# BEFORE THE IDAHO STATE DEPARTMENT OF EDUCATION (Administrative Hearing)

IN THE MATTER OF THE EXPEDITED	)	
DUE PROCESS HEARING REQUEST	)	
	)	
(Parent) on	)	
behalf of ", a minor child (Student),	)	
<del></del>	)	
Petitioner	)	No: EH-24-11-07a
V.	)	Amended MEMORANDUM DECISION
	)	and ORDER
	)	
	)	
	)	
BUHL SCHOOL DISTRICT #412, ("the	)	
District") and IDAHO STATE DEPARTMENT	)	
OF EDUCATION ("the Department"),	)	
	)	
Respondents	)	
·	)	
	•	

#### PROCEDURAL HISTORY

This is an expedited administrative due process proceeding under the Individuals with Disabilities Education Act (IDEA.) This Hearing Officer prepared the Order and Certificate of Service but did not email the parties until the following day. Therefore the the date on the Certificate of Service required correction, and will reflect today's date of Petitioner,

Petitioner,

a student (Student) in Respondent Buhl School District (District) represented by cocounsel Anne S. Magnelli and Nicole Jenkins. On Petitioner filed this

<sup>&</sup>lt;sup>1</sup> Ms. Jenkins did not attend the hearing.

expedited due process hearing request against Respondents District and the Idaho State
Department of Education (Department), represented by the Office of the Idaho Attorney General
alleging the following violations: 1) failure to follow the IDEA procedures re: change
(2) inappropriate IEP/failure to follow or implement
the student's IEP; (3) SDE has an independent obligation and is ultimately
responsible for ensuring that students are provided with FAPE under IDEA. On
, Respondent District filed an Answer. On
Respondent Department filed a Motion to Dismiss, accompanying Memorandum, Declaration,
and attached Exhibit. On Respondent District filed a
A hopping was hold on Lines the class of testimony, both
A hearing was held on . Upon the close of testimony, both
parties stipulated to provide written closing arguments due on 2025 which were
received timely and considered.
Each party identified exhibits for the hearing, and the following witnesses testified:
Petitioner and parent
Sandra Lobo, Director of Support Services, Director of Special Education and Federal Programs
Angie Oparnico, Buhl School District Superintendent
teacher

principal
The following is included for historical background information: On
Petitioner filed an administrative due process request. On the Hearing
Officer granted Petitioner's Motion for Summary Judgment disposing of all issues raised in the
Parent's Request for a Due Process Hearing . On
On Petitioner filed an expedited administrative due process
hearing EH-24-10-24a to determine whether District's
A due process hearing was held on
<sup>2</sup> The parties stipulated to have

Hearing Officer issued a Memorandum Decision and Order, finding that Petitioner did not meet burden of proof.

## LEGAL STANDARD

Petitioner, as the party bringing the Request for the Expedited Due Process Hearing, bears the burden of proof by a preponderance of the evidence to prevail in this matter. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005).

# **ISSUES**

1.	
2.	Whether Respondent Buhl School District had an obligation to
	FINDINGS OF FACT
1.	Student is currently in and on an IEP. (
2.	Student
	_
3.	At the time of the hearing, Student
<b>1</b> .	Respondent

5.	Respondent Buhl School District has a four-days school week, Tuesday through Friday.
	(HT p. 20, ln. 20.)
6.	On Respondent
	Petitioner testified that
7.	Either
8.	
9.	On District
10.	

No date provided.

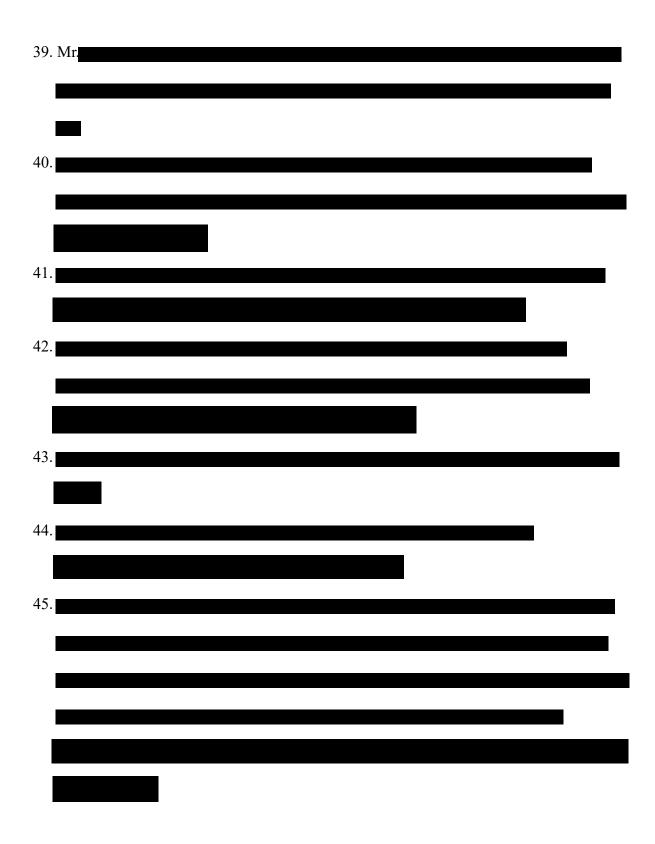
11.	
12. Student Process Hearing Order	pursuant to a prior Due
13.	
14.	
15. During the period between	
16. On	
17.	

<sup>■</sup> The 2024-2025 school year began on August 14, 2024. (HT p. 49, ln. 5-8.)

18.	Respondent
19.	On
20.	
0.1	
21.	Petitioner testified that
22	Petitioner testified that
<i></i> .	
23.	On
24	
24.	

26. Studer	at's			
27. Studer	4t <sup>3</sup> c			
27. Studer	ii S			
28.				
29.				
30.				

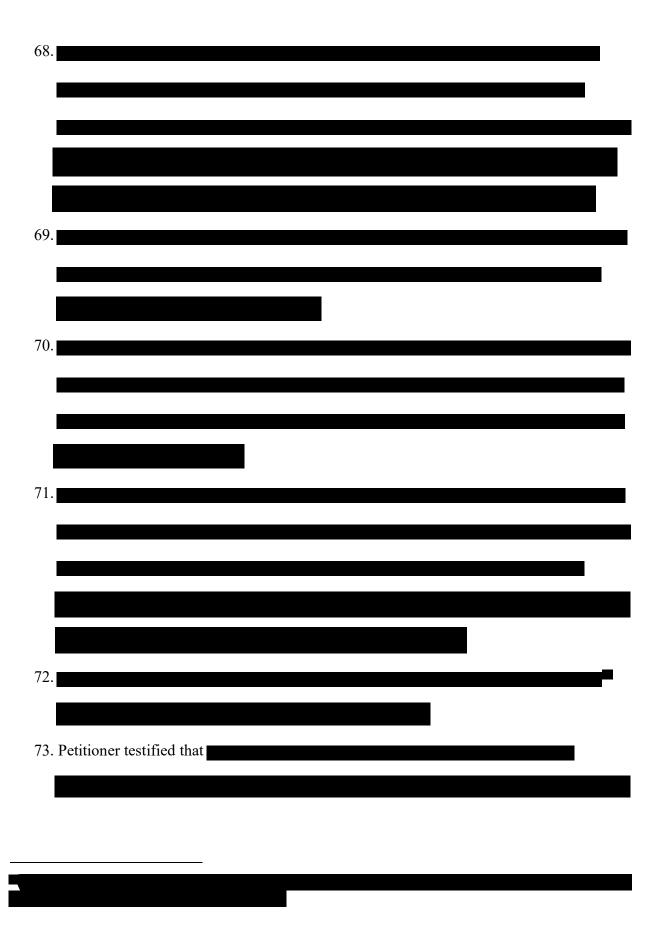
31.			1	
32.				
33.				
34.				
35. Respondent	did not			
36. Petitioner be	elieved			
37.				
38.				



46.	
47.	Upon further questioning
48.	
49.	Petitioner described
ĺ	
50.	Petitioner testified that
51.	
52.	
53.	

54.	Petitioner testified that
<i></i>	
55.	
56.	
57	Students
57.	Statems
50	Student
٥٥.	Student
59.	
60.	

61.	Student's
62.	Initially,
	but then the witness
63.	
64.	
65.	
 66.	
67.	



CONCLUSIO	ONS OF LAW
under IDEA	
Generally, 34 CFR 300.	
Therefore, the operative question is	The United States Education
	The Officed States Education
	The United States Education

Department's Office for Special Education and Rehabilitative Services (OSERS) provides guidance regarding
which
triggers procedural safeguards and rights under IDEA. These procedural safeguards protect both
the procedural and substantive rights of students and their parents and are designed to ensure a
District's compliance with IDEA's mandates.
OSERS defines
The reason for this is clear: a student
But a district cannot absolve itself from its ultimate
obligation under IDEA to provide a FAPE to students with disabilities by
In fact, an oft anticipated purpose of an
IEP,
Therefore, there are instances
of when
13 Dear Colleague Letter, 14 Dear Colleague Letter,

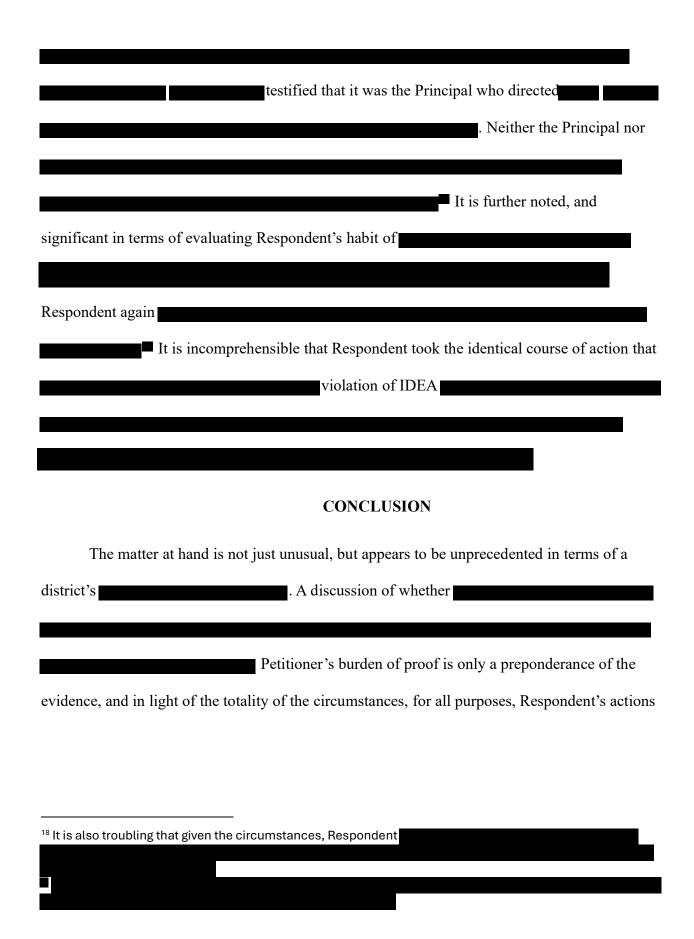
and the district is not meeting its obligation to provide a FAPE through the IEP
process which is a district's road map for the delivery of special education and related services.
Indeed, even if
. The latter is the case in this unprecedented scenario.
Petitioner met burden to demonstrate Procedural and Substantive Violations under the
<u>IDEA</u>
IDEA's purpose, enumerated in 34 CFR 300.1, is to provide children with disabilities a
free appropriate public education through an IEP reasonably calculated to allow them to make
progress in light off their circumstances. Endrew F. v. Douglas County Sch. Dist. RE-1, 69
IDELR 174 (2017.) Additionally and however à propos to the timing of this Decision and Order,
on the United States Secretary of Education issued a letter admonishing against
The messaging was one of
Clearly, the U.S.
Department of Education consistent with the IDEA that
■ This letter referenced multiple sources including U.S. Department of Education, Office of Planning,
Evaluation, and Policy Development.

This matter can only be described as complicated, challenging, with a factual scenario that despite extensive research by this Hearing Officer, did not produce an analogous case providing guidance or precedence.

The Hearing Officer in Order dated programme found that
Respondent's circumvented the IDEA and resulted in not just
procedural, but substantive violations. The Hearing Officer ordered Respondent
While this Hearing Officer
It .
is inconceivable that the Hearing Officer contemplated that Respondent would take such
action
Shortly thereafter, Respondent
While Respondent may have technically complied with
under this exceptional circumstance and fact scenario, this Hearing Officer is not convinced that
Respondent complied with IDEA. Respondent has an obligation provide a FAPE to children with

disabilities,	, and it is taki	ing every action available to avoid such
obligation		. Respondent cannot substantively
violate Student's rights under	IDEA and then	•
There is a clear pattern	n of	
Testimony from		
Testimony nom		
_		
	-	

Respondent's handling of Student's
due to
substantive IDEA violations is a technicality away from violating an order. It is further
disconcerting that the principal has no training regarding the establishment or implementation of
an IEP
It is a legal absurdity that Respondent took such actions which then
required Petitioner,
However, the testimony by
building administrators that unraveled proved to be even more
troubling due to a lack of credibility. The Superintendent testified that
. The Principal testified that



#### **REMEDIES**

The IDEA empowers courts to grant the relief that they determine to be appropriate. See *Burlington Sch. Comm. V. Massachusetts Dep't of Educ.*, 556 IDELR 389 (U.S. 1985) (citing 20 USC 1415(i)(2)(C)(iii).

#### **Private Placement**

While Petitioner met burden of proof	to show violations under IDEA, Petitioner
failed to present any evidence regarding	. Other the
record is void of any information explaining Stud	dent's
	. There was no testimony discussing
	While Petitioner testified that Student

## **Compensatory Education**

While not explicitly provided by the IDEA, compensatory education is appropriate when there is a need to attempt to place a student in a comparable position had Respondent not violated Student's rights under IDEA. The award for compensatory education is within the broad

discretion of the court and is based on equitable principles. Compensatory education may include
the award of services themselves. The addressed compensatory
education for Here, the only question is whether there
is an equitable need for compensatory education due to
Officer finds that an award of services is an appropriate remedy given this unique circumstance.
Attorney's Fees
The IDEA does not permit a a hearing officer to award attorney's fees. <sup>21</sup> Any request is denied.
The Parties are responsible for their own attorney fees and costs.
Based on the findings of fact, conclusion of law, the following remedies have been determined
appropriate. It is therefore ORDERED:
1.
2.

 $<sup>^{21}</sup>$  34 CFR 300.517(a)(1) "the court in its discretion may award reasonable attorney's fees as part of the costs".

Dated on this 12<sup>th</sup> day of January, 2025

\_/s/ Courtney S. Wucetich

Courtney Sidonia Wucetich

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 processing 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. (See 20 USC 1415(1)(2)). 20 USC 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. 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 January 15, 2025, I emailed to Counsel this Memorandum Decision and Order

Anne Sullivan Magnelli

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Nicole Jenkins

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