

BEFORE THE IDAHO DEPARTMENT OF EDUCATION
(IDEA Due Process Administrative Hearing)

IN THE MATTER OF A DUE)	
PROCESS HEARING REQUEST)	
)	
██████████ (“the Parent),)	
On behalf and for ██████ (“the Student”),)	
Petitioners.)	Case No: H-24-08-19a
)	
v.)	Memorandum Decision and
)	Order Granting Summary
BUHL SCHOOL DISTRICT # 412)	Judgment
(“the LEA and referred to as the “DISTRICT”),)	
Respondents.)	

Introduction

A Prehearing Order and Notice of Hearing was provided to the Parties dated September 10, 2024. The Order provided, among other procedural considerations, the opportunity for the Parties to present prehearing motions and supporting memorandums. The Parties in addition to submitting Prehearing motions asking that summary judgment be entered, responded and replied to the competing motions for summary judgment. Additionally, the Parent requested clarification of what procedural provisions applied in the Request for a Due Process Hearing.

Parent’s Request for Clarification

At the time of the Parent’s Request for Clarification, the only procedural issue the Parties had requested that the Hearing Officer address was discovery. The Hearing Officer in two Orders dated September ██████ 2024 and September ██████ 2024 indicated that the Individuals with Disabilities Education Act (IDEA) does not contemplate discovery and denied the Parties’ requests for Discovery.

The Prehearing Order also set out the procedure for the due process hearing. The Parties in a Zoom call discussed the contents of the Prehearing Order and have availed themselves of those procedures as well. The Prehearing Order was entered with the Parties participation and was not objected to after the Order’s entry.

The Parties have now raised substantive issues of law and have set out the applicable IDEA provisions and case law for their respective positions. The substantive provisions of the IDEA apply.

The Parties Competing Motions for Summary Judgment

The Parent indicates that the only question at this time "...is whether [REDACTED] depriving the Student of a free and appropriate public education (FAPE) [REDACTED]". (Memorandum in Support of Petitioners Motion for Summary Judgment- [REDACTED])

Accepting that representation, the consideration of any other possible claims and issues that were raised by the Parent in the Request for a Due Process Hearing are not addressed in this Memorandum Decision and Order and are dismissed without prejudice.

Correspondingly the District's Motion for Summary Judgment based on the Parent's narrowing of the issues will be granted and the those claims of the Parent as identified by the District are dismissed without prejudice.

The only issue then for the Hearing Officer's consideration is whether the District failed to provide the Student FAPE based on [REDACTED].

Standard for the entry of Summary Judgment

The standard for consideration of summary judgment is essentially the same whether applying the Idaho Rules of Civil Procedure (IRCP) or the 9th Circuit's analysis of the Federal Rule of Civil Procedure. For these purposes, IRCP 56 indicates that summary judgment is appropriate if there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law.

The moving party is required to demonstrate by a preponderance of the evidence in order to prevail.

The applicable law is the IDEA.

Additionally, the Request for a Due Process Hearing must allege a violation that occurred not more than two years before the filing of the Request for a Hearing. 34 CFR 300.507(a)(2).

The Applicable Facts

These are the factual findings of the Hearing Officer based on the Memorandums and Declarations with attached exhibits submitted by the Parties. The following chronology are the material facts which are not in dispute:

1. The Student is [REDACTED] years of age and is a Student enrolled in the District.
2. The Student was most recently determined eligible for special education and related services upon the District's Eligibility Evaluation (Evaluation) dated December [REDACTED] 2021 under the category of [REDACTED].

3. The District then timely adopted an Individualized Education Plan (IEP) for the Student.
4. The Student's IEP dated December [REDACTED] 2022, is the applicable IEP in place at the time [REDACTED] began.
5. In pertinent part, the December [REDACTED] 2022 IEP provided that the Student would be [REDACTED].
6. On April [REDACTED] 2023, the Student [REDACTED] [REDACTED] (Ex [REDACTED]-Declaration of Counsel in Support of Motion for Summary Judgment)
7. The Student [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8. The basis for [REDACTED] [REDACTED]
9. On May [REDACTED] 2023, the District [REDACTED] [REDACTED]
10. An IEP Team Meeting was not held and the Student's IEP was not amended.
11. The Student's [REDACTED] [REDACTED]
12. The Student [REDACTED] [REDACTED]
13. On August [REDACTED] 2023, an IEP Team Meeting was held [REDACTED] [REDACTED]
14. The Student [REDACTED] [REDACTED]
15. Beginning November [REDACTED] and continuing on November [REDACTED] 2024 [REDACTED]
16. Written Notice of [REDACTED] was not provided by the Parties, however an IEP Amendment was adopted also dated November [REDACTED] 2023, which the Hearing Officer inferred that [REDACTED] [REDACTED]
17. [REDACTED] the Student on November [REDACTED] 2023, [REDACTED] and [REDACTED] [REDACTED] ([REDACTED] Declaration of Counsel in Support of Motion for Summary Judgment)

18. A [REDACTED] the IEP Team on December [REDACTED] 2023.
19. The Annual IEP meeting resulted in an amendment on December [REDACTED] 2023, to be effective on December [REDACTED] 2023 to [REDACTED] the Student. The December [REDACTED] 2023, IEP provided that the Student [REDACTED] special education and related services. The [REDACTED]
20. The IEP Team meet on August [REDACTED] 2024, to consider [REDACTED] schedule for the current school year.
21. The Student's IEP was amended to provide [REDACTED] the Student's annual IEP review in December, 2024. The [REDACTED]
22. The Student [REDACTED].
23. Based on [REDACTED].
24. The Due Process Hearing Request was filed on August 19, 2024.

Analysis

34 CFR 300.1 sets out the purposes of the IDEA:

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- (b) To ensure that the rights of children with disabilities and their parents are protected;
- (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
- (d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

Those purposes are best served when a school district complies with the procedural and substantive provisions of IDEA. The IDEA has significant procedural and substantive provisions to provide a disabled child FAPE. These procedures are intended to protect a student with a disability and to ensure that the district complies with the IDEA.

There is a lack of case law dealing with the [REDACTED] [REDACTED]. There are cases finding that a parent (see [REDACTED])

or an attorney ([REDACTED]) rights are not affected by [REDACTED]. However, that analogy was not particularly helpful.

Two Hearing Officers decisions, [REDACTED] and [REDACTED] provide some helpful analysis in the consideration of [REDACTED] that may result in [REDACTED].

The IDEA provides clear direction to school districts [REDACTED] . 34 CFR 300. [REDACTED]. If a student's [REDACTED], the district must [REDACTED]. 34 CFR 300. [REDACTED].

[REDACTED] . 34 CFR 300. [REDACTED]

The District's [REDACTED] Principal [REDACTED] (Ex [REDACTED]-Declaration of Counsel in Support of Motion for Summary Judgment)

The [REDACTED] . 34 CFR 300. [REDACTED]. The [REDACTED] 2023.

The District [REDACTED] . However, from this record it does not appear that the Student [REDACTED]

Upon finding that [REDACTED], the district must either [REDACTED] or if [REDACTED] review and modify [REDACTED]. 34CFR 300. [REDACTED] The student is to be [REDACTED] unless special circumstances exist. 34 CFR 300. [REDACTED].

The student [REDACTED] is entitled to: [REDACTED] receive educational services, as provided in §300 [REDACTED] so as to enable the child to [REDACTED] participate in the general education curriculum, [REDACTED], and to progress toward meeting the goals set out in the child's IEP; and [REDACTED] Receive, as appropriate, [REDACTED] [REDACTED] [REDACTED] 34 CFR 300. [REDACTED]

There is nothing in the record suggesting that [REDACTED] an amended IEP occurred until December 2023. Nor did the District offer any evidence that any of the [REDACTED] [REDACTED] in 34 CFR 300. [REDACTED] exist.

The District [REDACTED] [REDACTED] [REDACTED]

At the beginning of the 2023-2024 school year, the Student's IEP team met to amend the IEP [REDACTED] [REDACTED]

The Student [REDACTED] [REDACTED] as contemplated by IDEA, but had [REDACTED] [REDACTED] [REDACTED]

The Student was [REDACTED] the general education setting [REDACTED] [REDACTED] in April 2023.

An IEP resulting from the August IEP Team meeting was not provided by the Parties and is not part of the summary Judgment record.

There is nothing in the Record until November 2023 which indicates the services being provided to the Student [REDACTED] early in the 2023-2024 school year. However, [REDACTED] [REDACTED] August of the 2023-2024 school year.

In early November 2023, the District [REDACTED], and based on the uncontested representations of the District held an IEP Team Meeting and [REDACTED] The District's Superintendent, then [REDACTED] [REDACTED]

[REDACTED] The effect of [REDACTED]
[REDACTED]

The [REDACTED] in November 2023 as reflected in the Amended IEP was to be effective until November 2024.

The Parent filed the Request for a Due Process Hearing on August [REDACTED] 2024. The Student [REDACTED] the 23-24 school year, [REDACTED] the 2023-2024 school.

The Student [REDACTED]
[REDACTED]

The IDEA permits a school district [REDACTED] for special circumstances which includes [REDACTED]. The District must take affirmative action [REDACTED].

The [REDACTED] was clearly employed to avoid [REDACTED]. [REDACTED] raised any issues prohibiting the District from utilizing the special circumstances provisions of 34 CFR [REDACTED].

The [REDACTED] is clearly not intended to be available to a school district to avoid the district's implementation of [REDACTED] and the IDEA. [REDACTED] pursuant to the IDEA.

The [REDACTED] was not as a result of any action taken by the District finding that [REDACTED].

Further the District did not [REDACTED] as contemplated by 34 CFR 300. [REDACTED]. The District argues that [REDACTED] was agreed to by the Parent on several occasions and that [REDACTED] was agreed to by the Parent. The Parent should not be expected to agree to the District denying the Student FAPE when the due process hearing request is timely brought with in the two year statute of limitations.

The District also argues that [REDACTED] the IDEA requirement that the student [REDACTED] should apply. The [REDACTED]
[REDACTED]

If [REDACTED] it would not have been necessary to [REDACTED]
[REDACTED]

The use of [REDACTED], employed [REDACTED] by the District, [REDACTED] that the District [REDACTED]
[REDACTED] The District failed to follow the necessary procedure [REDACTED]
[REDACTED] That failure is a not a procedural violation, that failure denied the Student FAPE.

Additionally, the District failed to determine if [REDACTED]
[REDACTED] in the Fall of 2023, again a substantive violation of the District's obligation to provide FAPE.

The District failed to utilize the available IDEA provisions [REDACTED]
[REDACTED] and denied the Student FAPE.

Attorney Fees

The IDEA does not permit a hearing officer to award attorney's fees. 34 CFR 300.517(a)(1) "in any action or proceeding brought under section 615 of the Act, the court in its discretion may award reasonable attorneys' fees as part of the costs,,,". Any request for attorney fees is denied.

Award of Compensatory educational services

The Hearing Officer has discretion to award compensatory education to attempt to place the Student in a comparable position had the District not failed to provide the Student FAPE. 34 CFR 300.513(c)(3) Here compensatory educational services are calculated to enable the Student to complement [REDACTED]
[REDACTED] services consistent with the Student's IEP [REDACTED].

In addition to the factual findings made above in connection with the violation of FAPE, additional findings are appropriate in order the fashion a remedy.

1. The Eligibility Evaluation dated 12-[REDACTED]-21 indicates that the Student [REDACTED]
[REDACTED]
[REDACTED]

2. The Student's IEPs made part of the record [REDACTED]
[REDACTED]
[REDACTED]

It is therefore *ordered* that:

1. The Student based on the failure of the District to consider [REDACTED] and provide services as anticipated by the Evaluation is awarded [REDACTED] hours of compensatory [REDACTED].

The District will provide the services by [REDACTED] employed by the District or contracted by the District. The time value of the services will not be used to fund a designated account that the Parent can draw on.

2. The District will provide [REDACTED] hours [REDACTED] compensatory Education services consistent with the Student's most recent IEP.

The District will provide the services by a certified special education teacher or a paraprofessional employed by the District or contracted by the District. The time value of the services will not be used to fund a designated account that the Parent can draw on.

3. The District shall [REDACTED] by October [REDACTED] 2024. The District will timely [REDACTED] prior to the Student's participation in the below [REDACTED].

In the interim the District shall provide [REDACTED] as necessary and without limitation to assist the Student's [REDACTED], including insuring the Student has the opportunity [REDACTED] [REDACTED] as supported as is appropriate to [REDACTED] [REDACTED]

The District shall also provide the Student and the Parent with [REDACTED] schedule including [REDACTED] and District email and a summary of [REDACTED] [REDACTED]

4. The Hearing presently set for September 31 and continuing through October 4, 2024 is vacated.

The Prehearing Order dated September 10, 2024, is also vacated and any required disclosures are vacated and the Parties do not have to comply with the remaining processes set out in the Prehearing Order.

5. The Parties shall be responsible for their own attorney fees and costs.

6. Summary Judgment is granted for both the Student and the District.

7. This is a final Order and disposes of all issues raised by the Parent's Request for a Due Process Hearing.

Dated this 21st day of September

/s/ Edwin L. Litteneker

Edwin L. Litteneker

Hearing Officer

Notice

Any party aggrieved by the findings and decision herein has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under 20 USC 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. 20 USCS 1415 (l)(2)(a) provides that 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 action under Part B of the Act, as allowed by that state law. IDAPA 08.02.03 109.05(g)

This Memorandum Decision
And Order Granting Summary
Judgment was provided by
email to Counsel on September 21,
2024, as follows:

Lyndon Nguyen

lyndonlegal@gmail.com

Kristian Beckett

kristian@beckettlegal.com

Anne Magnelli

amagnelli@ajhlaw.com

/s/ Edwin L. Litteneker

Edwin L. Litteneker

Hearing Officer

