hearing as matters “relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child.” 20 USC § 1415(b)(6)(A); 34 CFR § 300.507(a)(1).

At the due process hearing in this matter, argument and testimony were presented relating to the claims asserted in Petitioner’s Amended Complaint and also on issues relating to the Student’s [REDACTED]. Although Student’s [REDACTED] effects the provision of FAPE to the Student, the procedures and decisions of the school district relating to Student’s [REDACTED] are outside of the scope of a due process hearing under the IDEA. This Memorandum Decision makes no ruling as to the school district’s procedures and decisions concerning Student’s [REDACTED].

Petitioner’s causes of action set forth in the Amended Complaint relating to the identification, evaluation or educational placement of the Student or the provision of FAPE to the Student are addressed below.

**1. Petitioner did not show that Respondent failed to consider parent input and recent evaluations of the Student to develop an Individualized Education Program (IEP) for the Student.**

Petitioner cites to 34 CFR § 300.324(a)(ii) and (iv) in asserting the claim that Respondent failed to consider Parent input to develop Student’s IEP. These regulatory sections provide that

in the development of the Student's IEP, the IEP team must consider "the concerns of the parents for enhancing the education of their child" and "the academic, developmental, and functional needs of the child." In the development of the IEP, although the IEP Team is not required to adopt the position or grant the requests of the parent, the IEP Team must give due consideration to the parent's requests. See *Cupertino Union Sch. Dist. v. K.A.*, 75 F. Supp.3d 1088, 1103 (N.D. Cal. 2014)(citing *Ms. S. ex rel G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1132 (9<sup>th</sup> Cir. 2003).

Parent (one or both) attended, either in person or virtually, IEP Team meetings on September █, 2022, and June █, 2023. Exh. 201, 203, and 207. Parent input was included in the Meeting Minutes for the September █, 2022 IEP Team Meeting and parent completed an input form for the meeting. Exh. 17, 19 and 233. Parent input was recorded in the Meeting Minutes from the June █, 2023, IEP Team meeting. Exh. 27.

Witnesses at the due process hearing testified that Petitioner input was sought, received and considered at the September █, 2022, and June █, 2023, IEP Team meetings. TR. pp. 350-354; 355-358; 479; 507.

Both the September █, 2022, IEP and the June █, 2023, IEP include input from the parents in relation to Specialized Instruction with █, Specialized Instruction with █, █, and Specialized █ with █. Exh. 2 and 7.

No evidence was presented at the hearing in this matter indicating that Respondent failed to give due consideration to the input of Petitioner in the development of an IEP of the Student or to contradict the evidence referenced above showing that Petitioner's input was considered. Accordingly, Petitioner has failed to meet the burden of proof on Petitioner's first cause of action.

2. **Petitioner did not show that Respondent failed to evaluate and/or revalue the [REDACTED] components of the Student’s IEP based on allegations of [REDACTED].**

Petitioner’s second cause of action asserts that Respondent “failed to evaluate and/or revalue the [REDACTED] components of the Student’s IEP based on allegations of [REDACTED]. . . District failed to adequately investigate, District failed to adequately respond, District never altered IEP to address the impact of [REDACTED] on Student.” Complaint, p. 31.

To establish that Student was denied FAPE due to [REDACTED], Petitioner must establish that Respondent [REDACTED] [REDACTED] of Student and that the [REDACTED] was [REDACTED] that Student can derive no benefit from the services Student was offered by the school district. See [REDACTED].

Applying the standard from the Ninth Circuit, the Federal District Court for the State of Idaho has held that in order to establish a denial of FAPE due to [REDACTED], a claimant must show:

- (1) the plaintiff is an individual with a disability;
  - (2) he or she [REDACTED] based on that disability;
  - (3) the [REDACTED] was [REDACTED]  
[REDACTED]  
[REDACTED]
  - (4) the defendant knew about the [REDACTED]; and
  - (5) the defendant was [REDACTED] the [REDACTED].
- See [REDACTED].

Evidence presented at the hearing showed that prior to January 2023 Petitioner and/or Student [REDACTED] to Respondent. In November 2022, Petitioner reported to Respondent that Student was [REDACTED] by [REDACTED] and that the [REDACTED]

██████ was ██████████ Student's ████████. TR 664. In response to Petitioner's report Respondent questioned the special education teacher and the ████████ teachers who Student ██████████. The interactions between Student ██████████ ██████████ TR 664. Respondent spoke with ██████████ ██████████ Exh. 31. After this report by Petitioner and Respondent's investigation, there were no further reports of ██████████. TR 665.

Student ██████████. TR 647-8; Exh. 48, p.128. No details of ██████████ are included in the record. In the classroom where ██████████ the teacher "... ██████████" Exh. 48.

No evidence presented at the hearing showed or inferred that ██████████ based on Student's disability. The ██████████ reported by Petitioner or Student do not establish ██████████ sufficiently ██████████ that it altered Student's education or created an ██████████ educational environment. Further, evidence presented at the hearing did not show that Respondent was ██████████, rather, Respondent investigated the allegations and took actions appropriate in light of the investigation. Accordingly, Petitioner did not meet the burden of proof to showing that Student was denied FAPE due to ██████████.

- 3. Petitioner did not meet the burden of proof to show that Respondent failed to review all relevant information about the student and ████████ disability during the ██████████ as required IDEA or that Respondent came to the wrong conclusion that ██████████ disability.**

A [REDACTED] is an evaluation of [REDACTED] to determine whether [REDACTED] disability. It must be performed when a school district proposes [REDACTED] that will result in [REDACTED] for a child with a disability. 34 CFR 300. [REDACTED]. The [REDACTED] analysis must be [REDACTED] days of "any decision [REDACTED] of a child with a disability [REDACTED]." 34 CFR 300. [REDACTED].

Pursuant to 34 CFR 300. [REDACTED], [REDACTED] must be found to be a [REDACTED] disability if:

1. [REDACTED]  
[REDACTED]; or
2. [REDACTED]  
[REDACTED].

The [REDACTED] [REDACTED] the parent, and [REDACTED] IEP team [REDACTED] 34 CFR 300. [REDACTED].

The [REDACTED] must [REDACTED]  
[REDACTED]  
[REDACTED] 34 CFR 300. [REDACTED]. However, that list [REDACTED]  
[REDACTED] not exhaustive. [REDACTED]  
[REDACTED]  
[REDACTED]

If the [REDACTED] reveals that the [REDACTED] [REDACTED] [REDACTED] disability, the IEP team must:

1. [REDACTED]

- [REDACTED]
- [REDACTED]

2. And, except as provided in 34 CFR [REDACTED] the [REDACTED], unless the parent and the school district agree to [REDACTED] as part of the modification of [REDACTED]. 34 CFR 300. [REDACTED]

[REDACTED]

disability, then the child is [REDACTED] as a child without a disability. However, the child must [REDACTED] receive [REDACTED] the child [REDACTED] to participate in the general education curriculum, [REDACTED] setting, and to progress toward meeting the goals set out in the child's IEP. 34 CFR 300. [REDACTED].

While parents have the right to participate in the [REDACTED], they do not have the right to [REDACTED] team's [REDACTED] that the child's [REDACTED] disability. [REDACTED]

[REDACTED]

Evidence presented at the hearing in this matter established that:

- On January [REDACTED] 2023, Student [REDACTED] [REDACTED] TR 757-58; 760-61; 784-85.
- A [REDACTED] analysis was conducted [REDACTED] of a proposed [REDACTED].
- A [REDACTED] meeting was held on January [REDACTED], 2023. TR 580; Exh. 15.

- Attendees at the January [REDACTED], 2023, [REDACTED] meeting were Parents ([REDACTED] and [REDACTED]), [REDACTED] (District Administrator or Designee), [REDACTED] (Special Education Teacher), [REDACTED] (Assistant Principal), and [REDACTED] (School [REDACTED]) Exh. 15.

- Conflicting evidence was presented as to whether the January [REDACTED] 2023, [REDACTED] [REDACTED] included [REDACTED] [REDACTED]

- Petitioner testified that limited discussion took place, Student's file was not reviewed, and parent input was not considered. TR 164-5; 204.

- Respondent representatives testified that information reviewed at the January [REDACTED] 2023, [REDACTED] included: the Student's special education file, TR 518, 401; Student's Eligibility Report and Evaluation Summary, TR 581-2, 402, Exh. 11; recent evaluation, TR 581; previous testing and results, TR 582, 405; attendance records, TR 402; progress in the classroom, TR 402; Student's [REDACTED], TR 402; [REDACTED] of Student's disability, TR 402-3; teacher observations, TR 405; and parent input, TR 548.

- At the [REDACTED] meeting the parties were unable to reach consensus as to whether [REDACTED]

- Respondent representatives did reach a consensus that Student's [REDACTED] [REDACTED] disability, specifically, Student's [REDACTED] [REDACTED] the child's disability; [REDACTED] Exh. 15.

- A second [REDACTED] on June [REDACTED] 2023, following a corrective action plan issued by a complaint investigator's determination that Respondent's January [REDACTED] 2023 [REDACTED] did not comply with the requirements of the IDEA.

- The June [REDACTED] 2023, [REDACTED] and Meeting Minutes provide significant detail on what information was considered and reviewed at the [REDACTED] [REDACTED] meeting. Exh. 206, 208.

- At the conclusion of the June [REDACTED] 2023, [REDACTED] the parties were again unable to reach a consensus.

- Respondent representatives did reach a consensus that Student's [REDACTED] [REDACTED] disability.

The facts set forth above lead to the conclusion that the procedural requirements of the IDEA for a [REDACTED] were satisfied. See also, TR 426, 428; .525 - 528; 580 – 585; 812 - 813; 900 - 901; 921; Exh. 234, 231, 206, 208.

Respondent's substantive [REDACTED] in January and June 2023 focused on Respondent's findings that Student's [REDACTED] was not consistent with Student's [REDACTED] and it was also [REDACTED]. Student's [REDACTED] relating to Student's disability is [REDACTED]. Also, Student [REDACTED] [REDACTED] (i.e., Student [REDACTED] and [REDACTED] [REDACTED]. TR 934). This [REDACTED] Student [REDACTED] on January [REDACTED] 2023, shows that there was no [REDACTED] [REDACTED] and Student's disability. See [REDACTED] [REDACTED] (holding disability not [REDACTED])



); [REDACTED];  
[REDACTED] (holding [REDACTED] disability was not [REDACTED]); [REDACTED]  
[REDACTED]) (holding [REDACTED]  
[REDACTED] disability).

Petitioner asserts that [REDACTED] [REDACTED])  
[REDACTED] Respondent's failure to implement the IEP. Petitioner argues that  
Respondent failed to implement the IEP by not addressing [REDACTED]  
[REDACTED]. As discussed supra, Petitioner did not meet the burden of showing that  
Student was denied FAPE due to [REDACTED] or that Respondent failed to appropriately address [REDACTED]  
[REDACTED]. Supra, p. 9-10.

Although there is a conflict in testimonies as to what information was reviewed and  
considered [REDACTED] January [REDACTED] 2023 [REDACTED], such conflict does not  
lead to the conclusion that Petitioner met the burden of showing that Respondent failed to satisfy  
the procedural requirements of the IDEA in reviewing all relevant information. The evidence  
does show that Respondent met procedural requirements of the IDEA in [REDACTED] the June [REDACTED],  
2023, [REDACTED].

Also, the evidence in the record supports Respondent's conclusion that Student's [REDACTED]  
[REDACTED] was not a [REDACTED] disability because [REDACTED]  
[REDACTED] was inconsistent with Student's [REDACTED] relating to Student's  
disability and Student's [REDACTED] was not [REDACTED] prior to  
[REDACTED]. Accordingly, Petitioner did not meet its burden of proof as the  
Petitioner's third cause of action.

**4. Petitioner did not meet the burden of proof to show that Respondent failed to implement [REDACTED] procedures according to IDEA, including [REDACTED] [REDACTED] and [REDACTED] Respondent failed to [REDACTED] provide educational services [REDACTED] to enable Student to participate in general education and progress toward goals in IEP.**

A Student with a disability [REDACTED] must [REDACTED] the Student to [REDACTED] participate in the general education curriculum, [REDACTED], and to progress toward meeting the goals set out in the child's IEP. See 34 CFR 300. [REDACTED].

Section 34 CFR §300. [REDACTED] requires that [REDACTED] when [REDACTED] [REDACTED] disability. As noted previously, Student's [REDACTED]; therefore, Respondent was not obligated to [REDACTED] in connection with the [REDACTED].

In the present case, following [REDACTED] on January [REDACTED] 2023, when [REDACTED] [REDACTED]. TR 651. [REDACTED] Respondent provided [REDACTED] Student. TR 208-9. Following [REDACTED] were being provided by Respondent. TR 208-9. Between February [REDACTED] 2023, and June [REDACTED] 2023, [REDACTED] were provided for Student [REDACTED]. TR 435-38, 451.53; 512-14. In June 2023 a complaint investigator completed a corrective action plan requiring that Respondent provide [REDACTED] during [REDACTED]. Respondent has provided the [REDACTED] ordered by the corrective action plan. TR 904-11. Student is enrolled in the school district for the 2023-2024 school year [REDACTED] [REDACTED] Petitioner [REDACTED]

████████████████████. TR 910-12; 916-7; Exh. 241. Evidence from the hearing shows that Respondent provided ██████████ to Student, including the ██████████, allowing Student to participate in the general education curriculum and progress toward goals. Petitioner failed to meet its burden on this claim.

**5. The IDEA does not require that Respondent file for a due process hearing ██████████, therefore Petitioner's fifth cause of action fails.**

In support of Petitioner's fifth cause of action, Petitioner sites to subsections of 34 CFR §300.██████. This regulatory section provides the right and procedures for appealing decisions regarding ██████████:

████████████████████  
████████████████████  
████████████████████  
████████████████████  
████████████████████  
████████████████████

Petitioner's fifth cause of action incorrectly asserts that Respondent was obligated to file for a due process hearing after parents objected ██████████. The IDEA and corresponding regulations do not require that the school district file for a due process hearing if the parent disagrees ██████████. The appeal rights quoted above clearly provide that the parent who disagrees ██████████ may appeal the decision by requesting a due process hearing. Petitioner misstates and misapplies the rights to appeal under § 300.██████ and therefore Petitioner is not entitled to relief under this cause of action.

**6. Petitioner did not meet the burden of proof to show that Respondent predetermined the outcome of meetings in which Parents are entitled to contribute to decision making in [REDACTED] the Student.**

Petitioner alleges that Respondent predetermined the decisions to be made at the January [REDACTED] 2023, [REDACTED] meeting, at the June [REDACTED] 2023, IEP Meeting, and at the June [REDACTED] 2023, [REDACTED] meeting.

- January [REDACTED] 2023, [REDACTED] meeting. Petitioner states that the [REDACTED] that [REDACTED] [REDACTED] was predetermined by Respondent. In support thereof Petitioner states: Petitioner was only provided two-days prior notice for the meeting; the [REDACTED] process was inadequately explained to Petitioner; Respondent assumed facts that had not been determined [REDACTED] was conducted quickly; Parent input was disregarded; Respondent failed to review Student's [REDACTED], eligibility, or IEP, Respondent provided false information to Parents; and Respondent relied on [REDACTED] as a key factor; Respondent unilaterally made the decision. See DPH Complaint, p. 38.
- June [REDACTED] 2023 IEP Meeting. Petitioner asserts that statements in the June [REDACTED] 2023, IEP reveal that the decision [REDACTED] was predetermined because the IEP states that [REDACTED] [REDACTED] [REDACTED] [REDACTED] even though the [REDACTED] [REDACTED] as required by the Corrective Action Plan had not yet occurred. Ibid.
- June [REDACTED] 2023 [REDACTED] meeting. Petitioner asserts the decision that [REDACTED] [REDACTED] was predetermined because Respondent unilaterally made the [REDACTED] the decision was contrary to the conclusion reached by [REDACTED] [REDACTED]. Ibid.

Petitioner's allegations contained in Petitioner's Complaint, as set forth above, even if established at the hearing would not show that the [REDACTED] [REDACTED] were predetermined. Petitioner did not establish that any of the three decisions were

predetermined. The [REDACTED] were made by Respondent only after consensus in not reached with Petitioner. If consensus cannot be reached then then Respondent must make the [REDACTED] determination. See [REDACTED] [REDACTED] [REDACTED] [REDACTED] supra.(holding that the IDEA does not require the LEA and the parents to reach a consensus [REDACTED]. Instead, if a consensus cannot be reached, the LEA [REDACTED] and the parents' only recourse is to [REDACTED] Making [REDACTED] without reaching consensus with the parents does not equate to predetermination of the decisions. Also, just because Respondent did not agree with Petitioner or [REDACTED] does not mean that Respondent's decision was predetermined.

In regard to the references in the IEP to [REDACTED], these references do not mean that [REDACTED] was predetermined. At the time of this June IEP meeting Student [REDACTED] TR 444-5; Exh. 3. The complaint investigator's conclusions or the actions required by the corrective action plan did not change the fact that [REDACTED] at the time of the IEP meeting. The statements in the IEP about [REDACTED] were factually accurate and were not an indication of predetermination of decisions to be made at the [REDACTED]

- 7. For Petitioner's seventh cause of action, Petitioner did not meet the burden of proof to show a procedural violation which (1) impeded Student's right to FAPE; (2) impeded Petitioners right to participate in the decision making process; or (3) caused a deprivation of educational benefits to the Student.**

"On the date on which the decision is made to [REDACTED], the [REDACTED], the









Petitioner was not allowed to provide input at [REDACTED].  
Petitioner's Post Hearing Brief, p. 23-4.

- (1) Petitioner was not denied the opportunity to participate in IEP meetings due to a withholding of documents by Respondent.

In questioning the Special Education Director, [REDACTED], Petitioner's attorney elicited the following:

- “Q. So as the SpEd director, is it not your responsibility to make sure that record requests are granted to parents as allocated under IDEA?  
A. That's correct.”

Petitioner uses this testimony to claim that Petitioner was denied records because [REDACTED] didn't verify that certain documents were sent to the parents. Petitioner's Post Hearing Brief, p. 23. [REDACTED] testimony does not lead to Petitioner's conclusion, namely, that Petitioner was denied records in response to Petitioner's request for documents. Ibid, p. 23-4.

- (2) Petitioner was not denied the opportunity to participate in IEP meetings due to an inability to provide input at the [REDACTED].

This cause of action asserts that Petitioner was denied participation in IEP meetings as required under 34 CFR §300.322. Petitioner's assertion, that Petitioner was not allowed to provide input at the [REDACTED] does not apply to this cause of action whereas participation in a [REDACTED] [REDACTED]. Petitioner participation in a [REDACTED] is governed by 34 CFR §300. [REDACTED]. A [REDACTED] is not an IEP meeting and the [REDACTED]. Accordingly, Petitioner's claim that Respondent violated the parental participation requirements of 34 CFR §300. [REDACTED] by limiting Petitioner's input at the [REDACTED] [REDACTED] [REDACTED] is

inconsistent with the applicable regulatory provisions. The evidence also shows that Petitioner did attend and provide input at [REDACTED] meetings.

Petitioner has not met the burden of showing that Respondent failed to ensure Petitioner participation at IEP meetings.

**10. Petitioner did not meet the burden of proof requiring Petitioner show that Respondent failed to provide prior written notice required by the IDEA.**

Petitioner claims Respondent violated 34 CFR §300.503(a)(1), (b)(2) and (b)(3) by failing to provide prior written notice required by subsection (a)(1). Subsection (a)(1) requires that written notice must be given to the parent of a child with a disability a reasonable time before the District “[p]roposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.” Subsections (b)(2) and (3) describe what the content of such notice.

Section 7 in this Memorandum Decision addresses the provision of prior Written Notice in connection with Student’s [REDACTED].

Prior Written Notices were provided to Petitioner on January [REDACTED] 2023, (Exh.214); June [REDACTED] 2023, (Exh. 220); June [REDACTED] 2023, (Exh. 215); September [REDACTED] 2023, (Exh. 216); September [REDACTED] 2023, (Exh. 217); October [REDACTED] 2023, (Exh. 218); October [REDACTED] 2023, (Exh. 219); and January [REDACTED] 2024, (Exh. 221).

Following Student’s [REDACTED], the [REDACTED] [REDACTED] to Student [REDACTED] by Respondent. [REDACTED] designated by Respondent for the provision of educational services to Student include: [REDACTED].

After [REDACTED], the [REDACTED] did not change the

services to be provided to Student. Such [REDACTED] did not constitute [REDACTED] [REDACTED] which invokes the written notice requirements of the IDEA.

A [REDACTED] alone does not qualify as [REDACTED].” Rather, a [REDACTED] occurs “[REDACTED].”

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner did not meet the burden of showing that Respondent failed to comply with the requirement to provide Written Notice to Petitioner prior to [REDACTED].

**11. Petitioner’s eleventh cause of action does not assert a claim within the scope of a due process hearing under the IDEA and therefore this cause of action fails.**

“A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) or (2) relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child.” 34 CFR § 300.507(a)(1) (emphasis added).

As stated in this regulation a due process hearing can address issues of identification, evaluation, placement or the provision of FAPE to a specific child. A due process hearing is not the appropriate venue to contest matters of policy or matters applicable to students generally. Petitioner’s eleventh cause of action seeks to redress alleged wrongs against students with disabilities generally and is therefore not an appropriate matter for consideration in a due process hearing.

**12. Petitioner did not show that Respondent failed to provide Student a Free Appropriate Public Education (FAPE).**

In support of this cause of action Petitioner cites 34 CFR § 300.322 and then references a Corrective Action Plan that was not admitted into evidence. Amended Complaint, p. 45-6. Student then alleges that “Student has [REDACTED] [REDACTED] reasonably calculated to enable [Student] to make progress appropriate in light of [Student’s] circumstances. In fact, Student [REDACTED].” Ibid.

The cited regulation concerns “Parent Participation” which has no understandable relationship to the rest of the information set forth by Petitioner under this cause of action.

Petitioner’s statements about Student spending [REDACTED] [REDACTED] and “Student [REDACTED]” are not supported by the record.

- During the [REDACTED], 2023, [REDACTED] [REDACTED] [REDACTED]. TR 208.
- Following the [REDACTED] Student’s IEP was amended [REDACTED] [REDACTED] Exh. 202.
- On February [REDACTED] 2023, Student’s IEP was amended so that Student would receive [REDACTED] Exh. 202.
- Between February [REDACTED] 2023, and June [REDACTED] 2023, [REDACTED] were provided for Student [REDACTED]. TR 435-38, 451.53; 512-14.
- Student received [REDACTED] special education services that were not received from [REDACTED] 2023 through [REDACTED] 2023. TR 207-08; 210, Exh. 56.
- On June [REDACTED] 2023, [REDACTED] IEP Team Meeting was held and, although the student needs and services were discussed, the time allocation of services was not completed on the IEP. Exh. 7; 27. The IEP Team agreed not to complete the

time allocations at that time and anticipated completion of the allocations in the upcoming August IEP Team Meeting. TR 477-83.

- At the August █, 2023, IEP Team Meeting the team agreed that “[Student] will receive █ each of █ and █ of █. [Student] will also have █ service delivery.” Exh. 26.
- The 2023-2024 school year began August 21, 2023.
- At the beginning of the 2023-2024 school year, Respondent made █ available to Student █ was Student’s special education teacher █, to provide services █. TR 244-5; 904-5.
- Student was █ due to Petitioner and Student’s █. TR 247.
- After █, Respondent offered and made █ available to Student █ continued as Student’s special education teacher █ to deliver services. TR 244, 247-8; 904-6; Ex. 51.
- Student’s █, including █, were provided at █. TR 906-10.
- Since the beginning of the 2023-2024 school year █ 2024, Student █ Exh. 241.
- Student █ 2023. TR 544-5.

Since Student’s █, Respondent has offered and provided █ to Student. The █ provided to Student satisfied the services to be provided under Student’s IEP from January through June 2023. Respondent has offered █ to Student for the 2023-2024 school year; however, Student █

██████████ Accordingly, Petitioner has not met the burden of showing that Respondent failed to offer appropriate ██████████ to Student.

**13. Petitioner did not meet the burden of proof requiring Petitioner show that Respondent completely failed to implement IDEA resulting in a denial of FAPE.**

Petitioner’s thirteenth cause of action asserts multiple claims; however, Petitioner failed to meet the burden of proof on each claim as reviewed below.

- a. **“Evaluation Procedures (34 CFR § 300.304): District failed to assess a specific area of concern or suspected disability identified by the team, teacher, student, or parents.”**

The regulation cited by Petitioner sets out the procedures for conducting an initial evaluation (34 CFR §300.301) or reevaluation (34 CFR §300.303) of a disabled child. The regulation does not require that the school district “assess specific areas of concern or suspected disability”. Petitioner’s claim fails as the violation alleged by Petitioner is not required by 34 CFR §300.304.

- b. **“Additional Requirement for Initial Evaluations and Reevaluation Procedures (34 CFR § 300.305).”**

The cited regulation applies to sets forth additional requirements for conducting initial evaluations and reevaluations. However, the specific alleged violations asserted by Petitioner under this heading, even if true, do not apply to apply to or show a violation of the additional requirements for initial evaluations and reevaluations procedures under 34 CFR §300.305. See Amended Complaint, p. 47; Petitioner’s Post Hearing Brief, p. 30.

- c. **“Categorical Definitions, Criteria, and Assessments (34 CFR § 300.8) ██████████  
██████████ District failed to identify ██████████**







## 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.”

