

**IMPARTIAL DUE PROCESS HEARING**  
**BEFORE THE HEARING OFFICER**  
**APPOINTED BY THE STATE SUPERINTENDENT OF PUBLIC SCHOOLS**

**STATE OF NEVADA**

In the Matter of	)	
	)	DECISION OF THE HEARING
STUDENT <sup>1</sup> , by and through Parent,	)	OFFICER
	)	
Petitioner,	)	Date: 2/3/2022
	)	
v.	)	
	)	Hearing Officer: David A. Stephens
SCHOOL DISTRICT,	)	
	)	
Respondent.	)	

**INTRODUCTION**

This matter came on for hearing on January 19, 2022 at 9:00 a.m. The Petitioner’s Parent<sup>2</sup> was present and represented by Robert D. Sweetin, Esq.; the Respondent was represented by Daniel Ebihara, Esq.; David A. Stephens was the presiding Hearing Officer. The hearing was continued for additional testimony and evidence on January 20, 2022, starting at 9:00 a.m. The hearing was held by video conference. The Record was closed on January 20, 2022.

The basis for jurisdiction of this matter is 20 USC §1415, 34 CFR §§ 300.508, 509, 510, and 511, NRS 385.080 and 388.520, and NAC 388.310.

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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.)

<sup>2</sup> Ibid.

## **PRELIMINARY MATTERS**

This case arises out of a due process complaint filed by the Petitioner on July 9, 2021. The Hearing Officer was appointed on July 19, 2021.

The original decision deadline was extended because the parties believed the matter was settled, but then settlement fell apart. At the Petitioner's request the decision deadline was extended. Shortly before the initial date set for the hearing on this matter, the Petitioner's attorney withdrew and Petitioner requested an extension of the decision deadline to retain new counsel. The decision deadline was extended again. The Petitioner retained Robert D. Sweetin, Esq. The Petitioner's new counsel wanted time to prepare and to attempt settlement. This desire necessitated the continuance of the decision deadline and the hearing. Therefore, at the request of the Petitioner an order continuing deadlines was entered extending the decision deadline to February 4, 2022.

The Pre-hearing Conference was held on December 29, 2021 with a Pre-hearing Report and Order being prepared and served that same day. At the initial pre-hearing conference the parties set the issues to be decided, in addition to other matters set forth in the Pre-hearing Report and Order.

In an email to opposing counsel and the Hearing Officer, the Petitioner raised some concerns as to the issues set forth in the Pre-hearing Report and Order. After reviewing those concerns an amended Pre-hearing Report and Order was prepared and served on January 11, 2022. The amended Pre-hearing Report and Order clarified some of the issues to be decided.

The following individuals testified during the hearing; the Assistant Principal of the High School, Petitioner's High School Special Education Teacher, School District Social Worker,

Petitioner's Middle School Special Education Teacher, the Petitioner, School District Police Officer, Petitioner's Parent, ("Parent"), and Petitioner's step mother.<sup>3</sup>

**The School District's Exhibits 1 through 15 and the Petitioner's exhibits 1 through 6 were admitted into evidence by stipulation of the parties.**

### ISSUES

The issues to be determined are as follows:

- A. Whether for the 2019-2020 and 2020-2021 school years the school district failed to appropriately assess the behavioral problems of the Petitioner, and if so, whether that failure amounted to a denial of FAPE?
- B. Whether for the 2019-2020 and 2020-2021 school years the school district failed to assess the petitioner's needs for supplementary educational aids and one on one personal assistance, and if so, whether that failure amounted to a denial of FAPE?
- C. Whether for the 2019-2020 and 2020-2021 school years there was a failure to design Individualized Educational Programs, ("IEP"), for the IEP dated February 14, 2019, IEP dated February 10, 2020, IEP dated September 23, 2020, IEP dated April 8, 2021, and IEP dated April 27, 2021, such that they were reasonably calculated to enable the Petitioner to make progress appropriate to the Petitioner's circumstances, and if so, whether that failure amounted to a denial of FAPE?
- D. Whether for the 2019-2020 and 2020-2021 school years the Petitioner's parent was denied the opportunity to meaningfully participate in the formulation of the IEP dated February 14, 2019, IEP dated February 10, 2020, IEP dated September 23, 2020, IEP

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<sup>3</sup> See Appendix A for the identifying information regarding these witnesses.

dated April 8, 2021, and IEP dated April 27, 2021, and if so, whether that denial amounted to a denial of FAPE?

E. Whether for the 2019-2020 and 2020-2021 school years the school district failed to implement the IEP dated February 14, 2019, IEP dated February 10, 2020, IEP dated September 23, 2020, IEP dated April 8, 2021, and IEP dated April 27, 2021, as drafted, and if so, whether that failure amounted to a denial of FAPE?

F. Whether for the 2019-2020 and 2020-2021 school years the IEP dated February 14, 2019, IEP dated February 10, 2020, IEP dated September 23, 2020, IEP dated April 8, 2021, and IEP dated April 27, 2021, contained vague and immeasurable goals such that the IEP denied FAPE?

#### **FINDINGS OF FACT**

1. Petitioner is described as bright, friendly and a social butterfly. (Testimony of Parent, and Middle School Special Education Teacher).

2. Petitioner has qualified for special education services since he began school. Petitioner was assessed by the multidisciplinary team (“MDT”), and the MDT determined that Petitioner qualified for special educational services from the school district when he began first grade. The areas in which Petitioner qualified for special educational services are reading, written language, mathematics and behavioral/social skills. (See School District Exhibits 6, 7, 8, 9, and 10).

3. For the 2019-2020 school year Petitioner attended a middle school in the School District. (Testimony of Parent and Middle School Special Education Teacher).

4. For the 2020-2021 school year Petitioner attended a public high school in the School District. (Testimony of Petitioner, Parent, and High School Special Education Teacher).

5. The Petitioner struggles with behavior in general education classes, to an extent in special education classes, conflict with others, including students and teachers, and personal hygiene. (School District Exhibits 6, 7, 8, 9, and 10, and Testimony of Middle School Special Education Teacher).

6. The Petitioner has also been subject to bullying by students in the school he attends. (Testimony of Parent and Middle School Special Education Teacher.)

#### A. CLAIM OF FAILURE TO ASSESS

7. Due to Petitioner's behavior/social problems, a Behavioral Implementation Plan, ("BIP"), for the Petitioner was put into place on February 14, 2018. The goal of the BIP was to help the Petitioner to improve his social behavior, and particularly his self control in stressful situations. (See, School District Exhibit 5).

8. The IEP dated February 14, 2019, noted that the Petitioner's behavior interfered with the Petitioner's learning and the learning of other students. (School District Exhibit 6).

9. The IEP dated February 14, 2019, contained goals to help the Petitioner manage conflict, behave better in the classroom, and improve personal hygiene. (School District Exhibit 6).

10. The IEP dated February 14, 2019, specifically incorporated the Petitioner's BIP by reference. (School District Exhibit 6, p. 11).

11. The Petitioner's BIP was updated in February 2020, to assist the Petitioner in dealing with teasing, bullying, and harassment. The goal of the BIP was to help the Petitioner to

improve his social behavior, and particularly his self control in stressful situations. (See, School District Exhibit 5).

12. The IEP dated February 10, 2020, noted that the Petitioner's behavior interfered with the Petitioner's learning and the learning of other students. (School District Exhibit 7).

13. The IEP dated February 10, 2020 contained goals to help the Petitioner manage conflict better, behave better in the classroom, and improve personal hygiene. (School District Exhibit 7).

14. The IEP dated February 10, 2020 specifically incorporated the Petitioner's BIP, by reference. (School District Exhibit 7, p. 13).

15. Petitioner's behavior improved in important areas during the 2019-2020 school year. (Testimony of Middle School Special Education Teacher).

16. The IEP dated September 23, 2020, noted that the Petitioner's behavior interfered with the Petitioner's learning and the learning of other students. (School District Exhibit 8).

17. The IEP dated September 23, 2020 mentioned the BIP and that it could not be updated due to distance learning, which went into effect in March, 2020. (Testimony of Assistant Principal and School District Exhibit 8, p. 6).

18. The IEP dated September 23, 2020 referenced Petitioner's struggles with emotions, conflict with others, and personal hygiene. It stated that Petitioner would continue to work on these areas. But no specific goals were set. (School District Exhibit 8).

19. The IEP dated September 23, 2020 was set up this way because the Petitioner was in distance learning at the beginning of the 2020-2021 school year. (Testimony of High School Special Education Teacher).

20. The IEP dated April 8, 2021, noted that the Petitioner's behavior interfered with the Petitioner's learning and the learning of other students. (School District Exhibit 9).

21. The IEP dated April 8, 2021 mentioned the BIP and that it could not be updated due to distance learning. (School District Exhibit 9, p. 7).

22. The IEP dated April 8, 2021 referenced Petitioner's struggles with emotions, conflict with others, and personal hygiene. It also noted that Petitioner had improved in these areas. However, no specific goals were set. (School District Exhibit 9).

23. The IEP dated April 27, 2021, noted that the Petitioner's behavior interfered with the Petitioner's learning and the learning of other students. (School District Exhibit 10).

24. The IEP dated April 27, 2021, mentioned the BIP and that it could not be updated due to distance learning. (School District Exhibit 10, p. 7).

25. The IEP dated April 27, 2021 did not contain goals to help the Petitioner manage conflict better. (School District Exhibit 10).

26. No behavior problems that interfered with Petitioner's learning and school experience were noted during the 2020-2021 school year. (Testimony of High School Special Education Teacher).

27. However, given that Petitioner had prior behavior problems in school attendance and his lack of behavior problems during online school, does not mean his behavior should not have been assessed in the Petitioner was returning to in person school. (School District Exhibit 5).

28. Parent did not testify to any behavior problems during the 2020-2021 school year. (See, Testimony of Parent, and School District Exhibit 10, p. 7).

B. CLAIMS OF FAILURE TO ASSESS PETITIONER’S NEEDS FOR  
SUPPLEMENTAL AIDS AND ONE ON ONE ASSISTANCE

29. The IEP dated February 14, 2019, found the Petitioner qualified for special education services in the area of reading, written language, mathematics, and behavioral/social skills. (School District Exhibit 6).

30. The IEP dated February 14, 2019 noted that Parent was concerned that Petitioner continue to make progress in academic and social areas. (School District Exhibit 6, p. 6).

31. The IEP dated February 14, 2019 provided the following supplemental aids: The Petitioner was given text to speech assistance and verbal prompts for on task behavior. The Petitioner was also given access to manipulatives and 100 charts and calculator to help in mathematics. The Petitioner was to be monitored when traveling the campus during transitions, to and from the restroom, and to and from the bus. The Petitioner’s BIP was incorporated into the IEP dated February 14, 2019. (School District Exhibit 6, p. 11-12).

32. The IEP dated February 14, 2019, did not provide for a one on one aide. There is no evidence that indicates that such a request was made by the Parent. There was also no evidence that Petitioner needed a paraprofessional one on one aide to make appropriate progress in school. (Testimony of Parent and Middle School Special Education Teacher).

33. The IEP dated February 10, 2020, found the Petitioner qualified for special education services in the area of reading, written language, mathematics, and behavioral/social skills. It provided for supplementary aids for the Petitioner. (School District Exhibit 7).

34. The IEP dated February 10, 2020 noted Parent was concerned with Petitioner’s on task behavior in general education. (School District Exhibit 7, p. 8).



35. The IEP dated February 10, 2020 provided the following supplemental aids: The Petitioner was given extra time to complete assignments, use of a calculator, text to speech assistance for reading, reading assistance, and verbal prompts for on task behavior. He was also provided curb to curb transportation assistance. The Petitioner's BIP was incorporated into this IEP. (School District Exhibit 7. p. 13).

36. The IEP dated February 10, 2020, did not provide for a one on one aide. There is no evidence that indicates that such a request was made by the Parent. There was also no evidence that Petitioner needed a paraprofessional one on one aide to make appropriate progress in school. (Testimony of Parent and Middle School Special Education Teacher).

37. The IEP dated September 23, 2020, found the Petitioner qualified for special education services in the area of reading, written language, mathematics, and behavioral/social skills. (School District Exhibit 8).

38. For the IEP dated September 23, 2020, Parent was given written notice and phone notices of the date of the IEP Meeting. Parent failed to attend, but did not object to the IEP presented by the School District. (School District Exhibit 8).

39. The IEP dated September 23, 2020 noted that Parent was concerned that Petitioner could not read the computer screen, and that Petitioner could not use the school given email address and access the Petitioner's Canvas account. (School District Exhibit 8, p. 6).

40. The IEP dated September 23, 2020 provided the following supplemental aids: The Petitioner was given extra time to complete assignments, use of a calculator, except when testing, text to speech assistance for reading, and use of a dictionary. (School District Exhibit 8. pp. 12-13).

41. To solve that problem the IEP dated September 23, 2020 assigned a School Social Worker to work with Petitioner on getting online access. (Testimony of School Social Worker).

42. It took the School Social Worker most of the first quarter to get Petitioner the correct email address and train him to get online. (Testimony of School Social Worker).

43. Parent partially disagreed with this IEP. (School District Exhibit 8).

44. The IEP dated September 23, 2020, did not provide for a one on one aide. There is no evidence that indicates that such a request was made by the Parent. There was also no evidence that Petitioner needed a paraprofessional one on one aide to make appropriate progress in school. (Testimony of Parent and High School Special Education Teacher).

45. The IEP dated April 8, 2021 found the Petitioner qualified for special education services in the area of reading, written language, mathematics, and behavioral/social skills. (School District Exhibit 9).

46. Parent testified he began requesting a one on one paraprofessional aide for Petitioner beginning with the April 8, 2021 IEP meeting. (Testimony of Parent).

[ 47. The IEP dated April 8, 2021 provided supplemental aids to the Petitioner as follows: the Petitioner was given extra time to complete assignments, the use of a calculator except for testing, use of a dictionary, and reading books on tape. (School District Exhibit 9, p. 14).

48. The IEP dated April 8, 2021, did not provide for a one on one aide. There was also no evidence that Petitioner needed a paraprofessional one on one aide to make appropriate progress in school. (Testimony of High School Special Education Teacher and School District Exhibit 9).

49. The IEP dated April 27, 2021 found the Petitioner qualified for special education services in the area of reading, written language, mathematics, and behavioral/social skills. It amended the April 8, 2021, IEP to add parent input. (School District Exhibit 10, p. 2).

50. Parent testified that Parent made a request for a one on one aide, in class and hallways, and a tutor for reading. (Testimony of Parent). The High School Special Education Teacher testified that Parent was granted all his requests at this IEP Meeting. (Testimony of High School Special Education Teacher).

51. The IEP dated April 27, 2021 provided supplemental aids to the Petitioner as follows: Petitioner was given extra time to complete assignments, the use of a calculator except for testing, use of a dictionary, and to read books on tape. (School District Exhibit 10, p. 14).

52. The IEP dated April 27, 2021, did not provide for a one on one aide, or a reading tutor. There was also no evidence that Petitioner needed a paraprofessional one on one aide to make appropriate progress in school. (Testimony of High School Special Education Teacher and School District Exhibit 9).

53. Parent submitted a letter into evidence from a counselor indicating Petitioner needs an aide with him at school. The letter is dated several months after the April 27, 2021 IEP Meeting. It was not provided to the IEP team at the IEP Meeting of April 27, 2021. (Petitioner's Exhibit 3).

54. A one on one aide was not necessary for Petitioner to make academic progress. (Testimony of High School Special Education Teacher).

55. The IEPs at issue provided the necessary supplemental aids for Petitioner to make reasonable academic progress.

C. FAILURE TO DESIGN AN IEP REASONABLY CALCULATED  
TO ENABLE PETITIONER TO MAKE APPROPRIATE PROGRESS

56. The IEP dated February 14, 2019, contained specific learning goals in the areas of reading and mathematics. It also contained social/behavioral goals for hygiene and self control. (School District Exhibit 6).

57. The IEP dated February 14, 2019, set specific levels of performance that the Petitioner was trying to reach during the 2019-2020 school year. (See, School District Exhibit 6).

58. The goals in the IEP dated February 14, 2019 set specific percentages of success per quarter to measure the progress of the Petitioner. (See, School District Exhibit 6).

59. The Progress Reports for this IEP show that Petitioner made satisfactory progress. (School District Exhibit 6, pp. 22 and 23).

60. The Petitioner made academic and social progress under this IEP. (Testimony of Middle School Special Education Teacher and Parent.)

61. The IEP dated February 10, 2020, contained specific learning goals in the areas of reading and mathematics. It also contained social/behavioral goals for hygiene and self control. (School District Exhibit 7).

62. The IEP dated February 10, 2020, set specific levels of performance that the Petitioner was trying to reach during the 2019-2020 school year. (See, School District Exhibit 7).

63. The goals in the IEP dated February 10, 2020 set specific percentages of success per quarter to measure the progress of the Petitioner. (See, School District Exhibit 7).

64. The Progress Reports for this IEP show that Petitioner made satisfactory progress. (School District Exhibit 7, pp. 22 and 23).

65. The Petitioner made academic and social progress under this IEP. (Testimony of Middle School Special Education Teacher and Parent.)

66. The IEP dated September 23, 2020, contained specific learning goals in the areas of reading and mathematics. (School District Exhibit 8).

67. The goals in the IEP dated September 23, 2021 set specific percentages of success per quarter to measure the progress of the Petitioner. (See, School District Exhibit 8).

68. The Progress Reports for this IEP show that Petitioner made satisfactory progress. (School District Exhibit 8, pp. 22 and 23).

69. The Petitioner made academic and social progress under this IEP. (Testimony of High School Special Education Teacher.)

70. The IEP dated April 8, 2021 was a revision of the IEP dated September 23, 2020, due to schools reopening for in person attendance. (Testimony of High School Special Education Teacher).

71. The IEP dated April 27, 2021 was a revision of the IEP dated April 8, 2021. It was revised at the request of the Parent.

72. The goals in the IEPs dated April 8, 2021 and April 27, 2021 set specific percentages of success per quarter to measure the progress of the Petitioner. (See, School District Exhibit 9 and 10).

73. There was no testimony as to the progress the Petitioner made under the April 8, 2021 and April 27, 2021 IEPs. (See Testimony of Parent and High School Special Education Teacher and School District Exhibits 9 and 10)

#### D. DENIAL OF MEANINGFUL PARTICIPATION OF PARENT

74. The IEP dated February 14, 2019, was developed in an IEP meeting by the IEP team. The Parent attended the IEP meeting by phone conference. The Parent did not make any requests that were not agreed to by the School District. The Parent signed and approved the IEP. (School District Exhibit 6).

75. The IEP dated February 10, 2020 was developed in an IEP meeting by the IEP team. The Parent participated. The IEP sets forth specific areas of need for the Petitioner. The Parent did not make any requests that were not agreed to by the School District. The Parent signed and approved the IEP. (School District Exhibit 7).

76. The IEP dated September 23, 2020 was developed in an IEP meeting by the IEP team. The Parent was notified of this meeting, but did not attend. The IEP sets forth specific areas of need for the Petitioner. The Parent signed and approved the IEP. (School District Exhibit 8).

77. The School District sent several notices of the date and time of this IEP meeting. (School District Exhibit 8, pp. 17-22).

78. No reason was given by Parent for the failure to attend this IEP Meeting. (See testimony of Parent).

79. At this IEP meeting the IEP Team, without the parent's participation, drafted and IEP for Petitioner. (See School District Exhibit 8).

80. Notice of Intent to Implement this IEP was sent to Parent on September 23, 2021. (School District Exhibit 8, p. 26).

81. The IEP dated April 8, 2021, was developed in an IEP meeting by the IEP team. The Parent participated. This IEP was a revision of the IEP dated September 23, 2020. The IEP sets forth specific areas of need for the Petitioner. The Parent did not make any requests that were not agreed to by the School District. The Parent signed and approved the IEP. (School District Exhibit 9).

82. The IEP dated April 27, 2021, was developed in an IEP meeting by the IEP team. The Parent participated. This IEP was a revision of the IEP dated April 8, 2021. It was revised at the request of the Parent. The IEP sets forth specific areas of need for the Petitioner. The Parent requested a one on one paraprofessional aide for Petitioner, and a reading tutor. These requests were not agreed to by the School District. The Parent approved the IEP. (School District Exhibit 10, Testimony of High School Special Education Teacher and Parent).

#### E. FAILURE TO IMPLEMENT

83. The IEP dated February 14, 2019 was implemented for February 14, 2019 to February 13, 2020. (See, School District Exhibit 6).

84. The IEP dated February 20, 2020 was implemented for February 10, 2020 to February 9, 2021. (See, School District Exhibit 7).

85. Pursuant to a directive issued by the Governor of the State of Nevada all public schools in Nevada were closed on March 16, 2020, due to the spread of COVID-19. (Testimony of Middle School Special Education Teacher).

86. Petitioner finished the 2019-2020 school year in distance learning. (Testimony of Parent and Middle School Special Education Teacher).

87. The 2020-2021 school year commenced with distance learning only for all students in the school district. (Testimony of Assistant Principal).

88. Because public schools were still closed when the 2020-2021 school year began, Petitioner needed an IEP that would conform to distance learning. (Testimony of High School Special Education Teacher).

89. The third IEP was implemented ON October 2, 2021 for September 23, 2021 to September 22, 2021. (See, School District Exhibit 8).

90. Petitioner could not get online to participate in classes and the School District's Canvas program. (Testimony of Parent, Assistant Principal and High School Special Education Teacher).

91. The Petitioner had trouble getting online for distance learning. The problem was that the Petitioner was given the wrong email address and no training to get on the school district campus website. (Testimony of Parent, Petitioner, and School Social Worker).

92. The School District was aware of this problem because the Parent was calling about it. (Testimony of Parent). It was also noted in the September 23, 2021 IEP. (School District Exhibit 8).

93. Additionally, Petitioner was not attending school during this time. (Testimony of High School Special Education Teacher).

94. It took about eight weeks to get the Petitioner up to speed on this third IEP so that he had access to online distance learning. (Testimony of School Social Worker).



95. The September 23, 2021 IEP provided that a School Social Worker would be assigned to work with Petitioner to get him online. (School District Exhibit 8, p.7).

96. The September 23, 2021 IEP provided for 80 minutes per week of synchronous learning in written expression, 80 minutes per week of synchronous learning of social/independent living skills, 80 minute per week fo synchronous learning of prevocational skills, 80 minutes per week of synchronous mathematics learning and 80 minute per week of synchronous learning of reading. (School District Exhibit 9).

97. Petitioner missed all these classes for the first quarter because the School district failed to train him on how to get online and participate in learning online. (Testimony of School Social Worker).

98. Petitioner also missed a quarter of asynchronous learning under the IEP. (Testimony of School Social Worker).

99. During the pendency of the 2020 - 2021 school year, in approximately March of 2021, the School District changed from distance learning to a hybrid school approach where each student would attend school for two days and be online for three days. (Testimony of High School Special Education Teacher)

100. In early April, 2021, the School District went to a full time in school learning model. (Testimony of High School Special Education Teacher)

101. The fourth IEP was implemented for April 8, 2021 to September 22, 2021. (See, School District Exhibit 9).

102. The April 8, 2021, IEP was developed with the return of students to full time school attendance in April, 2021. (Testimony of High School Special Education Teacher).

103. The fifth IEP was implemented for April 27, 2021 to September 22, 2021. (See, School District Exhibit 10).

#### F. VAGUE AND IMMEASURABLE GOALS

104. The IEP dated February 14, 2019, contained specific learning goals in the areas of reading and mathematics. It also contained social/behavioral goals for hygiene and self control. The goals had standards by which the Petitioner's progress could be measured. (School District Exhibit 6).

105. The IEP dated February 10, 2020, contained specific learning goals in the areas of reading and mathematics. It also contained social/behavioral goals for hygiene and self control. The goals had standards by which the Petitioner's progress could be measured. (School District Exhibit 7).

106. The IEP dated September 23, 2020, contained specific learning goals in the areas of reading and mathematics. The goals had standards by which the Petitioner's progress could be measured. (School District Exhibit 8).

107. The IEP dated April 8, 2021, contained specific learning goals in the areas of reading and mathematics. The goals had standards by which the Petitioner's progress could be measured. (School District Exhibit 9).

108. The IEP dated April 27, 2021, contained specific learning goals in the areas of reading and mathematics. The goals had standards by which the Petitioner's progress could be measured. (School District Exhibit 10).

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel and the Hearing Officer's own research the Conclusions of Law of this Hearing Officer are as follows:

1. The Hearing Office has jurisdiction over the parties and the subject matter of this Due Process Hearing. See, 20 USC §1415, 34 CFR §§ 300.508, 509, 510, and 511, NRS 385.080 and 388.520, and NAC 388.310.

2. The burden of proof is on the School District as to evaluation and the provision of FAPE to a student with a disability. NRS 388.467

3. An Individualized Education Program, ("IEP"), is a document that identifies a child's educational needs and outlines the services required to meet those needs. It also sets measurable goals to measure the child's progress. See, 20 USC §1414(d)(1)(A).

4. The IEP dated February 14, 2019, appropriately assessed the behavioral problems of the Petitioner in that it identified Petitioner's Educational needs, formulated a plan to assist with those behavioral problems, including incorporating Petitioner's BIP, and set measurable goals to measure Petitioner's progress.

5. The IEP dated February 10, 2020 appropriately assessed the behavioral problems of the Petitioner in that it identified Petitioner's Educational needs, formulated a plan to assist with those behavioral problems, including incorporating Petitioner's BIP, and set measurable goals to measure Petitioner's progress.

6. The IEP dated September 23, 2020 failed to appropriately assess the behavioral problems of the Petitioner in that it did not contain strategies to help Petitioner learn self control and deal with frustration, and it had no measurable goals to determine Petitioner's Progress.

While the IEP was based on distance learning, Petitioner could still have used goals and teaching regarding self control, even though in distance learning education bullying was not an issue.

7. The IEPs dated April 8, 2021, and April 27, 2021, failed to appropriately assess the behavioral problems of the Petitioner in that it essentially assumed that because Petitioner Had not problems with behavior during online school he would not have behavior problems in returning to live school. This position is not supported by Petitioner's BIP. These IEPs did not have strategies to help Petitioner learn self control and deal with frustration, and it had no measurable goals to determine Petitioner's Progress.

8. Petitioner's IEP must be reasonably calculated to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances. See, *Andrew F. v. Douglas County School District*, 578 U.S. 330, 137 S.Ct. 988, 999, 197 L.Ed.2d 355 (2017), and 20 USC §1401.

9. The IEP dated February 14, 2019 was reasonably calculated to enable the Petitioner to make progress appropriate to the Petitioner's circumstances. The instruction offered was "specially designed" to meet a child's "unique needs" through an individualized education program. It contained appropriate Supplemental aids for Petitioner.

10. The IEP dated February 10, 2020 was reasonably calculated to enable the Petitioner to make progress appropriate to the Petitioner's circumstances. The instruction offered was "specially designed" to meet a child's "unique needs" through an individualized education program. It contained appropriate Supplemental Aids for Petitioner.

11. The IEP dated September 23, 2020 was reasonably calculated to enable the Petitioner to make progress appropriate to the Petitioner's circumstances. The instruction

offered was "specially designed" to meet a child's "unique needs" through an individualized education program. It contained appropriate Supplemental Aids for Petitioner.

12. The IEP dated April 8, 2021 was reasonably calculated to enable the Petitioner to make progress appropriate to the Petitioner's circumstances. The instruction offered was "specially designed" to meet a child's "unique needs" through an individualized education program. It contained appropriate Supplemental Aids for Petitioner.

13. The IEP dated April 27, 2021 was reasonably calculated to enable the Petitioner to make progress appropriate to the Petitioner's circumstances. The instruction offered was "specially designed" to meet a child's "unique needs" through an individualized education program. It contained appropriate Supplemental aids for Petitioner. While it denied Parent's request for a one on one paraprofessional for Petitioner it was denied because the IEP team believed Petitioner did not need a paraprofessional one on one aide.

14. The IDEA and its implementing regulations require that parents be provided an opportunity to meaningfully participate in the education of their eligible children. The IDEA's procedural safeguards are aimed, in part, at ensuring "that families of such children have meaningful opportunities to participate in the education of their children at school and at home." 20 U.S.C. 1400(c)(5)(B)

15. The IDEA, its implementing regulations, and our case law all emphasize the importance of parental involvement and advocacy, even when the parents' preferences do not align with those of the educational agency. The statute is particularly protective of parents' right to participate in the formulation of their child's IEP because parents not only represent the best interests of their child in the IEP development process, they also provide information about the

child critical to developing a comprehensive IEP and which only they are in a position to know. *Amanda J v. Clark County School District*, 267 F.3d 877, 882 (9<sup>th</sup> Cir. 2001).

16. The Parent meaningfully participated in formulating the IEP dated February 14, 2019.

17. The Parent meaningfully participated in formulating the IEP dated February 10, 2020.

18. For the IEP dated September 23, 2020, the Parent was denied the opportunity to meaningfully participate in the formulation of the IEPs. He was notified of the IEP meeting, but he did not attend. He was provided a notice of intent to implement the September 23, 2019 IEP but Parent did not raise any objection to this IEP.

19. A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification. *Ms. S. ex rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115 (9<sup>th</sup> Cir. 2003).

20. A procedural violation under the IDEA is a denial of FAPE if the Petitioner alleges a procedural violation of the IDEA; the violation significantly impeded the Parent's opportunity to participate in the decision making process; and, the child did not receive FAPE as a result of the procedural violation. 20 USC 1415(f)(3)(E)(ii)(II).

21. This failure to allow the Parent is a procedural violation. It did not significantly impede Parent's opportunity to participate in that he did not object to the September 23, 2021 IEP, and when Parent had other problems with IEP the school District scheduled an IEP Meeting, and Petitioner did not suffer a denial of FAPE as a result of the procedural violation.

22. Thus, the violation does not amount to a denial of FAPE to Petitioner.

23. The Parent meaningfully participated in formulating the IEP dated April 8, 2021.

24. The Parent meaningfully participated in formulating the IEP dated April 27, 2021, in that Parent made the request to amend the IEP dated April 8, 2021. He attended the IEP Meeting. Other than a request for a one on one paraprofessional, the IEP team made the amendments he requests.

25. The IEP dated February 14, 2019 was implemented as drafted and approved.

26. The IEP dated February 10, 2020 was implemented as drafted and approved.

27. The IEP dated September 23, 2020 was not implemented as drafted and approved.

This IEP was designed to for distance learning, yet the School District failed to get Petitioner the necessary training and information for him to join online learning for the entire first quarter of the school year to get Petitioner online.

28. This failure amounted to a denial of FAPE for the Petitioner.

29. After the first quarter there was no further failure to implement the IEP dated September 23, 2020.

30. The IEP dated April 8, 2021 was implemented as drafted and approved.

31. The IEP dated April 27, 2021 was implemented as drafted and approved.

32. "We are mindful that we must not critique an IEP with the benefit of hindsight—instead, we evaluate whether the goals and methods were reasonably calculated to ensure that the child would receive educational benefits at the time of implementation."

*Anchorage School District v. M.P.*, 689 F.3d 1047, 1058 (9th Cir. 2012).

33. The IEP dated February 17, 2019 did not contain vague and immeasurable goals for the Petitioner. The goals were specific, measurable, and were designed to allow the Petitioner to make progress appropriate to Petitioner's circumstances.

34. The IEP dated February 10, 2020 did not contain vague and immeasurable goals for the Petitioner. The goals were specific, measurable, and were designed to allow the Petitioner to make progress appropriate to Petitioner's circumstances.

35. The IEP dated September 23, 2020 did not contain vague and immeasurable goals for the Petitioner. The goals were specific, measurable, and were designed to allow the Petitioner to make progress appropriate to Petitioner's circumstances.

36. The IEP dated April 8, 2021 did not contain vague and immeasurable goals for the Petitioner. The goals were specific, measurable, and were designed to allow the Petitioner to make progress appropriate to Petitioner's circumstances.

37. The IEP dated April 27, 2021 did not contain vague and immeasurable goals for the Petitioner. The goals were specific, measurable, and were designed to allow the Petitioner to make progress appropriate to Petitioner's circumstances.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

IT IS HEREBY ORDERED that the Petitioner is entitled to compensatory education for a total of 60 hours. The compensatory education shall be divided as follows, 12 hours of reading, 12 hours of written expression, 12 hours of mathematics, 12 hours of Prevocational skills, writing and 12 hours of social/independent living skills<sup>4</sup>.

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<sup>4</sup> These hours were calculated based upon the hours of synchronous learning missed by Petitioner in the first quarter of the 2020-2021 school year, and divided by the percentage of time in each area where Petitioner was entitled to synchronous education.



**IT IS FURTHER ORDERED** that these hours of compensatory education shall be focused on the area of need outlined in the April 27, 2021 IEP.

**IT IS FURTHER ORDERED** that the compensatory education shall be completed within five months of the date of this order.

**NOTICE OF RIGHT TO APPEAL**

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision pursuant to NAC §388.315. A party to the hearing may file a cross-appeal within ten (10) days after receiving notice of the initial appeal. If there is an appeal, a state review officer appointed by the Superintendent from a list of officers maintained by the Department shall conduct an impartial review of the hearing pursuant to NAC 388.315. Since this decision is being delivered in both electronic and hard copy, receipt of a copy of this Decision and Order will be determined by either the date of actual delivery or the date of the first attempt to deliver by the U.S. Postal Service.

Dated this 4 day of February, 2022.



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