

BEFORE THE IDAHO STATE DEPARTMENT OF EDUCATION
(Administrative Hearing)

IN THE MATTER OF THE)
DUE PROCESS HEARING REQUEST)

██████████, as legal guardian)
and Parent of ██████████, Petitioner)

No: H-23-08-25a

v.)

Memorandum Decision
and Order

Pocatello/Chubbuck School)
District NO. 25,)
_____)

INTRODUCTION

Petitioner submitted a Due Process Hearing Request (“Complaint”) in this matter dated August 21, 2023 and received by the Idaho Department of Education on August 25, 2023, with Aaron Bergman of Beamson Caldwell appearing as legal counsel for Petitioner. Respondent (“District”) through its attorney Chris Hansen of Anderson Julian, and Hull, submitted an Answer To Due Process Complaint on September 7, 2023. The parties stipulated that in lieu of the mandatory resolution period under the Individuals with Disabilities in Education Act (“IDEA”) the parties would participate in and attempt to settle this matter through mediation which took place the ██████████ of September 2023.

On October 2, 2023, the parties notified the hearing officer that the mediation was unsuccessful, and they wished to proceed with the due process hearing. The parties also requested that the period for conducting the due process hearing be extended, and pursuant to a stipulation, an Order to Extend the Due Process Hearing Completion Deadline was entered on October 6, 2023. The parties agreed that the date of the hearing would be discussed at a Prehearing Scheduling Conference that took place virtually on October 20, 2023. The parties agreed that the due process hearing would take place on December 11- December 12, 2023. The parties set a schedule for prehearing motions and exhibit and witness list exchanges. On October 27, 2023, as per the Prehearing Scheduling Conference Order, Petitioner filed Petitioner’s Issue Disclosure Statement. On November 30, 2023, the Respondent’s Motion to Dismiss was denied,

and on December 6, 2023, Respondent filed a Pre-Hearing Memorandum. Shortly before the date of the due process hearing, Petitioner's legal counsel notified all parties that they were [REDACTED] [REDACTED] unable to proceed. For good cause showing, the Motion to Vacate and Reset the Due Process Hearing filed on December 11, 2023, was granted. The Due Process hearing was set for February 21 – February 22, 2024.

A Due Process Hearing was held on February 21, 2024 – February 22, 2024, in person at [REDACTED] and remotely on March 8, 2024, as stipulated by all parties.

Eleven witnesses testified. The witnesses are identified by their roles, jobs or professional titles for purposes of preserving the confidentiality of the individuals involved in this matter pursuant to the Family Education Rights and Privacy Act (FERPA.) FERPA provides unique confidentiality protection for persons who are involved in the provision of public education and particularly students eligible for special education. In the drafting of the Memorandum Decision efforts were made to limit gender identification to further protect the identity of the Student and the participants in the education process.

The Parties called as witnesses:

- Petitioner's [REDACTED]
- Petitioner (the Student's [REDACTED])
- The Student
- The Student's Vice Principal
- The Student's [REDACTED] Teacher
- The Student's [REDACTED] Teacher
- The District's [REDACTED]
- The District's Special Education Teacher [REDACTED]
- The Principal of [REDACTED]
- The District's Director of Special Services
- The Student's [REDACTED] Teacher

Sixty-three exhibits were introduced into the Record. The Exhibit Lists submitted by the Parties are made part of the record and are included in the Transmittal of the Record.

The Hearing was recorded by able and professional court reporters who were provided copies of the exhibits which are to be attached to the official transcript of the Hearing. IDEA provides that parents are entitled to the transcript of the hearing at no charge which was provided by Respondent's Counsel's office digitally via email and a Dropbox link on March 22, 2024. The email stipulated that all parties already had copies of the exhibits. The Hearing Officer's Transmittal of the Record is the official record of the exhibits admitted in the Record. The Transmittal of the Record includes two binders of paper copies of the exhibits.

During the course of the Hearing, exhibits were often identified for the witness by reference to both the exhibit number and bait stamp appearing on the bottom of each page.

IDEA permits parents of a child with a disability to challenge the "identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE) to the child." (34 CFR 300.507(a)(1)).

IDEA limits the hearing officer's consideration of events that occurred two years prior to the filing of the Hearing Request. A complaint was received and filed with the Idaho Department of Education Office of Dispute Resolution on August 25, 2023, and the relevant time period for purposes of this hearing looks backwards retroactively to August 26, 2021.

The date for the completion of the hearing officer's decision is prescribed by the IDEA. (34 CFR 300.515.) The parties simultaneously submitted written closing briefs on April 12, 2024. The parties stipulated at the close of testimony that the Hearing Officer's written order would be due May 3, 2024.

ISSUES

In Petitioner's initial Complaint dated August 21, 2024, Petitioner identified the following claims against Respondent:

- a. Respondent failed to accommodate and engaged in overt discrimination in violation of the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act.
- b. Respondent denied the Student a Free and Appropriate Public Education (FAPE) when it failed to identify and evaluate the Student.
- c. Respondent misled and misinformed the Petitioner and the Student regarding their procedural rights under the IDEA.
- d. Respondent failed to seek consent from the Petitioner to evaluate the Student.

- e. Respondent denied the Student a FAPE when it failed to provide the Student an Individualized Education Plan (IEP.)
- f. Respondent's failures excluded the Student from [REDACTED] and other instruction, programs, and activities, resulting in a denial of FAPE in the least restrictive environment (LRE).
- g. Respondent engaged in civil child abuse.

On October 27th, 2023, Petitioner submitted Petitioners' Issue Disclosure Statement and clarified the issues to be litigated in the due process hearing as follows:

- 1. Did the District deprive [the Student] from receiving a FAPE when the District failed to fulfill the IDEA's child-find mandate?
- 2. Did the District deprive [the Student] from receiving a FAPE when it failed to provide its educational services in the least restrictive environment?
- 3. Did the District deprive [the Student] from receiving a FAPE when it failed to include Petitioner in the decision making process?
- 4. Did the District deprive [the Student] from receiving a FAPE when it failed to provide [the Student] with an IEP?

RELIEF SOUGHT BY PETITIONER

Petitioners' Issue Disclosure Statement requested the following relief:

- 1. An Order that Respondent provide [the Student] and IEP that addresses the following components of staff and administration:
 - (a) Staff and administrative training regarding
 - i. Identification of children with disabilities;
 - ii. Formulating evaluations to address a child's specific unique disabilities;
 - iii. The appropriateness of special education and related services [REDACTED]
[REDACTED]; and
 - iv. The development and implementation of [REDACTED] for disabled children;

- (b) Re-enrollment in [REDACTED] with compensatory educational tutoring and services to enable [the Student] to participate and meaningfully advance in the class with same grade peers;
- (c) Re-enrollment in [REDACTED] with compensatory educational tutoring and services to enable [the Student] to participate and meaningfully advance in the class with same grade peers;
- (d) Provision of appropriate aids and services so that [the Student] can [REDACTED];
- (e) Provision of appropriate aids and services so that [the Student] can readily participate with peers [REDACTED];
- (f) Provision of appropriate aids and services so that [the Student] can readily participate with peers in [REDACTED]; and
- (g) Provision of appropriate [REDACTED] by certified teachers, as well as tutoring by aids and any other ancillary services necessary to enable [the Student] to continue [their] education [REDACTED]

BURDEN OF PROOF

Petitioner has the burden of persuasion, *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005), and is required to establish that Respondent failed to meet the obligations required by the IDEA by a preponderance of the evidence.

FINDINGS OF FACT

1. The Student is [REDACTED] years old, is in the [REDACTED] grade, and has been enrolled in [REDACTED] [REDACTED] Transcript (TR) 402:2-14.
2. The Student has [REDACTED], although an [REDACTED] [REDACTED] report dated September [REDACTED], 2022 indicated that the Student [REDACTED] [REDACTED]. The same report [REDACTED] [REDACTED] [REDACTED].” TR 405:22-23, Exhibit 9 ML00057, ML00059.

3. The Student has [REDACTED]
[REDACTED]
[REDACTED] TR 24:13- 25:23.
4. During the relevant timeframe, the Student [REDACTED]
[REDACTED] Petitioner’s Exhibits 5-7.
5. The Student [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Petitioner’s Exhibit 5.
6. On September [REDACTED], 2022, the Student was [REDACTED]
[REDACTED]
[REDACTED]. Petitioner’s Exhibit 6.
7. On October [REDACTED], 2023, the Student [REDACTED]
[REDACTED]
[REDACTED]. Petitioner’s Exhibit 7.
8. [REDACTED] TR 54:24 – 55:2. The Student [REDACTED]” TR 53:14. The Student’s [REDACTED]
[REDACTED]. TR 54: 8-11.
9. [REDACTED]. TR 77:18-22. The Student [REDACTED] Within [REDACTED] months, the Student [REDACTED]
[REDACTED]. TR 73:17-18. When Student [REDACTED]
[REDACTED]” TR 74:18-19. [REDACTED]
[REDACTED]. TR 74:23-25 – 75:1-6.
10. The Student [REDACTED] since September [REDACTED], 2021, [REDACTED]
[REDACTED] TR 365:25-367:10.
11. [REDACTED], Petitioner contacted Respondent regarding the Student’s [REDACTED] which would require an [REDACTED]
because Petitioner was concerned regarding [REDACTED]
[REDACTED] Respondent replied that [REDACTED]
[REDACTED]
[REDACTED]. The Student [REDACTED]

[REDACTED] TR 90:10- 91:8. After it became apparent that the Student would [REDACTED] Respondent sent letters [REDACTED] but Petitioner did not sign them. TR 784:16-785:1.

12. The Student [REDACTED] Initially, Petitioner wanted the Student [REDACTED] [REDACTED] [REDACTED] TR 92:11-19.

13. The Student felt that Petitioner, the Student's [REDACTED] [REDACTED]. TR 419:10-12.

14. The Student [REDACTED] TR 101:22 – 102:4. The Student [REDACTED]. TR 464:23-24. The Student [REDACTED]. TR 455:12-25.

15. On October [REDACTED], 2021, the Respondent sent out an email after a meeting between the school counselor and Petitioner notifying the Student's teachers that the Student [REDACTED] [REDACTED]. With [REDACTED] weeks left in the term, the Respondent agreed with Petitioner's request to [REDACTED] [REDACTED] and that [REDACTED] [REDACTED]. Exhibit 13. The Student participated [REDACTED] [REDACTED]. TR 421:8-10.

16. On October [REDACTED], 2021, Petitioner met with Respondent to discuss different solutions including [REDACTED] [REDACTED] TR 120:14-15. Respondent sent a follow up email to Petitioner to summarize the proposed solutions as follows: Exhibit 10

- [The Student] [REDACTED] [REDACTED]
- [The Student] [REDACTED] [REDACTED]
- [The Student] [REDACTED] [REDACTED]

- [The Student] [REDACTED]
[REDACTED]
[REDACTED]
- [The Student] [REDACTED]
[REDACTED]
[REDACTED]
- [The Student] [REDACTED]
[REDACTED].

17. The Student [REDACTED]
[REDACTED]
[REDACTED] When the Student [REDACTED]
[REDACTED]
[REDACTED]. TR 472:3-4, 472:22-25, 473:1-25. All students were
set up in [REDACTED], and the teacher [REDACTED]
[REDACTED] TR 472:6-10. The teacher told the Student that
[REDACTED]. TR 474:17-19.

18. On October [REDACTED], 2021, Petitioner requested via email that Respondent evaluate the Student
[REDACTED]. Petitioner referenced [REDACTED]
[REDACTED] Petitioner expressed concern that the
Student [REDACTED]. Petitioner
stated that the Student [REDACTED]
[REDACTED] Petitioner expressed concern that they believed the Student
[REDACTED]
[REDACTED]. Exhibit 11.

19. On October [REDACTED], 2021, Respondent sent Petitioner Written Notice proposing to review
educational records, overall history, and data to determine whether an evaluation is
warranted. Exhibit 42. (1595). On November [REDACTED], 2021, Respondent sent Petitioner Written
Notice that an evaluation was not warranted. The Written Notice identified the basis of
the refusal to evaluate to include reviewing [REDACTED] records, grades, classroom data,
overall educational history, [REDACTED] general education classes, and [REDACTED]

[REDACTED]. The Written Notice noted that the Student's current [REDACTED] [REDACTED] were relevant factors, [REDACTED], the staff may need to meet to discuss the Student's needs. The Written Notice explained the following reasons:

[The Student] is a student who has [REDACTED]

20. Petitioner provided a [REDACTED] [REDACTED] dated February [REDACTED], 2022 requesting [REDACTED] [REDACTED], with the note that “[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].” Exhibit 46.

21. On September [REDACTED], 2022, Petitioner emailed Respondent that the Student [REDACTED] [REDACTED] Exhibit 14. The Student [REDACTED] [REDACTED] [REDACTED] [REDACTED] Exhibit 299 PCSD 001284.

22. On October [REDACTED], 2022, Petitioner sent Respondent an email outlining concerns regarding [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 299 PCSD 001284.

23. The Student [REDACTED]
[REDACTED]
[REDACTED] TR 694:3-6. The Student [REDACTED]
[REDACTED]
[REDACTED] TR 826:15-827:2. The [REDACTED] TR 793:18.

24. The Student [REDACTED]
[REDACTED].” TR 792:5-6. The Student [REDACTED]
[REDACTED] TR 792:7-11. If the Student
[REDACTED]
[REDACTED]
[REDACTED] TR 792:11-15.

25. Petitioner was “really excited” about the Student’s [REDACTED]
[REDACTED]
[REDACTED].” TR 793:10-14.
The Student [REDACTED]
[REDACTED] TR 793:15-21. The Student [REDACTED]
[REDACTED]
[REDACTED]. TR 793:21-24.

26. The Student [REDACTED]
[REDACTED] Respondent does not [REDACTED] TR 702:8-18.

27. On October [REDACTED], 2022, Respondent sent Petitioner an email that [REDACTED]
[REDACTED] The
Respondent [REDACTED] the
Student because Petitioner told Respondent that the Student was [REDACTED]. The email
notified Petitioner that [REDACTED]
[REDACTED]
[REDACTED]. They will only have videos posted in [REDACTED] if they have a
supplemental video. [REDACTED]

Respondent reiterated that teachers do not video record lessons. Exhibit 299 PCSD 001283. The school principal had conversations with the Student's TR 690:7-13.

28. On November , 2022, the Respondent sent Petitioner Written Notice proposing to review educational records, overall history, and data to determine whether an evaluation is warranted pursuant to Petitioner's request for a special education evaluation. Exhibit 42 (1597).

29. On November , 2022, the Respondent held a meeting for "Consideration of Referral for Special Education Evaluation." Both Petitioner and the Student attended. The meeting minutes reflect that procedural safeguards were accepted, that Parent's input was to request an IEP and consider , and that present levels of performance were reviewed by , and included grades, transcript, and a private evaluation. Exhibit 210. On November , 2022, Respondent sent Petitioner a Request for Input.

30. The Referral to Consider a Special Education Evaluation dated November , 2022 identified Petitioner's concerns citing Respondent's input cited that . Exhibit 219 PCSD 001593-1594.

31. The Problem Solving Team formed pursuant to the Referral to Consider Special Education Evaluation included Petitioner, the Student, Petitioner's , the Student's , and a advocate, in addition to the required district personnel. The Team considered evaluations(s), attendance records, classroom progress, grade reports, and work samples. The Student demonstrated

[REDACTED]

[REDACTED] Exhibit 219 PCSD 001594.

32. Prior to the meeting, the school team met to discuss [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] to make a determination about whether or not we're doing the right thing for [the Student.] “ TR 703:23-25 – 704:1-6.

33. A [REDACTED] meeting was held on January [REDACTED], 2023 attended by Petitioner and the Student, to discuss the evaluation process. Exhibit 205 PCSD 001580. Petitioner signed a Consent for Assessment. Exhibit 39. The [REDACTED], [REDACTED] [REDACTED], and special education teacher conducted assessments pursuant to the evaluation. Exhibit 41.

34. The evaluation included the following assessments: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Exhibit 41 PCSD 001548-1554.

35. Respondent prepared an eligibility report and held an eligibility meeting on March [REDACTED], 2023. Petitioner, the Student, the [REDACTED] and the Student's [REDACTED] attended in addition to district staff. The meeting minutes reflect that the team reviewed the [REDACTED] and [REDACTED]. Petitioner identified the Student's strengths and needs. The team reviewed the Student's [REDACTED] work samples and compared them to same grade peers. A review of the Student's

[REDACTED]

[REDACTED] The Team found the Student ineligible for special education. The Student, Petitioner, the Student's [REDACTED], and the [REDACTED] [REDACTED] advocate all checked the box marking that they agreed with the report. Exhibit 41 PCSD 001544-1578.

36. The Eligibility Report included the following: Exhibit 41 PCSD 001578.

[REDACTED]

37. The Student's transcript reflects that for the 2021-2022 school year, the Student [REDACTED]

[REDACTED]

[REDACTED] While falling outside the relevant time period, it is noted that the Student [REDACTED] during the 2023-2024 school year. Exhibit 336.

38. During the 2021-2022 school year, the Student [REDACTED]

[REDACTED]

[REDACTED]. Exhibit 32 PCSD 001518. During the 2022-2023 school year, the Student [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 32 PCSD 001522. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 32 PCSD 001518-1523.

39. While outside of the relevant time period, it is noted that during the 2023-2024 school year, the Student [REDACTED]

[REDACTED] Exhibit 336.

40. Petitioner [REDACTED] TR 79:2-4. As a result, Petitioner has [REDACTED] TR 79:2-25-80:1-12. Petitioner may

[REDACTED] TR 81:11-

19. Petitioner testified [REDACTED]

[REDACTED].

CONCLUSIONS OF LAW

1. The Availability of Relief under the ADA or section 504 of the Rehabilitation Act

Recently, the United States Supreme Court has reaffirmed that under the IDEA, the Due Process Hearing Officer can only address issues in a due process hearing as described in 34 CFR 300.503(a)(1) through 34 CFR 300.503(a)(2) relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to a child. *Perez v. Sturgis Public Schools*, 598 U.S. 142, 143 S.Ct. 859, L. Ed. 2d 95 (2023). Respondent's obligation to provide a FAPE to eligible students under IDEA versus section 504 of the Rehabilitation Act differ, but for purposes of this litigation and analysis, the obligation to offer a FAPE is limited to how that is defined under the IDEA. Any claims regarding accessibility or access to a Free Appropriate Public Education as contemplated by the ADA or section 504 of the Rehabilitation Act fall outside of the subject matter jurisdiction of this administrative process and therefore will not be subject to discussion.

2. Child Find

Under the IDEA, state and local agencies provide special education to children with disabilities. 20 U.S.C. 14212(a); *Ojai Unified Sch. Dist. V. Jackson*, 4 F.3d 1467, 1469 (9th Cir. 1993). The LEA is therefore responsible for identifying and assessing all children who are suspected of having disabilities and are in need of special education and related services. 20 U.S.C. 1412(a)(3); 34 CFR 300.111.

The LEA must establish and implement an ongoing Child Find policy and procedure system to locate, identify, and evaluate students *suspected* of having disabilities ages three through the semester they turn twenty-one who *may* need special education. The obligation extends to all children suspected of having a disability requiring special education, “even though they are advancing from grade to grade.” 34 C.F.R. 300.111(c)(1).

“School districts may deny a child a free appropriate public education by violating either substantive or procedural requirements of the IDEA.” *MM v. Lafayette Sch. Dist.*, 767 F.3d 842, 852 (9th Cir. 2014). A school district denies a child a free appropriate public education by violating the IDEA’s substantive requirements when it offers a child an IEP that is not reasonably calculated to enable the child to receive educational benefits. *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 432-33 (9th Cir. 2010). The school district may also, however, deny the child a free appropriate public education by failing to comply with the IDEA’s extensive and carefully drafted procedures. See *Doug C. Hawaii Dep’t of Educ.*, 720 F.3d 1038, 1043 (9th Cir. 2013). *Timothy O v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1118 (9th Cir. 2016).

One of the procedural requirements of the IDEA is that “if a school district has notice that a child has displayed symptoms of a covered disability, it must assess that child in all areas of that disability using the thorough and reliable procedures specified in the Act.” *Id.* at 1119.

The IDEA and Ninth Circuit precedent establish that “if a school district is on notice that a child may have a particular disorder, it must assess that child for that disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment. That notice may come in the form of expressed parental concerns about a child’s symptoms, as in *Pasatiempo* [infra], of expressed opinions by informed professionals, as in *Hellgate* [infra], or even by other less formal indicators, such as the child’s behavior in or out of the classroom. A

school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel the suspicion through informal observation. Rather, notice automatically triggers mandatory statutory procedures: the school district must conduct an assessment for all areas of the suspected disability using the comprehensive and reliable methods that the IDEA requires.” *Paso Robles* at 1121-22. See also *Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir. 1996) (holding that “[o]nce either the school district or the parents suspect disability... a test must be performed so that parents can receive notification of, and have the opportunity to contest conclusions regarding their children.”); *N.B. v Hellgate Elementary Sch Dis.*, 541 F.3d 1202 (9th Cir. 2008) (holding that the requirement to assess may be triggered by the informed suspicions of outside experts).

A school district may deny a parent’s request for evaluation. Upon denial, the district must provide written notice to the parents with an explanation of the basis of the refusal. 34 CFR 300.503(a) and (b). The parent then has procedural safeguards to challenge the refusal through a due process hearing request under 34 CFR 300.507.

On a global level, no evidence was presented that Respondent lacks policies and procedures in violation of 34 CFR 300.111. Thus, the inquiry is whether Respondent had an affirmative obligation to evaluate the Student for special education by being on notice that the Student is suspected of having a disability and may need specialized instruction.

There is no dispute that Respondent knew that the Student [REDACTED] [REDACTED] But the mere fact that the Student [REDACTED] [REDACTED] did not automatically trigger a child find obligation. Respondent had no reason to suspect that the Student [REDACTED] until the Petitioner’s request for an evaluation on October [REDACTED], 2021 when Petitioner notified Respondent of [REDACTED] [REDACTED]

Petitioner did not present sufficient evidence to indicate that at the beginning of the Student’s [REDACTED] year, or at the time of the request for evaluation in 2021 and 2022, the Student may have needed specialized instruction. Regarding [REDACTED], Petitioner notified Respondent that the Student had [REDACTED] Respondent was not aware that the Student [REDACTED], nor is there evidence in the record indicating that [REDACTED]

[REDACTED] The letter from [REDACTED] did not support the contention that the

Student [REDACTED]
[REDACTED] there was no evidence presented that the Student may need specialized instruction as a result of [REDACTED]. [REDACTED] the Student [REDACTED]. There was nothing in the record to show [REDACTED]. There was no evidence presented that the Student [REDACTED] in the educational setting.

On October [REDACTED], 2021, the Respondent sent Petitioner Written Notice to determine whether an evaluation is warranted. On November [REDACTED], 2021, the Respondent sent Petitioner Written Notice that an evaluation was not warranted, identifying the basis of the refusal to evaluate to include reviewing [REDACTED] records, grades, classroom data, overall educational history, [REDACTED] general education classes, and [REDACTED] classes. Respondent considered the Student's [REDACTED] and [REDACTED] as relevant factors in determining whether an evaluation was warranted.

Respondent did not rely exclusively on [REDACTED]. The Written Notice explicitly stated that there was [REDACTED], and no evidence of a need for specially designed instruction. Respondent had already put [REDACTED] in place that appropriately addressed the Student's disability, and testimony reflected that while the Student [REDACTED] for that period of time. In fact, the Student [REDACTED].

On November [REDACTED], 2022, Respondent replied to Petitioner's second request for an evaluation via Written Notice. The school [REDACTED] testimony reflects that in November 2022, upon learning of the Petitioner's request to evaluate, [REDACTED] grades, and classroom performance. The testimony revealed that teachers [REDACTED] the school team discussed [REDACTED] specially designed instruction.

Petitioner's suggestion that the school [REDACTED] assessment and data collection is somehow flawed or results-oriented is unfounded. In fact, the school [REDACTED] testimony is

found to be both credible and sincere. The school [REDACTED] during testimony, and “[REDACTED].” That being said, there is nothing in the record to demonstrate that despite the school [REDACTED] beliefs, that their professional judgment and ability to appropriately [REDACTED] were somehow compromised.

On November [REDACTED], 2022, Respondent held a meeting attended by Petitioner and the Student. The meeting minutes reflect that procedural safeguards were accepted, Petitioner provided input, and that present levels of performance were reviewed by the school [REDACTED] and included grades, [REDACTED] transcript, and [REDACTED]. The evidence showed that Respondent felt [REDACTED]

[REDACTED] Respondent also noted [REDACTED]. The referral noted that the Student has [REDACTED]. The Problem Solving Team considered [REDACTED] evaluations(s), attendance records, classroom progress, grade reports, and work samples. The Student [REDACTED].

Ultimately, even though Respondent did not believe an evaluation was warranted, it acquiesced to Petitioner’s request and agreed to move forward. At the time, Petitioner’s focus of concerns appeared unrelated to [REDACTED]. Petitioner signed a Consent for Assessment on January [REDACTED], 2023, and Respondent conducted a [REDACTED]. Petitioner failed to present any evidence that Respondent failed to evaluate for [REDACTED] where the Student may need specialized instruction. Petitioner did not present any evidence regarding whether [REDACTED] would have qualified as an IDEA-based disability, and how, if at all, the Student may need specialized instruction.

On March [REDACTED], 2023, the IEP team determined that the Student was not eligible for special education. The Student, Petitioner the Student’s teacher, and [REDACTED] all checked the box marking that they agreed with the report. Petitioner did not challenge the report’s data or request an IEE.

Petitioner failed to meet its burden of proof of if and when Respondent had an obligation to evaluate the Student for special education pursuant to Child Find. Petitioner presented no evidence to establish that Student had a [REDACTED] need for specialized instruction. The Student [REDACTED] in the educational setting, and Respondent evaluated the Student in all areas of suspected disability as identified by Petitioner, ultimately finding the Student ineligible.

3. Least Restrictive Environment

The IDEA requires that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled and removal from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The IEP team determines what constitutes the least restrictive environment (LRE) for the individual student. 34 CFR § 300.116.

The LRE is the appropriate balance of settings and services to meet the student's needs. Placement decisions are made following an evaluation that assessed a student in all areas of suspected disability. Placement is the last decision to be made by the IEP team and occurs after the determination of needs, goals, and required services have been identified.

The threshold requirement to trigger a LEA's obligation to educate a student in the LRE is that a student be eligible for special education under the IDEA. In this matter, the Student was found ineligible for special education, and therefore the provisions of LRE are inapplicable. Nonetheless, it must be noted that the Student [REDACTED]

Contrary to Petitioner's argument, placement as it is contemplated under the IDEA and LRE is not a particular location, campus, specific class, or curriculum. In fact, educational placement of a student does not always include a discussion or the identification of the location of services. A district is not required to involve parents in the discussion regarding the location of a child's

services. *M.A. v. Jersey City Bd. of Education.*, 592 Fed.Appx.124, 64 IDELR 196 (3d Cir. Nov.21, 2014)(unpublished).

The assertion that Respondent relegated the Student to a more restrictive setting as it is contemplated under IDEA is unsupported. First, it must be noted that neither Respondent nor an IEP team [REDACTED]. The Student [REDACTED]. The Student's [REDACTED]. The reason [REDACTED] was not independently identified through testimony, but general testimony from the Student, the Student's [REDACTED], and Petitioner stated that the Student [REDACTED]. It is significant that no testimony explained the need for the Student's [REDACTED] and the letter from [REDACTED] did not indicate that the Student [REDACTED]. The evidence shows that [REDACTED] were within Petitioner's discretion, and Respondent [REDACTED].

The testimony does not support the contention that the LEA excluded the Student from [REDACTED]. To the contrary, the testimony revealed that any student can [REDACTED] and that the Student was welcome to [REDACTED]. Testimony showed that it was Petitioner who was [REDACTED], not the Student, and it was the Student's choice not to return [REDACTED]. The Student attended [REDACTED].

A significant amount of Petitioner's testimony and references in the record focused on an incident where the Student [REDACTED] [REDACTED], and a disputed incident about a [REDACTED]. Petitioner picked up the Student [REDACTED]. Petitioner fails to illustrate any nexus between the two isolated incidents and the IDEA.

Finally, the suggestion that [REDACTED] is not general education as it is contemplated under the IDEA [REDACTED] and general

education versus special education. The testimony explained that [REDACTED] used by the school. There was nothing in the record to show that [REDACTED] was anything other than general education, and the mere fact that it is an [REDACTED] does not reframe it as otherwise. The Student is not adverse to [REDACTED].

The Petitioner failed first, to meet their burden that LRE applied, and second, to demonstrate that the Student was educated in an environment more restrictive than the general education setting as defined under the IDEA.

4. Parental Participation

The IDEA regulations reflect the central role that parents play in the IEP development process. 34 CFR 300.322 provides that a LEA must take steps to ensure that one or both parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including 1) notifying the parent early enough to ensure that they will have an opportunity to attend and 2) scheduling the meeting at a mutually agreed on time and place. The IDEA further requires that a parent “must be afforded an opportunity to participate in meetings with respect to...[t]he identification, evaluation, and educational placement of the child; and [t]he provision of FAPE to the child.” 34 CFR 300.501(b)(1)(i)-(ii). It also provides that a parent be part of the groups that determine what additional data are needed as part of an evaluation of their child, and determine their child’s eligibility and educational placement. 34 CFR 305, 34 CFR 306.

A LEA prevents parental participation in the IEP process even if a parent is present at a meeting if it independently develops an IEP and indicates to a parent that their input is not welcome, or that their presence is mere form over substance. *W.G. v. Board of Trustees of Target Range School District No. 23*, 18 IDELR 1019 (9th Cir. 1992), *superseded by statute on other grounds, as recognized in L.M. v Capistrano Unified School District*, 109 LRP 17056, 556 F.3d 900 (9th Cir. 2009). Predetermination of a particular outcome also prevents parental participation, as the IDEA requires open minds and a willingness to consider information.

The Record is clear that Petitioner received notice of, and attended and participated in multiple meetings, including a facilitated eligibility meeting. During meetings, Petitioner was

accompanied by the Student's [REDACTED], a [REDACTED] advocate [REDACTED], and the Student's [REDACTED]. Information shared by Petitioner, including [REDACTED] [REDACTED] was discussed, considered by the team, and incorporated into the Eligibility Report. The school [REDACTED] testified that at the November [REDACTED], 2022 meeting, at least half the meeting or more was spent discussing Petitioner's concerns regarding [REDACTED], and issues about [REDACTED] and [REDACTED].

Furthermore, the Petitioner, the Student, and the advocates signed that they agreed with the Eligibility Report, and the record reflects that at the time, there was consensus. Prior Written Notices were provided in each instance Respondent acted and identified actions to be considered and the reasons for and against such decisions. Respondent is not required to evaluate a student to determine eligibility upon parent request, but rather is required to respond which it did.

Petitioner's assertion that Respondent predetermined eligibility is without merit. While the record reflects that no teachers or staff had concerns regarding the Student's [REDACTED] and did not feel an evaluation for eligibility was warranted because there was no need for specialized instruction, Respondent acquiesced to Petitioner's request to evaluate. There is nothing in the record to support that district staff came to the meeting determined to disqualify the Student. In fact, the Principal's testimony supports the contention that Respondent proceeded with the evaluation in good faith, as the testimony stated that it was an opportunity to have a "better body of evidence... to share [REDACTED] and to make a determination about whether or not we're doing the right thing for [the Student.] The school [REDACTED] testimony and professional determination that the Student did not qualify for special education does not support the contention that they did not have an open mind and did not consider shared information, nor does it support any assertion that [REDACTED] [REDACTED]. The school [REDACTED] testimony reflected that they relied on [REDACTED] [REDACTED] statistics, but understood that "it's the team decision."

IDEA's parental participation does not require that Respondent follow a parent's choices, as it is Respondent that is ultimately accountable for a student's education. Petitioner failed to meet their burden that Respondent prevented parental participation.

5. Development of an Individualized Education Plan

34 CFR 300.323(c)(1) requires that a meeting to develop a student's initial IEP be held within thirty calendar days of the date on which the student was found to be IDEA-eligible. The IEP team found the Student to be ineligible under the IDEA, and therefore Respondent had no obligation to develop an IEP for the Student.

Petitioner failed to prove that the Student was eligible for special education and related services under the IDEA, and therefore Respondent had an affirmative obligation to develop an IEP.

ORDER

Based on the Findings of Fact and Conclusions of Law made in the Memorandum and Decision, it is hereby ordered:

The relief sought by Petitioner shall be and hereby denied, and that Petitioner shall take nothing by way of the Request for Due Process Hearing, and that Request for Due Process Hearing is dismissed.

Dated this 3rd day of May, 2024.

/s/ Courtney Sidonia Wucetich
Courtney Sidonia Wucetich
Hearing Officer

Notice emailed May 3, 2024 to:

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