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Hearing Officer

BEFORE THE OFFICER FOR THE
IDAHO DEPARTMENT OF EDUCATION

█████. and █████. as legal guardians and parents)	Case No. H-23-11-13A
of █████., a minor,)	
)	
Petitioner,)	MEMORANDUM DECISION
)	
vs.)	
)	
TETON SCHOOL DISTRICT No. 401,)	
)	
Respondent.)	
_____)	

Statement of Proceedings

Petitioner's¹ 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 stipulation dated January 3, 2024, the Parties waived the Resolution Period. At the request of the parties the time in which the decision must be rendered in this case was extended twice prior to the hearing.

¹ Student's parents are jointly referred to herein as Petitioner and individually as █████ and █████.

Prehearing motions for partial summary judgement and for dismissal were submitted by Respondent. Appropriate and timely responses to these motions were submitted by Petitioner. Both of Respondent's prehearing motions were denied by an order entered on January 30, 2024.

A due process hearing was held February 21-22, 2024. During such hearing a third request for extension of time was granted extending the time in which a decision must be rendered until March 29, 2024.

Causes of Action

The Amended Complaint sets forth seven causes of action for determination in this matter, namely:

1. Whether Respondent failed to have an IEP in effect for Student at the beginning of the [REDACTED] school year and thereby denied FAPE to the Student.
2. Whether Respondent failed to ensure that Student's IEP was accessible to each staff member responsible for implementing the IEP, and failed to ensure that each teacher was informed of his/her responsibilities of implementing the IEP.
3. Whether Respondent failed to appropriately address [REDACTED] [REDACTED] which resulted in a denial of FAPE for the Student.
4. Whether Respondent failed to provide FAPE to Student after September [REDACTED] 2023.
5. Whether Respondent failed during the October [REDACTED] 2023, IEP Team Meeting to offer Student an IEP reasonably calculated to enable the Student to make progress appropriate in light of Student's circumstances thereby denying Student of FAPE.
6. Whether Respondent failed to provide proper written notice to Petitioner regarding Student's IEP at the October [REDACTED] 2023, IEP Team Meeting.
7. Whether Respondent violated the IDEA by not providing a requested re-evaluation or Independent Education Evaluation (IEE).

Witnesses

The following witnesses testified at the due process hearing:

- [REDACTED], Psychologist (T: D1:13:21-23)
- [REDACTED], Petitioner
- [REDACTED] Petitioner
- [REDACTED], Special Education Teacher, Teton School District, [REDACTED] School (T: D1:182:14-16)
- [REDACTED], Academic Coach (T: D2:5:21-22)
- [REDACTED], Special Education Teacher and Principal, [REDACTED] School (T: D2:17:3-5)
- [REDACTED], Special Education Teacher, [REDACTED] School (T: D2:29:3-8)
- [REDACTED], Systems of Support Director, Teton School District (T: D2:83:23-84:8)
- Megan Christiansen, Superintendent, Teton School District (T: D2:108:21-25)

Exhibits

Petitioner submitted Exhibits 101 through 140 and Respondent submitted Exhibits 201 through 218 at the due process hearing. Exhibits that were not admitted into evidence are so indicated below.

Petitioners' Exhibits	Respondent's Exhibits
101 – [REDACTED]	201 – IEP, 11/1/22
102 – IEP, 11/1/22	202 – Eligibility Report, 1/1/23

103 – Email, 9/█/23	203 – Meeting Notes, 10/█/23
104 – Email, 9/█/23	204 – Procedural Safeguards, Attendance, 10/█/23
105 – Email, 9/█/23	205 – IEP, 10/█/23
106 – Email, 9/█/23	206 – Final Meeting Invite, 10/█/23
107 – Texts, 9/█/23	207 – Emails with Draft IEPs
108 – Email, 9/█/23	208 – Email with IEP, 10/█/23
109 – Email, 9/█/23	209 – Written Notice, 11/█/23
110 – █	210 – Notice of Intent to Enroll, 11/█/23
111 – █	211 – IEP █ Survey
112 – █	212 – Parent Input Form
113 – Email, 10/█/23	213 – Agenda for Facilitated IEP Meeting, 10/█/23
114 – Email, 9/█/23	214 – Written Notice, 1/█/24
115 – Email, 9/█/23	215 – NOT ADMITTED
116 – NOT ADMITTED	216 – NOT ADMITTED
117 – IEP, 10/█/23	217 – NOT ADMITTED
118 – █ Completed by █	218 – NOT ADMITTED
119 – Email, 9/█/23	
120 – Screenshot of █	
121 – NOT ADMITTED	
122 – Screenshot of █	
123 – Screenshot of █	
124 – NOT ADMITTED	
125 – NOT ADMITTED	
126 – Email, 9/█/23	
127 – Email, 9/█/23	
128 – Email, 9/█/23	
129 – Invoice, 1/█/24	
130 – Invoice, 2/█/24	
131 – Invoice, 12/█/23	
132 – Email, 6/█/23	
133 – Email, 9/█/23	
134 – Email, 9/█/23	
135 – Email, 9/█/23	
136 – Email, 10/█/23	
137 – Email, 9/█/23	
138 – Email, 9/█/23	
139 – Email, 9/█/23	
140 – Email, 9/█/23	

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 (9th 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
Stipulated Facts²

1. Student is a [REDACTED] year old child who has been diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
2. Student first became eligible for special education services in [REDACTED].
3. Since 2020, Student’s primary place of residency has been in [REDACTED], Idaho, within the Teton School District.
4. Student [REDACTED] enrolled and attended school in the Teton School District during the [REDACTED] school year.
5. From the 2020-2021 school year through the 2022-2023 school year, Student attended school at [REDACTED] School and received special education services under an IEP.
6. For the 2020-2021, 2022-2023, and 2023-2024 school years, Student was found eligible for special education services under the [REDACTED] category.
7. Student’s most recent eligibility determination date was January [REDACTED] 2023.
8. Student’s most recent, finalized IEP Student’s parents consented to is dated November [REDACTED] 2022.

² Findings of Fact 1 through 31 are stipulated facts pursuant to the Stipulation of Facts submitted by the Parties on February 14, 2024.

9. While attending school at [REDACTED] School, Student's special education teacher was [REDACTED]
10. In May of 2023, [REDACTED] met with [REDACTED], [REDACTED] School Special Education Teacher, to discuss what classes might be appropriate for students to be placed in in the 2023-2024 school year [REDACTED]. [REDACTED] shared IEP "at-a-glance" accommodations with [REDACTED]. Each [REDACTED] student, including Student, was discussed briefly, to decide which classes he or she would be placed into.
11. The first communication between Student's parents and [REDACTED] occurred via email on August 22, 2023.
12. The 2023-2024 school year began on August 28, 2023.
13. Student's parents and [REDACTED] met to discuss Student's [REDACTED] school on August [REDACTED] 2023. During this meeting, Student's parents were introduced to [REDACTED] who would be serving as Student's case manager for the upcoming school year.
14. Student began attending school at [REDACTED] School on September [REDACTED] 2023. Student had a [REDACTED] schedule in which Student was enrolled in [REDACTED]s.
15. Student's IEP Team did not meet prior to Student starting school on September [REDACTED] 2023.
16. On September [REDACTED] 2023, Student's mother, [REDACTED], submitted an email at [REDACTED], requesting that [REDACTED] include [REDACTED], the District's Special Education Director in further discussions regarding Student and reiterated she was requesting a review and reevaluation of the IEP "ASAP."
17. On September [REDACTED] 2023, Student's father, [REDACTED], called [REDACTED] School and spoke with [REDACTED], requesting she visit Student in [REDACTED] classroom right away.
18. [REDACTED] and Vice Principal [REDACTED]
19. Student's mother, [REDACTED], then arrived at the [REDACTED] in order to pick Student up from school.

20. [REDACTED] requested a [REDACTED]
[REDACTED]
[REDACTED]
21. [REDACTED]. sent an email to Principal [REDACTED] and Vice Principal [REDACTED] requesting [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
22. Principal [REDACTED] responded “We are working on it. I will be in touch later today.”
23. [REDACTED]
[REDACTED]
[REDACTED]
24. On September [REDACTED] 2023, [REDACTED], emailed [REDACTED], Superintendent [REDACTED], and Special Education Director [REDACTED], indicating that the IEP meeting needed to be rescheduled.
25. On September [REDACTED] 2023, at [REDACTED], [REDACTED] sent an email to [REDACTED] stating “[w]e don’t evaluate students [REDACTED], if their 3 year testing came up their [REDACTED] grade year they would be revealed [sic] or whenever their 3 year mark is, it depends when their IEP started. [REDACTED] shared me to the team and I was able to look back and [REDACTED] re-eligibility was done [REDACTED] [REDACTED] so should be valid for next 3 years.”
26. Student has not returned to [REDACTED] School since September [REDACTED] 2023.
27. On October [REDACTED] 2023, a facilitated IEP Team meeting was held in which Petitioner’s legal counsel and Petitioner participated on behalf of Student.
28. During the October [REDACTED] 2023, facilitated IEP Team meeting, the District proposed in a Draft IEP to be discussed by the Team at the meeting that Student attend [REDACTED]
[REDACTED], with the Least Restrictive Environment identified as: “Student is inside the general education classroom [REDACTED] In a 6-hour school day, the student is inside the regular class [REDACTED].”
29. On November [REDACTED] 2023, the parties attempted to resolve this matter through mediation which was not successful.

30. Petitioner’s counsel filed a Due Process Complaint and Request for Hearing on November █ 2023.

31. On November █ 2023, Petitioner’s counsel provided the District and District counsel with written notice of Petitioner’s intention to enroll Student in a private online school at public expense pursuant to 20 U.S.C. §1412(a)(10)(C) and 34 C.F.R. §300.148(d)(1)(ii).

Additional Findings of Fact

32. Student’s IEP dated November █ 2022, was in place for Student at the beginning of the 2023-2024 school year. (T: D1:49:24-50:1; D1:87:11-14).

33. The November IEP was created to accommodate █ for Student while Student and Petitioner █. (T: D1:126:17-127:3).

34. From November 2022 through the end of the 2022-2023 school year Student and Petitioners █ Student attended █ School █ (T: D1:78:5-10).

35. At the end of the 2022-2023 school year, Student’s █ school special education teacher met with the █ school special education teacher and, in regard to Student, they discussed recommendations for classes, supports that would be needed, and the type of instruction needed. (T: D1:184:9-19; 187:12-188:15; D2:29-7-25).

36. Petitioner had no communication with the █ School special education staff during the summer of 2023. (T: D1:50:25-26:2).

37. Respondent’s special education teacher, █, was not on contract with Respondent during the summer of 2023 and returned to work in August 2023. █ did not receive any communications from Petitioner during the summer. █ first communicated with Petitioner the week of August 22, 2023. (T: D2:42:10-43:7).

38. At the beginning of the 2023-2024 school year, Student █
█
█
D2:73:22-74:10; 136:7-10).

39. Student attended [REDACTED] class on September [REDACTED] 2023. During the class period, Student [REDACTED]
[REDACTED]
[REDACTED] (Exh. 110, 111, 118)
40. In response to [REDACTED] [REDACTED] [REDACTED] [REDACTED] (T: D2:112:4-15; 111:24-112:10).
41. On September [REDACTED] 2023, Respondent contacted Petitioner about arranging an IEP meeting. (T: D1:128:1-21).
42. On September [REDACTED] 2023, Respondent contacted the Stated Department of Education requesting assistance with a facilitated IEP Meeting. (T: D1:88:11-89:19; D1:92:7-15)
43. Following September [REDACTED] 2023, Respondent contacted Petitioner to discuss possible changes to Student's schedule. Petitioner requested that the changes be discussed at a meeting on September [REDACTED]. The meeting scheduled for September [REDACTED] was cancelled and rescheduled for [REDACTED] October. This October meeting was also cancelled. (T: D2:124:5-126:2).
44. Petitioner informed Respondent that Student [REDACTED] [REDACTED] (T: D2:114:15-115:13). Respondent requested that Petitioner share [REDACTED] [REDACTED] [REDACTED]..(T: D2:136-15-20; 115:14-23). However, Petitioner would not provide Respondent with [REDACTED] and had no reason to believe Respondent ever saw [REDACTED] (T: D1:163:111-164:13; D1:140:18-23).
45. At the IEP Team Meeting on October [REDACTED] 2023, Respondent proposed [REDACTED] options for providing educational benefits to Student:
- [REDACTED]
[REDACTED]
[REDACTED]
(T: D1:69:19-70:8)
46. The [REDACTED] option offered to Petitioner included [REDACTED] supports for the Student such as an [REDACTED] [REDACTED] and Special Education supports. (T: D2:123:13-124:2).
47. Petitioner declined the IEP offered at the October [REDACTED] 2023 IEP Team Meeting.(T: D1:69-19-20:13).

48. At the October █ 2023, IEP Team Meeting, Respondent offered to conduct a █ of the Student. Petitioner declined this offer. (T: D1:124:19-125:14).

49. Beginning on November 2023, Student █

(Exh. 210; T: D1:171:8-13).

50. Petitioner has hired █

(T D2:6:12-20).

Conclusions of Law

I. Student’s IEP dated November █ 2024, was in place at the beginning of the 2023-2024 school year.

“[A]t the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.” 34 C.F.R. § 300.323(a). At the due process hearing Petitioner, █ testified that the November 2022, IEP was in effect when Student started the 2023 school year. (T: D1:47:21-50:1; 87:9-14). Respondent’s Special Education Teacher, █, also testified that the November 2022 IEP was in effect at the beginning of the 2023-2024 school year. (T: D2:35:19-36:5). No testimony or documentary evidence was presented at the hearing contrary to this testimony of █ and █. Petitioner failed to meet Petitioner’s burden of proof on this issue.

II. Petitioner failed to show that Respondent did not make Student’s IEP accessible to each staff member responsible for implementing the IEP, and to ensure that each teacher was informed of his/her responsibilities of implementing the IEP.

IDEA regulations require that:

“Each public agency must ensure that –

- (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation, and
- (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of --
 - (i) His or her specific responsibilities related to implementing the child's IEP; and
 - (ii) The specific accommodations, modification, and supports that must be provided for the child in accordance with the IEP."

34 CFR § 300.323(d)

██████████ testified about Petitioner's procedures for informing teachers about a student's IEP, including, use of an online notification system, email notifications, and personally checking with teachers. (T: D2:34:16-35:6). ██████████ testified about the same procedures used at the ██████████ school. (T: D1:186:7-18)

Petitioner asserts that "As demonstrated through numerous exhibits and testimony, Teton School District did not ensure ██████████'s IEP was accessible to each staff member, nor were they informed of his or her responsibilities for implementation." Petitioner's Closing Arguments, p.5. Petitioner sets forth the actions of ██████████ on September ██████████ 2024, and the email sent by ██████████ ██████████ after the September ██████████ as evidence that Respondent failed to ensure Student's IEP was accessible to each staff member responsible for implementation and that Respondent failed to ensure that each teacher was informed of his/her responsibilities in implementing the IEP. Ibid. These actions however do not lead to the conclusion reached by Petitioner. Petitioner does not cite to any testimony or documentary evidence to support the assertion that Student's IEP was not accessible to ██████████ and other school district staff or that they were not adequately informed. Nothing was presented at the hearing showing that the district procedures are inadequate in making the Student's IEP accessible to Student's teachers and service providers or that the district procedures did not inform such teachers and service providers of

their responsibilities related to implementing Student's IEP, therefore, Petitioner failed to meet Petitioner's burden of proof on this cause of action.

III. Petitioner did not show that Respondent failed to appropriately address [REDACTED] [REDACTED] which resulted in a denial of FAPE for the Student.

In [REDACTED] the Ninth Circuit Court of Appeals ruled that if a teacher is [REDACTED] [REDACTED] [REDACTED], the child has been denied a FAPE. [REDACTED] [REDACTED] (holding that to violate Title IX "[REDACTED] [REDACTED]").

Applying [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

- [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED]
- [REDACTED] [REDACTED] [REDACTED]

Petitioner does not make any allegations of [REDACTED].

Exhibits 110 and 111 are [REDACTED].
[REDACTED] Exhibit 110 shows [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Exhibit 111 shows [REDACTED]
[REDACTED]
[REDACTED]

Exhibits 120, 122 and 123 are photos of [REDACTED]
[REDACTED] (T: D1: 129:4-25; 132:2-1; 133:9-22).

Petitioner testified that Petitioner [REDACTED]
[REDACTED] (T: D1: 67:11-13). In an email from Petitioner, [REDACTED], to
Respondent's staff ([REDACTED]), Petitioner stated that Student
had [REDACTED] 2023. (T: D1: 66:24-67:13; Exh. 109).
Respondent requested to see the photos [REDACTED] but Petitioner would not
provide the photos. (T: D1: 152:15-24; 163:24-164:18). Respondent were not provided with
the photos until the due process hearing. (T: D2:115:14-23).

In response to the [REDACTED]
[REDACTED] Petitioner did not show that Respondent [REDACTED]
Respondent investigated the allegations and took actions to [REDACTED]. (T:

D2: 110:20-114:10). Rather than being [REDACTED], Respondent [REDACTED]
[REDACTED] Ibid. Respondent's [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Respondent's
investigation into [REDACTED] was impeded by Petitioner's refusal to share
the pictures of [REDACTED] and Respondent had no other way to obtain the pictures.

The actions of [REDACTED]
[REDACTED]
[REDACTED] By not [REDACTED]
[REDACTED] Petitioner did not allow Respondent to take more corrective actions. Also,
Petitioner did not present anything to show that [REDACTED]
[REDACTED] because of Student's
disability. Petitioner did not meet its burden to show that Respondent failed to appropriate
address Petitioner's [REDACTED]

IV. Petitioner did not show that Respondent failed to provide FAPE to Student after September [REDACTED] 2023.

The evidence in the record relating to this claim includes, specifically:

- On 9/[REDACTED]/23, prior to the incidents relating to claim III above, Respondent contacted Petitioner in regard to scheduling an IEP Meeting. (T: D1:128:1-21).
- 9/[REDACTED]/23: Respondent contacted the State Department of Education for a facilitated IEP Meeting. (T: D1:89:7-19).

- Respondent through Principal [REDACTED] and Assistant Principal [REDACTED] attempted to contact Petitioner by phone. Contact was made and a change in Student's classes was discussed. Petitioner wanted to discuss changes in classes at a 9/[REDACTED]/23 meeting. (T: D2:124;5-125:12).
- 9/[REDACTED]/23 Respondent, [REDACTED], emailed Petitioner offering support for upcoming meeting for August. (Exh. 140).
- Meetings between Petitioner and Respondent were scheduled for 9/[REDACTED]/23, 10/[REDACTED]/23 but these meetings were cancelled. (T: D2:125:13-126:2).
- On 10/[REDACTED]/23, Principal [REDACTED] sent a letter to Petitioner in regard to Student's [REDACTED] and requesting a meeting to discuss a plan for [REDACTED]. Letter indicates that Respondent attempted to set up meetings with Petitioner on 9/[REDACTED]/23, 9/[REDACTED]/23, 9/[REDACTED]/23 and 9/[REDACTED]/23 with no success. (Exh. 112).
- Prior to 10/[REDACTED]/23 IEP Team Meeting Respondent sent forms to Petitioner requesting Petitioner's input. (T: D2:45:11-46:12).
- 10/[REDACTED]/23 an Invitation to the IEP Meeting was sent to Petitioners. (Exh. 206).

The record indicates that there was contact between the parties between September [REDACTED] 2023, and the October [REDACTED] 2023, IEP Team Meeting. The letter sent to Petitioners on October [REDACTED] 2023, shows that at late as October [REDACTED] 2023, Respondent was still anticipating [REDACTED]. [REDACTED] [REDACTED] also testified that up to the October [REDACTED] 2023, IEP Team Meeting Respondent was still anticipating that Student would [REDACTED]. (T: D2:126:12-21).

Petitioner did not show that at any time prior to October [REDACTED] 2023, Petitioner had informed Respondent that Student would not [REDACTED]. Petitioner, [REDACTED] testified that [REDACTED] when Student [REDACTED] (T: D1:113:15-114:13). Respondent's letter and testimony show that Respondent continued to expect Student to [REDACTED].

At the August [REDACTED] 2023, meeting between Petitioner and [REDACTED], Petitioner and Respondent discussed Student's [REDACTED] and they agreed upon [REDACTED] Student's class schedule. Nothing in the record shows Petitioner requested to change Student's [REDACTED] [REDACTED] after September [REDACTED] 2023. Petitioner's choice for Student [REDACTED] [REDACTED] does not equate to a denial of FAPE. Petitioner failed to show that Respondent denied Student FAPE after September [REDACTED] 2023.

V. Petitioner did not meet the burden of showing that Respondent failed during the October [REDACTED] 2023, IEP Team Meeting to offer Student an IEP reasonably calculated to enable the Student to make progress appropriate in light of Student's circumstances.

The Ninth Circuit Court of Appeals has held that “A school district denies a child a free and 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). Under the Supreme Court rule in *Endrew F. v. Douglas County School District*, 137 S.Ct. 988 (2017), the school district’s requirement was changed slightly in that the school district must offer an IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”

The parties agree on what offer was made at the October [REDACTED] 2023, IEP Team Meeting.

As stated by Petitioner, [REDACTED]:

“... they said that [Student] could [REDACTED]
[REDACTED] (T: D1:70:6-9, see also, D1:110:2-9).

At the due process hearing Petitioner, [REDACTED], reviewed each of the [REDACTED] options offered at the October [REDACTED] 2023, IEP Team Meeting and testified as to why Petitioner did not feel these options would work for Student. (T: D1:108:20-110; 118:18-120:17). Petitioner did not agree with [REDACTED] and lack of personal contact from Respondent's staff. Ibid. Petitioner's objections with [REDACTED] [REDACTED] focused on the supports needed to assist Student. (T D1:115:4-20; 118:25-119:11).

Although Petitioner objects to [REDACTED] [REDACTED] [REDACTED] (T: D1: 72:9-14; 120:18-20). Petitioner, [REDACTED], testified that Student [REDACTED] (T: D1: 160:10-12).

To assist Student with [REDACTED] Petitioners have obtained the services of [REDACTED] to assist Student with [REDACTED]

[REDACTED] been a part of [Student] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (T: D1: 161:1-11).

[REDACTED] "... [REDACTED] [REDACTED] [REDACTED] [REDACTED] (T: D1: 6:12-20).

██████████]“ . . . I’m connecting with [Student’s] teachers, and I’m looking at [Student’s] ██████████

██████████
██████████
██████████
(T: D1: 10:11-16).

Supports similar to those provided by ██████████ in connection with Student’s ██████████
██████████ are available to Respondent in connection with ██████████,
including: a special education instructor, someone checking in on schedules and tasks, ██████████
██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████
██████████
██████████ (T: D1: 181:5-11; D2: 93:3-104:20; 123:13-124:4).

Petitioner, ██████████, clarified through testimony that Petitioner’s objection to the offer of FAPE made by Respondent at the October ██████████ 2023, IEP Team Meeting, was that Respondent would be providing supports using school district staff:

“ Q. Okay. Do you know what accommodations or what things would be missing from ██████████ in your opinion that you felt made it an appropriate offer?

A. Yeah. So ██████████
██████████
██████████

Q. Okay.

A. And that could work on [Student’s] ██████████
██████████ right? And you know, it was mentioned that ██████████ would be [Student’s] SPED teacher. [Student] ██████████
██████████ . ██████████ hasn’t proved at all that ██████████ could help [Student] or ██████████ would be willing to help [Student] or that ██████████ would be willing to meet [Student’s] needs. ██████████ didn’t listen to anything that I had said or written.

Q. So was your objection to the use of staff that the district had selected to be [Student’s] case manager?

A. They only said that they would use district staff -- that they would only use district staff to either test [Student] or to support [Student] at ██████████, in the ██████████”
(T: D1: 115:4-116:2).

Q. And then [REDACTED]. What was the objection to that, or was there an objection? Why did you feel that that could not work?

A. Because [Student] couldn't have the supports necessary, and we worked with [REDACTED] that we've worked with. And they did not have the supports necessary to work with [Student]. And what was interesting -- and you recall this because you were there -- the district was only ever willing to provide [Student] with [REDACTED]. So you guys suggested [REDACTED]. I think that's [REDACTED] name. And you said, "Okay. So instead of [REDACTED] taking [Student], how about [REDACTED]. Well, [REDACTED] is great. [REDACTED] kind. I had never met [REDACTED] prior to the meeting. [REDACTED] said [REDACTED] a great person, but [REDACTED], and we had not been given any -- any clues that the district would provide [Student] with what [Student] needed. Like, it seems like everyone in the district was talking amongst themselves, and nobody was willing to meet [Student] in his space. Like, [REDACTED] said, "You guys need to look outside and be creative." And you guys all just said, "Nope. We're not going to do it."

Q. So is the objection to the use of district personnel?

A. Yes, it was. And we said that.

The IDEA does not require a school district to assign staff members the parents desire or to use outside contractors when the services can be provided by qualified staff. Methodology and qualification of service providers is a matter within the school district's discretion. See *SM & GM ex rel ZM v. State of Hawaii, Dept. of Educ.*, 56 IDELR 193 (D. Haw. 2011). Applying the reasoning of court in *SM & GM ex rel ZM*, it is within Respondent discretion to use qualified staff in providing support services to Student. Petitioner's objection to Respondent's offer of FAPE because Petitioner does not want to use Respondent's staff in providing services to Student is without merit.

The offer of FAPE by Respondent made at the October [REDACTED] 2023, IEP Team Meeting permitted Student to [REDACTED] while providing the same supports, although through a different provider, that enable Student [REDACTED]

██████████. This offer of FAPE is reasonably calculated to enable Student to benefit from and make progress appropriate in light of Student’s circumstances.

VI. Petitioner failed to show that Student was denied FAPE due to Respondent’s failure to provide proper written notice to Petitioner regarding Student’s IEP at the October █████ 2023, IEP Team Meeting.

“School districts may deny a child a free appropriate public education by violating either the substantive or procedural requirements of the IDEA. *M.M. v. Lafayette Sch. Dist.*, 767 F3d 842, 852 (9th Cir. 2014). 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 F3d 1038, 1043 (9th Cir. 2013).” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1118 (9th Cir. 2016). Under this claim, Petitioner asserts that Petitioner committed a procedural violation of the IDEA which denied the Student of FAPE.

As authority for this claim, Petitioner states the following in the Amended Complaint (repeated in Petitioner’s Closing Arguments):

“Under the IDEA, school districts must provide a prior written notice to the parents a reasonable time before it proposes, or refuses, to initiate or change the student’s placement. 34 C.F.R. §300.421(a). This notice must be in sufficient detail to inform parents about the action being proposed or refused, the reason for the action, and all procedural safeguards that are available.” 34 C.F.R. §300.421(b).

The regulatory section cited by Petitioner does not exist. There are prior notice provisions found at 34 CFR §303.421; however, these provisions apply to the Early Intervention Program for Infants and Toddlers with Disabilities and are not applicable here.

Petitioner's claim will be addressed here under the notice provisions of the Procedural Safeguards Due Process Procedures for Parents and Children found at 34 CFR § 300.503 which provides in pertinent part:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency –
 - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provisions of FAPE to the child.

The hearing record shows that an offer of FAPE was made at the October █ 2023 IEP Team Meeting. Petitioner refused such offer at the IEP Team Meeting. Following the IEP Team Meeting, Petitioner prepared a Written Notice (Exh. 209) on November █ 2023. The Written Notice was sent to Respondent's legal counsel to be shared with Petitioner's legal counsel pursuant to Petitioner's legal counsel's request that all communication to Petitioner go through legal counsel. (T: D2:82:15-83:4). There nothing definitive in the record to show that the Written Notice was actually sent by Respondent's legal counsel to Petitioner's legal counsel.

The IDEA and regulations provide that hearing officer may find a child did not receive FAPE due to an alleged procedural violation only if the procedural inadequacies –

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit.

34 CFR § 300.513(a)(2)

The Written Notice (Exh. 209) dated 11/█/23 summarized the offer of FAPE that had been made to Petitioner. (T: D2:70:12-16). Petitioner had denied this offer at the October █

IEP Team Meeting. Petitioner did not show or present evidence that non-receipt of the Written Notice impeded Student's right to FAPE, impeded Petitioner's opportunity to participate in the decision-making process or caused a deprivation of educational benefits and, therefore, Petitioner failed to meet the burden of proof on this issue.

VII. Petitioner did not show that Respondent violated the IDEA by not providing a requested re-evaluation or Independent Education Evaluation (IEE).

IDEA regulation, 34 CFR § 300.303(a), provides that the school district must “ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 –

- (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (2) If the child's parent or teacher requests a reevaluation.

The regulation goes on to limit when reevaluations are limited.

- (b) Limitations. A reevaluation conducted under paragraph (a) of this section –
- (1) May occur not more than once per year, unless the parent and the public agency agree otherwise; and
 - (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

At the August █ 2023, meeting of Petitioner with █ Petitioner requested an “assessment” to evaluate █. (T: D1:52:12-19). Again on September █ 2023, Petitioner requested a █ Exh. 103. On September █ Petitioner made a request for a █ Exh. 104. And then on September █ 2023, Petitioner requested an “█.” Exh. 105.

The record does not show that Petitioner requested an [REDACTED] [REDACTED] rather the requests Petitioner's requests for "assessments", [REDACTED] fit within the scope of [REDACTED] under 34 CFR § 300. [REDACTED].

Assessments of Student were completed in November 2022. (T: D1:57:5-7). At the times when Petitioner requested [REDACTED], as noted above, the [REDACTED] limitation in 34 CFR § 300 [REDACTED] applied and a [REDACTED] unless the parties agreed otherwise. Petitioner, [REDACTED], testified that at the August [REDACTED] 2023, Petitioner requested an assessment and that [REDACTED] said, "Well, I can arrange that. That's going to take myself, [REDACTED] [REDACTED] and one of [REDACTED] core teachers." (T: D1:52-20-22). On the other hand, in response to the question "And did you tell [REDACTED] no, we can't do that, or yes, we can go ahead and do that?" [REDACTED] [REDACTED] testified that [REDACTED] response was "No, I told [REDACTED] that we could look over whatever [REDACTED] wanted to." (T: D2:47:21-24). There is no clear evidence that the parties agreed to conduct [REDACTED] At the October [REDACTED] IEP Team Meeting Respondent offered to [REDACTED] requested by Petitioner; however, Petitioner did not agree to the assessment and did not sign a consent. (T: D1:12419-125:14; D2:66:7-67:7).

Under 34 CFR § 300 [REDACTED] Respondent was not required to [REDACTED] at the times requested by Petitioner because a [REDACTED] [REDACTED] Petitioner did not show that the parties agreed to conduct an additional [REDACTED] as required by the regulation. Therefore, Respondent did not violate the IDEA by not [REDACTED] when requested by Petitioner.

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 18th day of March, 2024, I caused to be served on the following a true and correct copy of the foregoing document by the method indicated below:

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By: _____/s/_____
Hearing Officer