Judson W. Tolman

Telephone: (208) 571-1012

**Hearing Officer** 

# BEFORE THE OFFICER FOR THE

#### IDAHO DEPARTMENT OF EDUCATION

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

#### **Statement of Proceedings**

Petitioner's<sup>1</sup> Due Process Hearing Request was received by the Idaho Department of Education on November 13, 2023. A stipulation was then submitted whereby the Parties agreed to the submission of an amended Complaint by Petitioner. Said Amended Complaint was submitted on December 20, 2023, thereby resetting the thirty-day Resolution Period. By way of 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.

<sup>&</sup>lt;sup>1</sup> Student's parents are jointly referred to herein as Petitioner and individually as and 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 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 which resulted in a denial of FAPE for the Student.
- 4. Whether Respondent failed to provide FAPE to Student after September 2023.
- 5. Whether Respondent failed during the October 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 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:

- Psychologist (T: D1:13:21-23)
- Petitioner
- Petitioner
- School (T: D1:182:14-16)
- Academic Coach (T: D2:5:21-22)
- Example 1. Special Education Teacher and Principal, School (T: D2:17:3-5)
- School (T: D2:29:3-8)
- 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 –	201 – IEP, 11/ <b>-</b> /22
102 – IEP, 11/1/22	202 – Eligibility Report, 1/1/23

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103 – Email, 9/ <b>■</b> /23	203 – Meeting Notes, 10/2/23
104 – Email, 9/ 23	204 – Procedural Safeguards, Attendance, 10/22/23
105 – Email, 9/ 23	205 – IEP, 10/m/23
106 – Email, 9/ 23	206 – Final Meeting Invite, 10/12/23
107 – Texts, 9/ /23	207 – Emails with Draft IEPs
108 – Email, 9/11/23	208 – Email with IEP, 10/m/23
109 – Email, 9/ 23	209 – Written Notice, 11/2/23
110 –	210 – Notice of Intent to Enroll, 11/11/23
111 –	211 – IEP Survey
112 –	212 – Parent Input Form
113 – Email, 10/2/23	213 – Agenda for Facilitated IEP Meeting, 10/2/23
114 – Email, 9/ 23	214 – Written Notice, 1/11/24
115 – Email, 9/ /23	215 – NOT ADMITTED
116 – <b>NOT ADMITTED</b>	216 – NOT ADMITTED
117 – IEP, 10/m/23	217 – NOT ADMITTED
118 – Completed by	218 – <b>NOT ADMITTED</b>
119 – Email, 9/ /23	
120 – Screenshot of	
121 – <b>NOT ADMITTED</b>	
122 – Screenshot of	
123 – Screenshot of	
124 – <b>NOT ADMITTED</b>	
125 – NOT ADMITTED	
126 – Email, 9/m/23	
127 – Email, 9/ <b>2</b> 3	
128 – Email, 9/ /23	
129 – Invoice, 1/1/24	
130 – Invoice, 2/ <b>1</b> /24	
131 – Invoice, 12/ <b>1</b> /23	
132 – Email, 6/ <u>1</u> /23	
133 – Email, 9/ /23	
134 – Email, 9/ /23	
135 – Email, 9/ /23	
136 – Email, 10/2/23	
137 – Email, 9/ <u>1</u> /23	
138 – Email, 9/ /23	
139 – Email, 9/ /23	
140 – Email, 9/ <b>2</b> 3	

### **Burden of Proof**

"The burden of proof in an administration hearing challenging an IEP is properly placed upon the party seeking relief." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528,

163 L.Ed.2d 387 (2005). Commenting on Schaffer, the Ninth Circuit stated: "[T]he ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims, ... [a]bsent some reason to believe that Congress intended otherwise, ... we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief." *Van Duyn v. Baker School Dist. 5J*, 502 F.3d 811, 820 (9<sup>th</sup> Cir. 2007). Applying *Schaffer*, and the Ninth Circuit opinion in *Van Duyn*, Petitioner bears the burden of proof on all issues for determination in this matter because Petitioner is the party challenging the IEP and the only party seeking relief.

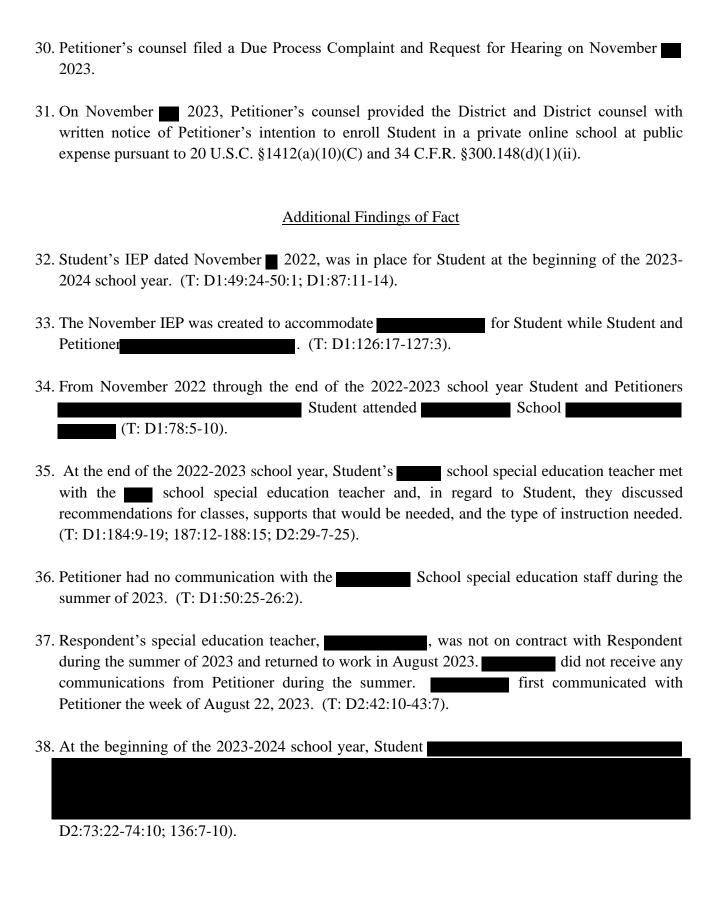
## **Findings of Fact** Stipulated Facts<sup>2</sup>

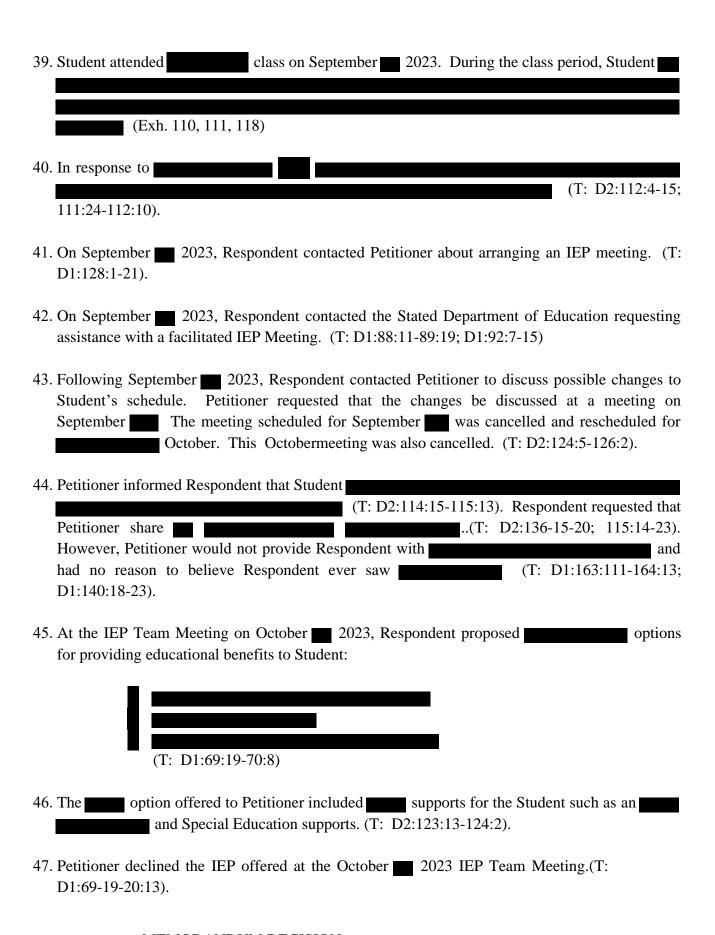
1.	Student is a great year old child who has been diagnosed with
2.	Student first became eligible for special education services in
3.	Since 2020, Student's primary place of residency has been in, Idaho, within the Teton School District.
4.	Student enrolled and attended school in the Teton School District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

 $<sup>^2</sup>$  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 School, Student's special education teacher was
10.	In May of 2023, met with, School Special Education Teacher, to discuss what classes might be appropriate for students to be placed in in the 2023-2024 school year shared IEP "at-a-glance" accommodations with Each 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 occurred via email on August 22, 2023.
12.	The 2023-2024 school year began on August 28, 2023.
13.	Student's parents and met to discuss Student's school on August 2023. During this meeting, Student's parents were introduced to who would be serving as Student's case manager for the upcoming school year.
14.	Student began attending school at School on September 2023. Student had a schedule in which Student was enrolled in s.
15.	Student's IEP Team did not meet prior to Student starting school on September 2023.
16.	On September 2023, Student's mother, submitted an email at include, requesting that include the include that the discussions regarding Student and reiterated she was requesting a review and reevaluation of the IEP "ASAP."
17.	On September 2023, Student's father, called School and spoke with requesting she visit Student in classroom right away.
18.	and Vice Principal
19.	Student's mother, then arrived at the in order to pick Student up from school.

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





48.	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)

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 which resulted in a denial of FAP			
	for the Student.	which resulted in a demai of 1711 D		
	In	the Ninth Circuit Court		
of Ap	peals ruled that if a teacher is			
	, the child has been denied a Fa	APE.		
		(holding that to violate Title		
IX "				
		").		
	Applying			

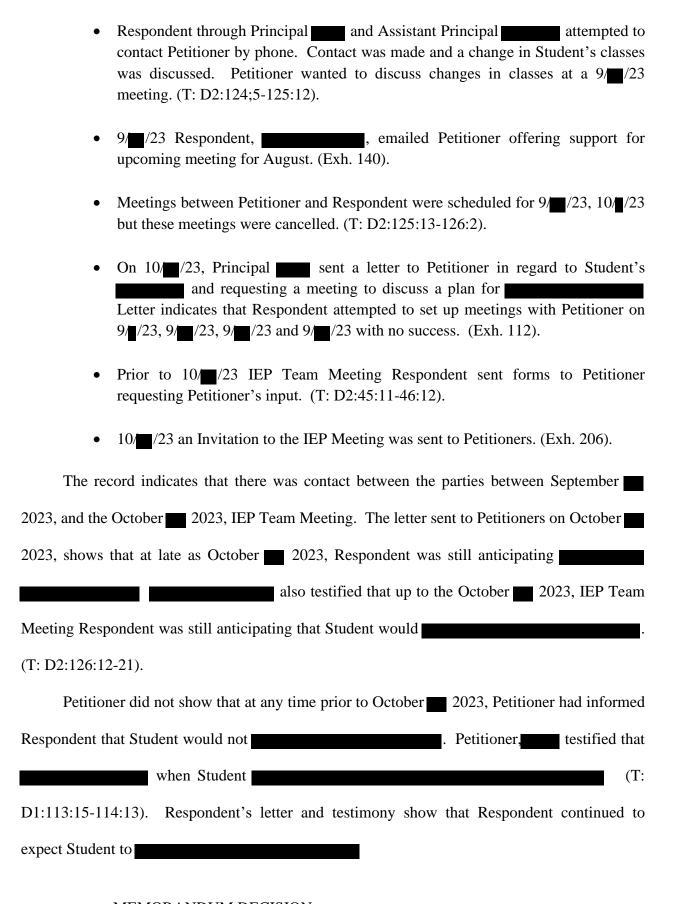
Petitioner does not make any allegations of
Exhibits 110 and 111 are  Exhibit 110 shows
Exhibit 111 shows
Exhibits 120, 122 and 123 are photos of
Petitioner testified that Petitioner  (T: D1: 129:4-25; 132:2-1; 133:9-22)  (T: D1: 67:11-13). In an email from Petitioner, to
Respondent's staff ( ), Petitioner stated that Studen and 2023. (T: D1: 66:24-67:13; Exh. 109)
Respondent requested to see the photos but Petitioner would no
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  Petitioner did not show that Respondent
Respondent investigated the allegations and took actions to the second s

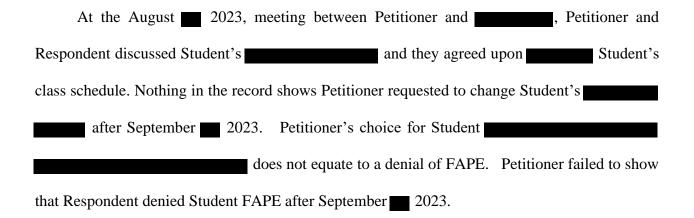
D2: 110:20-114:10).	Rather than being			, Respondent	
		Ibid.	Respondent's		
					Respondent's
investigation into			was impeded b	y Petitioner's r	-
the pictures of	and R	espond	dent had no other	way to obtain	he pictures.
The actions of	f				
		l Rv	not		
	Petitioner did not allow		-	nore corrective	actions. Also,
Petitioner did not pre	esent anything to show	that			
				becaus	e of Student's
•	r did not meet its bur	den to	show that Resp	pondent failed	to appropriate
address Petitioner's					

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

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

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





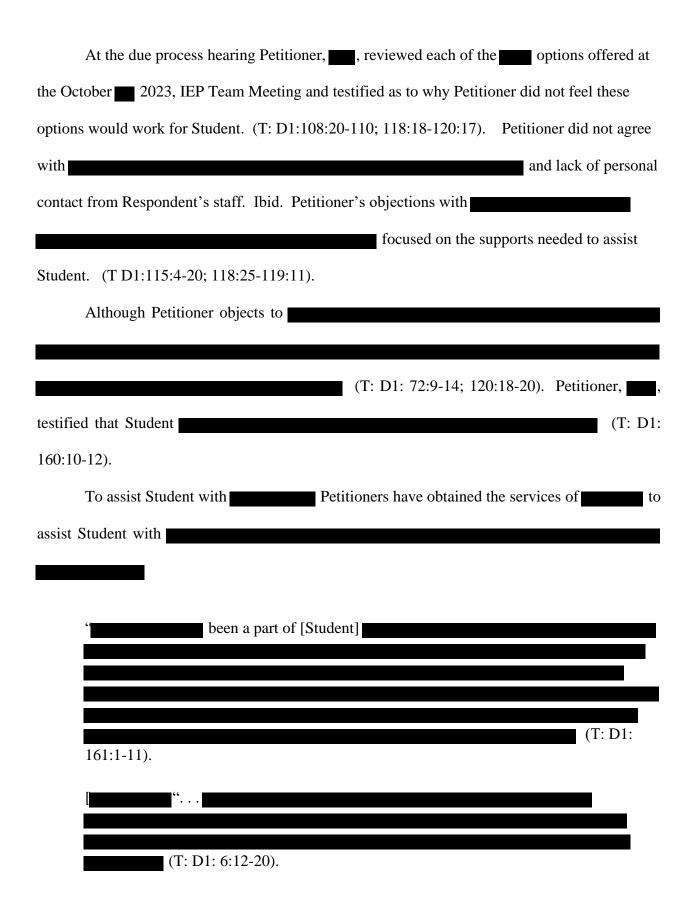
V. Petitioner did not meet the burden of showing that Respondent failed during the October 2023, IEP Team Meeting to offer Student an IEP reasonably calculated to enable the Student to make progress appropriate in light of Student's circumstances.

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 (9<sup>th</sup> 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."

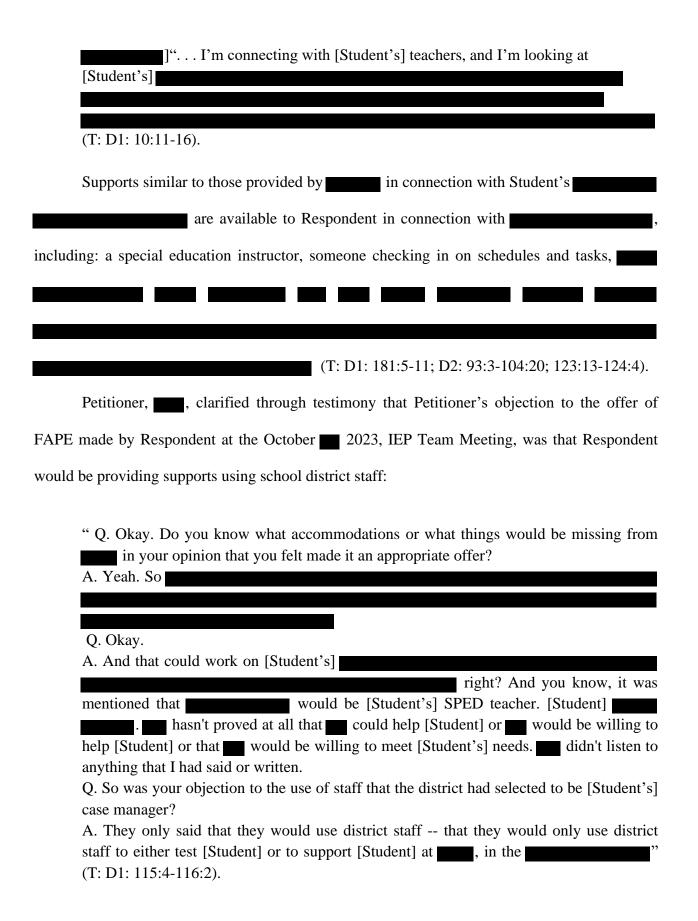
The parties agree on what offer was made at the October 2023, IEP Team Meeting.

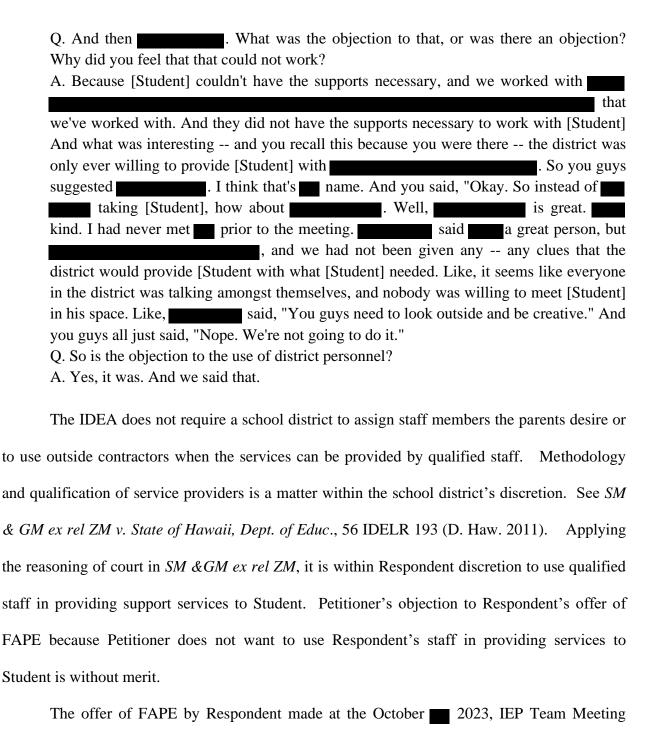
As stated by Petitioner,

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



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while providing the same supports, although

through a different provider, that enable Student

permitted Student to

. 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2013)." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1118 (9<sup>th</sup> 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 11/1/23 summarized the offer of FAPE that had been made to Petitioner. (T: D2:70:12-16). Petitioner had denied this offer at the October Page 21 of 26 MEMORANDUM DECISION

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.

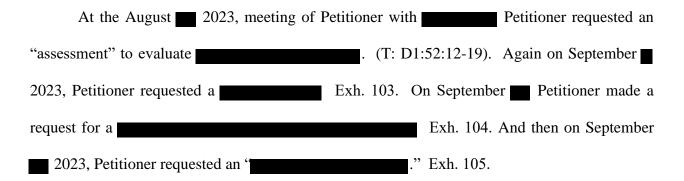
# VII. Petitioner did not show that Respondent violated the IDEA by not providing a requested re-evaluation or Independent Education Evaluation (IEE).

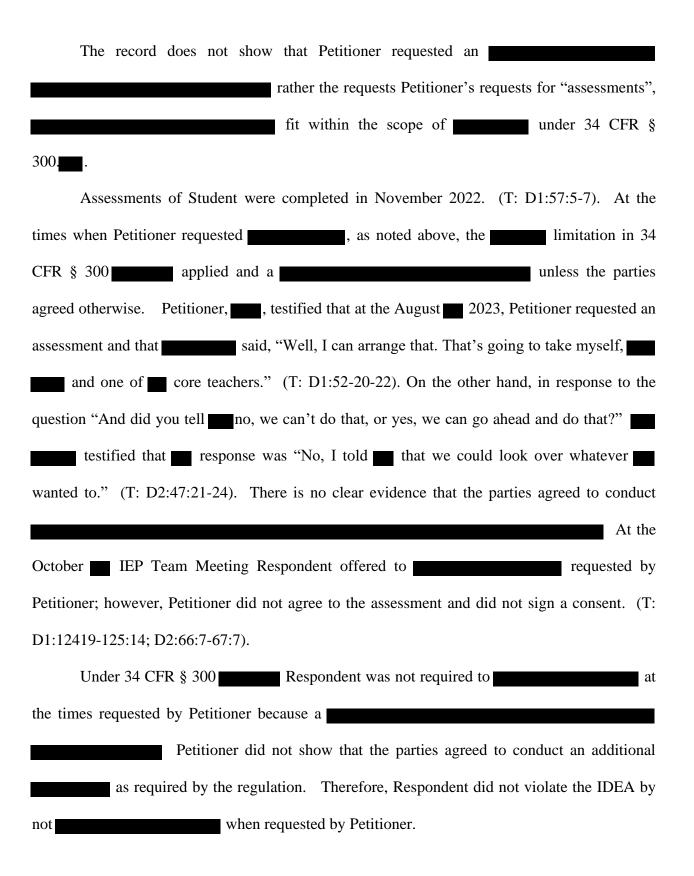
IDEA regulation, 34 CFR § 300.303(a), provides that the school district must "ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 –

- (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.





#### Conclusion

For the reasons set forth above Petitioner has failed to meet the burden of proof on all claims set forth in the Amended Complaint. Accordingly, Petitioner's causes of action and requests for relief are denied.

So ORDERED this <u>18<sup>th</sup></u> day of March, 2024.

/s/	
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 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 $\underline{18^{th}}$ 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:		
Courtney R. Holthus Chloe Palmer Disability Rights Idaho 9542 Bethel Court Boise, Idaho 83709 courtney@disabilityrightsidaho.org chloe@disabilityrightsidaho.org		U.S. Mail, postage prepaid Overnight Mail Facsimile Email
Anne S. Magnelli ANDERSON, JULIAN & HULL, LLP P.O. Box 7426 Boise, ID 83707-7426 amagnelli@ajhlaw.com		U.S. Mail, postage prepaid Overnight Mail Facsimile Email
Dispute Resolution Coordinator Special Education Division Idaho State Department of Education P.O. Box 83720 Boise ID 83720-0027 kshaner@sde.idaho.gov		U.S. Mail, postage prepaid  OvernMailMaistage prepaid  Forsenight Mail  Bracilimile  Email
		By: /s/ Hearing Officer