

include exhibits; however, the Transmittal of the Record includes the official record of the Exhibits admitted in the Record.

The Hearing was [REDACTED]

Two witnesses who are employees of the LEA were called to testify by the Parents. The LEA was given some latitude in the cross examination of these witnesses for purposes of avoiding having to call the witnesses back for direct examination.

After the two witnesses testified, a substantial amount of discussion and argument was offered by the Parties in regard to the testimony of the remaining witnesses that had been disclosed by the Parties. The Parents indicated that the matter could be submitted to the Hearing Officer based on the anticipated testimony which would be repetitive. The Parents were given some latitude in the arguments that were submitted for the Hearing Officer's consideration.

BURDEN OF PROOF

The Parents as the Petitioners have the burden of going forward and persuasion, *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005), and are required to establish that the District failed to meet the obligations required by IDEA by a preponderance of the evidence.

MEMORANDUM DECISION AND ORDER

This is the Memorandum Decision and Order of the Hearing Officer. This Memorandum Decision constitutes the Hearing Officer's findings of fact and conclusions of law regardless of the form of this Memorandum Decision.

What follows is a chronology of the relevant events which sets out findings of fact for purposes of identifying the events, actions taken by the parties, participation in meetings, the creation and documentation of the LEA's actions and the testimony of witnesses and the argument of the Parties that form the factual basis of the memorandum decision.

THE CHRONOLOGY

The Student is in [REDACTED] grade and has been determined by the LEA to be eligible for special education under the category of [REDACTED]. The Student also had a [REDACTED] condition which has recently been [REDACTED].

At the beginning of the 2022-2023 School Year (SY), the LEA [REDACTED], concluding that the Student, when [REDACTED] or [REDACTED], would [REDACTED] or [REDACTED] would [REDACTED] when [REDACTED]. (Ex. D-501)

In May, 2023, the Student's Individual Education Plan Team (IEP Team) met to consider the Student's eligibility for Extended School Year Services (ESY). The Team determined that the Student was not eligible for ESY services. The Parents objected to that decision, wanting to wait for the end of the SY progress reports and expressing concern that the Parents' vote was not being considered. (Ex. D-502)

The end of the 2022-2023 SY Progress Report indicated progress was made on a [REDACTED] goal of [REDACTED] 75% of the time with a goal of 80% and having achieved the goal of [REDACTED]. The Student also made progress on [REDACTED] goal of [REDACTED]. The Student made progress on [REDACTED] goal [REDACTED] to demonstrate [REDACTED]. The Student also demonstrated progress on [REDACTED] goals of [REDACTED]. (Ex. D-520)

The 2023-2024 SY began on August 16, 2023. The Student did not begin attending school until the week of August 29, 2023.

The Student's IEP Team met on September 7, 2023, to review the Student's IEP. The IEP Team adopted an amended IEP dated September 7, 2023, which included [REDACTED] (Ex. D-503). [REDACTED] carefully considered the [REDACTED]

The 2023-2024 SY IEP provided updated [REDACTED] Goals, an updated [REDACTED] Goal, an [REDACTED] Goal and updated [REDACTED] Goals. The Student was to be [REDACTED] throughout the school day and was only removed from the general education classroom for the related services of [REDACTED]. [REDACTED] accommodations [REDACTED] were included, as well as [REDACTED]. (Ex. D-504)

The LEA received Consent from the Parents to reassess the [REDACTED] and how [REDACTED] affect the Student's educational progress on September 14, 2023. (Ex. D-505)

The Student's IEP Team met on October 4, 2023, amending the IEP to increase the amount of time that [REDACTED] to include time [REDACTED] and when [REDACTED]. Written Notice was provided of the amendment to the IEP. (Ex. D-507)

A [REDACTED] dated October 12, 2023, was prepared setting out the conclusions of the [REDACTED] based on the information developed in response to the September 14, 2023, Consent to Assess. [REDACTED] was thorough and contained an appropriate [REDACTED] (Ex. D-508)

The Student made insufficient progress in the First Quarter of the 2023-2024 SY ending on October 13, 2023, on [REDACTED] goal based on [REDACTED]. Progress was made in the [REDACTED] goal, [REDACTED] goal and [REDACTED] goal. (Ex. D-521)

The Student had [REDACTED] and [REDACTED] at least [REDACTED] days between [REDACTED] and [REDACTED], 2023.

As a result of [REDACTED] on October 20, 2023, the Student [REDACTED]. The Student was [REDACTED], (Parent Teacher Conferences were scheduled for November 1, 2023, and no school was held).

Originally a [REDACTED] was scheduled for November 2, 2023, as a result of [REDACTED]. A [REDACTED] was sent to the Parents on November 1, 2023, for review. However, the [REDACTED] was not held on November 2, 2023.

On November 2, 2023, the LEA provided Written Notice without convening the IEP [REDACTED] Team that the Student would [REDACTED] beginning November 3, 2023, until the rescheduling of the [REDACTED]. The Student's educational program, IEP services and access to classroom materials were to be provided [REDACTED]. (Ex P-02)

The Student [REDACTED] between November 3, 2023, and November 10, 2023, and was [REDACTED]. (Ex. D-522)

The [REDACTED] Team met on November 10, 2023 and concluded that [REDACTED] the Student's disability, that the [REDACTED] and that [REDACTED] the Student's disability.

The [REDACTED] Team discussed various placement alternatives, including [REDACTED] at the LEA after an IEP Team Meeting scheduled for November 14, 2023, or [REDACTED] with an anticipated [REDACTED]. Pending the anticipated IEP Team Meeting, the [REDACTED] continued until November 13, 2023.

Upon [REDACTED] on November 13, 2023, the Student [REDACTED] which [REDACTED]. When the Student [REDACTED], the Student was [REDACTED].

The [REDACTED], review of the Eligibility Report and IEP Team Meeting was held on November 14, 2023. The [REDACTED] Team concluded that the [REDACTED] on November 13, 2023, was [REDACTED] the Student's disability, that the [REDACTED] implement the Student's IEP and that [REDACTED] the Student's disability.

An Eligibility Report dated November 14, 2023, was then considered by the IEP Team. In pertinent part, it identified the Student's [REDACTED] and [REDACTED] [REDACTED], identified the [REDACTED] and what the Student might [REDACTED].

The Eligibility team concluded that the Student would benefit from individualized or small group direct instruction with personalized feedback [REDACTED], as well as pre-teaching and re-teaching and additional practice to assist with [REDACTED] the Student's ability to learn. The Student continued to be eligible for special education [REDACTED].

The IEP Team then considered the Student's IEP. The draft IEP reflected [REDACTED] goal. [REDACTED] Goal included a [REDACTED] to [REDACTED] by 10% per month by [REDACTED]. The [REDACTED] were specially identified. (Ex. D-514)

As the IEP Team discussed the necessary elements of the IEP, the least restrictive environment was discussed. The Special Education Director made an offer of a Free and Appropriate Public Education (FAPE) to [REDACTED] and upon [REDACTED] implementing the amended IEP as had been discussed in the November 10, 2023, meeting.

The Parents disagreed with the offer of FAPE that the Student would [REDACTED] on November 14, 2023.

The IEP dated November 14, 2023, reflected the Parental input on the strengths, weaknesses and [REDACTED] and how [REDACTED] was [REDACTED].

Though the [REDACTED], eligibility review and review of an amended IEP, which all occurred on November 14, 2023, the notes of the meetings indicated a separate discussion was identified and each of the meetings were identified as distinct meetings with different purposes.

The [REDACTED] teacher testified that the placement [REDACTED] sounded like an option that should be considered.

Written Notice of the LEA's offer of FAPE was provided to the Parents. The LEA provided notice of its intention to continue [REDACTED] until November 17, 2023. After the Thanksgiving break on November 27, 2023, the Student would [REDACTED]. Transportation was to be provided from the Student's home to [REDACTED]. The Student's educational program was to be provided [REDACTED].

The Student did not [REDACTED] between November 3 and November 10 and between November 14 and November 17, 2023.

The Parents refused the LEA's offer of FAPE and notified the transportation company that their services were not required. The LEA provided Written Notice of the Parents' action and deleted the offer of transportation.

The Student has not attended [REDACTED] and has not participated in [REDACTED] since [REDACTED] November 13, 2023.

The Parents filed their Request for an Expedited Due Process Hearing on November 27, 2023.

ISSUES PRESENTED BY THE PARENTS

The Parents claimed that the LEA unilaterally changed the placement of the Student. In particular, the Parents claim that the right of parental participation in the educational decision-making process was violated. The Parents argue that the IEP Team did not "vote" on the LEA's offer of FAPE and that parental consent should be required [REDACTED]. When asked after the meeting on November 14, 2023, the IEP Team indicated that

any questions about the LEA's offer should be directed to the Special Education Director, which the Parents argued meant that the IEP Team did not reach consensus on the decision of the placement or location of the education services to be offered.

The Parents also argued that Section 504 of the Rehabilitation Act (504) and the Americans with Disabilities Act (ADA) prohibit the LEA from temporarily denying the Student the accommodations provided in the IEP [REDACTED].

DISCUSSION AND MEMORANDUM DECISION

1. The availability of relief under 504 or the ADA

The U.S. Supreme Court has recently reaffirmed that the Due Process Hearing Officer can only address IDEA issues in a due process hearing. The only relief that can be provided in the IDEA administrative process is for a denial of FAPE. *Perez v. Sturgis Public Schools*, 598 U.S. 142, 143 S. Ct. 859, 215 L. Ed. 2d 95 (2023). The ADA and 504 offer remedies not available under the IDEA and are not appropriate here.

The relief for claims that the LEA failed to implement the Student's IEP or that the LEA failed to provide necessary accommodations [REDACTED] particular, the Request for an Expedited Due Process Hearing further limits the Hearing Officer's ability to consider the relief sought by the Parents. 34 C.F.R. § 300.532(b).

2. Parental participation and unilateral placement of the Student

These two claims are related and the discussion of one affects the other; however, the Parents are entitled to a resolution of these issues separately. The Expedited Due Process Request would ordinarily be limited to an appeal to determine whether the [REDACTED] was appropriate, 34 C.F.R. § 300.532(a). However, the Parents invited a determination of whether the circumstances of the decision to [REDACTED] the Student [REDACTED] [REDACTED] denied the Student FAPE, and the LEA did not object to that

invitation. Parental Participation

The IDEA requires that the Parents "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 C.F.R. § 300.501(b)(1)(i)-(ii).

The Record is clear that the Parents received proper notice of IEP Team Meetings, [REDACTED] planning meetings and [REDACTED] and attended and participated in the numerous meetings held to discuss the Student's educational services within the last year.

Prior Written Notice was provided in each instance that the LEA acted and properly identified the action to be considered and the reasons for or against taking the proposed action. The Parents communicated requests by email that were also addressed by Prior Written Notice.

██████████s objected to and did not agree with the ██████████ and contended that the LEA could not place the Student in ██████████ without parental consent or without a 'vote' by the IEP Team. However, the proposed IEP was not objectionable ██████████ly the location of the special education services to be provided to the Student ██████████.

IDEA's parental participation does not require the Student's IEP Team to follow the parental choices if there is a lack of agreement among the IEP Team members about the educational services being contemplated by the IEP Team. The Record does not demonstrate whether ██████████ a consensus on the question of the location of the services to be provided ██████████. However, ultimately the decision is the LEA's if there is no consensus. The Idaho Special Education Manual describes the process in this manner:

If there is lack of consensus between the parent/adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus within the school team and provide written notice to the parent/adult student. If there is lack of consensus among school personnel, then the district representative on the IEP team shall make the decision and provide written notice to the parent/adult student. Manual, Chapter 5, Section 1, Para B (p. 66, 2018)

Even if the testimony might have revealed that members of the IEP Team did not reach consensus on the location ██████████ educational services, the decision was ultimately the LEA's.

Nor does IDEA permit 'voting,' see for example, *Buser v. Corpus Christi Indep. Sch. Dist.*, 20 IDELR 981 (S.D. Tex. 1994), *aff'd*, 51 F.3d 490, 22 IDELR 626 (5th Cir. 1995), *cert. denied*, 110 LRP 66347, 516 U.S. 916 (1995).

The LEA met its responsibilities to afford the Parents an opportunity to participate in the decisions regarding the Student's educational placement, the short term location of educational services and the provision of FAPE. No violation of the IDEA was demonstrated.

Unilateral Placement of the Student

However, the Parents' claim goes more to the LEA's decision to place the Student in a ██████████ and provide the academic instruction in ██████████ meetings held on November 14, 2023.

The [REDACTED] had been made, the Student's eligibility had been discussed which included a thorough and complete assessment of the [REDACTED] and then the IEP Team discussed the LEA's proposal to amend the IEP to address [REDACTED]. Each of the meetings were appropriately identified in the combined Meeting notes as separate meetings.

Though 34 C.F.R. § 300.530(f) would appear to limit the decision making of the [REDACTED] to [REDACTED] such limits would not apply to the IEP Team after [REDACTED] determined that [REDACTED] the Student's disability.

The [REDACTED] discussion that took place after [REDACTED] laid the groundwork for the IEP Team to consider amending the IEP with [REDACTED] goal that was based on the Eligibility Report's assessment of what might work to address the [REDACTED].

The placement decision is expressed in the IEP as a function of the least restrictive environment in identifying the amount of time that a student spends with their peers. However, the educational placement of the Student does not always include a discussion or the identification of the location of those services. At least one Circuit Court has held that 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 Educ.*, 592 Fed. Appx. 124, 64 IDELR 196 (3d Cir. Nov. 21, 2014) (unpublished).

The LEA properly provided Prior Written Notice of its intention to [REDACTED] provide education services [REDACTED]. (Ex. 512)

There is no procedural violation in the process that the LEA utilized in the decision to [REDACTED] the Student in [REDACTED] and address the [REDACTED] [REDACTED] provide academic services [REDACTED] and provide for the transportation of the Student [REDACTED].

Additionally, a substantive violation can also occur if the IEP is not reasonably calculated to provide the Student with meaningful educational benefits. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 69 IDELR 174 (2017).

However, here the Parents have elected to file the Request for an Expedited Due Process Hearing and not have the Student participate in [REDACTED] and have not made the Student available to participate in [REDACTED]. There is nothing in the Record which would indicate the appropriateness or inappropriateness of the LEA's offer of FAPE since the Student has not participated in the educational program offered by the LEA.

A substantive violation of the IDEA has not been demonstrated.

ORDER

Based on the Finding of Fact and Conclusions of Law made in this Memorandum Decision, it hereby ORDERED that:

the relief sought by the Parents shall be and is hereby denied, that the Parents shall take nothing by way of the Request for an Expedited Due Process Hearing and that the Request for a Hearing shall be and is hereby dismissed.

January 12, 2024.

/s/ Edwin L Litteneker

Edwin L. Litteneker
Hearing Officer

This Memorandum Decision
and Order was provided
to the Parties by email on
January 12, 2024 as follows:

[REDACTED]

Chris H. Hansen

[REDACTED]

/s/ Edwin L. Litteneker

Edwin L. Litteneker
Hearing Officer