STATE OF NEVADA DEPARTMENT OF EDUCATION

REVIEW OFFICER DECISION

In the matter of

STUDENT by and through his[1] parent, PARENT[2]

Petitioner-Appellant,

Perry A. Zirkel, State Review Officer

v.

CLARK COUNTY SCHOOL DISTRICT,

Respondent-Appellee.

I. PROCEDURAL BACKGROUND

On April 23, 2019, the Parent filed the complaint in this matter[3] under various legal bases,[4] including the Individuals with Disabilities Education Act (IDEA)[5] and Nevada's corresponding state statute and regulations.[6] The third due process hearing complaint in six months on behalf of the child (hereinafter referred to as "Student"),[7] this 19-page complaint against the Clark County School District (hereinafter referred to as "District") did not specify clear-cut issues, instead extending broadly across eligibility, reevaluation, free appropriate public

[1] The term "his" or "he" is used generically herein instead of designating the actual gender of Student or the Parent.

[2] "Parent" is also used generically herein without differentiation as to father and/or mother.

[3] The record in this matter includes the complaint within a set of exhibits, referred to herein by number, and a transcript of the hearing, cited herein with a "T" followed by the page number.

[4] Although the jurisdiction of the hearing officer and the review officer is limited to the IDEA and its corollary state legislation and regulations, the complaint references a wide range of legal bases, including the Family Education Rights and Privacy Act, the Health Insurance Portability and Accountability Act, the No Child Left Behind Act, Section 504 of the Rehabilitation Act, and common law negligence. Hearing Officer Exhibit 1.

[5] 20 U.S.C. 1401 *et seq*. (2017); 34 C.F.R. §§ 300.1 *et seq*. (2018).

[6] NEV. REV. STAT. §§ 388.419 *et seq*. (2017); NEV. ADMIN. CODE §§ 388.460 *et seq*. (2019). This decision refers to this corollary state statute and administrative code only to whatever extent that they differ in relevant respect from the IDEA legislation and regulations.

[7] The first of the two complaints was fully adjudicated, resulting in a hearing officer decision in the District's favor that, upon the Parent's appeal, a state review officer upheld. The parent withdrew the second complaint. Hearing Officer Decision (HOD), at 3.

education (FAPE), individual educational evaluation (IEE), records consent, and the previous, unappealed hearing officer's decision.[8] The requested relief was similarly broad-based, including money damages, compensatory education, specified personnel (e.g., "Death [sic] and Hard of Hearing therapist") and services (e.g., summer tutoring), and transfer to a particular private school.[9]

The hearing officer conducted a series of status, motion, and prehearing conferences resulting in a final prehearing report on July 23, 2019. As summarized in the report, the responses to the Parent's numerous motions included (1) denial of the recusal motion for lack of factual or legal justification; (2) granting of a subpoena for the private psychologist who conducted the IEE to provide testimony at the hearing but, contrary to the Parent's additional motion, limited to the scope of the issues to be decided; and (3) denial of the Parent's document production motion as untimely and prejudicial.[10] The two issues that the report identified for the hearing were, in summary, whether the District's failure (a) to obtain the Parent's consent for the IEE's release to the District, and (b) to prepare a new individualized education program (IEP) until 122 days after issuance of the IEE each amounted to a denial of free appropriate public education (FAPE)?[11] Neither party objected to the hearing officer's statement of the issues

[8] Hearing Officer Exhibit 1.

[9] *Id*. at 17–18.

[10] Hearing Officer Exhibit 32; *see also* HOD, at 2–3. The prehearing report also reported granting the District's motion to strike certain witnesses from the Parent's extensive list. *Id*. For the specific documentation of the prehearing motions, rulings, and other correspondence before and after the report, see Hearing Officer Exhibits 2–46.

[11] The exact and rather cumbersome wording was as follows:

> Whether the District committed a procedural violation by failing to obtain the Parent's written consent for the release of the IEE to the District, including any supporting documentation utilized in preparation of the report such as the Student's medical records, prior to the release of the report to the Parent and whether such procedural violation seriously impeded the student's right to a free public education ("FAPE") by significantly impeding the Parent's opportunity to participate in the individual [sic] education program ("IEP") decision making process, or caused a deprivation of an educational benefit to the Student; and, whether the District committed a substantive violation which deprived the Student of a FAPE by failing

within the prescribed period.[12]

On September 30, 2019, the hearing officer issued the final[13] decision in this matter, ruling in favor of the District for both issues. For the first issue, the hearing officer concluded that the District had no duty under the IDEA or corollary Nevada law to obtain the Parent's written consent for release of the IEE report. For the second issue, the hearing officer concluded that the absence of a new IEP during the 122-day interval did not result in the requisite substantive loss to the Student or the Parent.[14]

On October 3, 2019, the state superintendent received the Parent's appeal, which was dated September 28, 2019. The appeal provided nothing more specific or supporting than the following claim: "the [hearing officer] decision being bias, predetermine, and not in accordance to IDEA, ADA, and Parental Safeguards."[15]

On October 7, 2019, the state superintendent appointed me as the state review officer (SRO) in this case, with the express direction of submitting the decision "by November 2, 2019."[16]

On October 9, I e-mailed notice to the parties of (a) an initial statement of the issues of

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to prepare a new IEP for 122 days, the time which elapsed between the January 15, 2019 date of the IEE report, and May 17, 2019, the date of the Student's current IEP.

Id. The report clearly explained the exclusion of (a) issues already decided by the prior hearing officer decision (*supra* note 6); (b) adequacy of the IEE; and (c) appropriateness of the new IEP. Hearing Officer Exhibit 32, at 7. At the hearing, the hearing officer reinforced the specific scope for the proceedings and decision. T, at 18–24.

[12] HOD, at 3. The report had specified a period of the following three business days for such purpose. Hearing Officer Exhibit, at 11. The all-encompassing objection was not only procedurally untimely but also substantively insufficient to affect the scope of the hearing. For example, it relied upon a mis-cited decision from another jurisdiction that provided opposing, if any, support. T, at 26; Waggaman v. Forstmann, 217 A.2d 310 (D.C. Ct. App. 1996) (upholding trial judge's discretion to determine whether witness qualified as an expert).

[13] The hearing officer issued the original decision on August 31, 2019 (Hearing Officer Exhibit 44), but issued this amended decision to remove personally identifiable information and to correct a grammatical error. HOD at 1 n.2.

[14] *Id*. at 22. For the requisite loss, the hearing officer cited a series of Ninth Circuit decisions, including *Anchorage School District v. M.P.*, 689 F.3d 1047 (9th Cir. 2012) and *A.M. v. Monrovia School District*, 627 F.3d 773 (9th Cir. 2010), along with the Supreme Court's decision in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017). *Id*. at 13–19.

[15] State Review Officer Exhibit 1.

[16] SRO Exhibit 2. On the same date, the state superintendent also issued to the parties simultaneous notice of my appointment, including the pertinent procedures. *Id.*

the appeal and (b) a structured opportunity for timely submission of suggested revisions to these issues and additional arguments, including specification and support, in relation to the appeal. Upon receiving a requested confirmation of receipt from the District but not the Parent, I followed up with repeated e-mail requests and telephone voicemail messages with safeguards to avoid ex parte communications.[17]

On October 16, after repeated e-mails and follow-up voicemail telephone messages to the Parent without any reply, the Parent responded with an October 16 e-mail that confirmed "I am appealing all aspects of the July 20, - August 2, 2019 Hearing" and that "you should have everything needed in reviewing my due process hearing appeal."[18]

II. STANDARD OF REVIEW

The standard of review for a SRO under the IDEA is for an "independent decision" after examining the entire record.[19] The SRO finds persuasive the interpretation of the Third Circuit in *Carlisle Area School District v. Scott P.,*[20] requiring "plenary review" with one narrow exception: "[the SRO] should defer to the hearing officer's findings based on credibility judgments unless the non-testimonial, extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion."[21]

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[17] The e-mail messages, which went to the e-mail address used in various communications with the Parent and the District that are included in the hearing officer's certified record in this case, repeated the request for the Parent to provide by October 15 "any more specific elaboration or bases of the appeal, with citations to the record and/or applicable law," with the District to provide me with any rebuttal revision and/or brief by October 20. SRO Exhibit 3.

[18] *Id*. Without denying having read the e-mail messages or having heard the voicemail messages, the Parent appeared to claim that review officer communications to the parties not delivered by U.S. Postal Service are invalid. *Id*. It is not necessary to enter into the technicalities of such distracting disputation, because, as an overriding matter, the Parent expressly declined the opportunity to submit any additional arguments, including specifications or support, to the above-quoted catchall statement of appeal.

[19] 34 C.F.R. § 300.514(b)(2)(i) and (v) (2018).

[20] 62 F.3d 520 (3d Cir. 1995).

[21] *Id*. at 529. The Third Circuit explained that "beyond this rather narrow class of record-supported, credibility-based factual findings, we think that, to give the statute's language about 'independent' decisions effect, the [SRO] must have much more leeway in reviewing other non-credibility based findings of the hearing officer."

III. ISSUES[22]

As a threshold matter, the scope of this SRO decision is limited to answering these two questions:

1. Did the hearing officer engage in prejudicial partiality, including predetermination, in this case?
2. Was the hearing officer's decision in accordance with the IDEA, specifically with regard to the rulings that the district did not deny FAPE as a result of (a) not obtaining consent for the release of the IEE report, and (b) the timing of the new IEP after issuance of the IEE?

IV. FINDINGS OF FACT[23]

On October 6, 2014, in the wake of Student's enrollment in the District as a preschooler, the requisite team determined that Student was eligible under the IDEA and developed an IEP.[24]

On November 14, 2016, a reevaluation determined that the Student did not qualify under the autism classification of the IDEA and corollary Nevada regulations, and the requisite team,

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Id. at 528–29 (citing Perry A. Zirkel, *The Standard of Review Applicable to Pennsylvania's Special Education Appeal Panel,* 3 WIDENER J. PUB. L. 871, 892 (1994). The Ninth Circuit indirectly appeared to approve of this approach. Amanda J. v. Clark Cty. Sch. Dist., 267 F.3d 877, 888–89 (9th Cir. 2001).

[22] These two issues, which are a slight refinement of the initial statement included in the aforementioned notice to the parties (SRO Exhibit 3), are based on the general duties of the SRO (NEV. ADMIN. CODE § 388.315(1)) and the broad-based scope of the appeal (text accompanying *supra* note 15) as limited by the jurisdiction of the SRO, which does not extend to the ADA and any procedural safeguards beyond the IDEA, and the issues of the hearing (*supra* note 11).

[23] Although not disturbing the Hearing Officer's exclusion of the following exhibits in light of the justifiable scope of the hearing (*supra* note 11), these findings reference a few of these exhibits briefly for the purpose of providing context to facilitate understanding by a reviewing court or other readers of the legal analysis: Parent Exhibits 3, 4, 8, 9; District Exhibits 4–6; Parent Exhibit 7/District Exhibit 7; Parent Exhibits 12A,B,C; District Exhibits 8–10, 12, 16, largely 18; and Parent Exhibit 13/District Exhibit 11; District Exhibit 21. T, at 20–24, 35–37, and 166–70. These limited references are identified herein with brackets in the starting and ending footnotes of this section of the decision. However, the legal conclusions do not reference or rely on any of these contextual findings. Finally, per the applicable standard of review, these factual findings are independent of the HOD with the exception of the identified (*infra* text accompanying notes 34-35 and 55–57) key credibility-based determination.

[24] *E.g*., Parent Exhibit 1, at 1. The District did not identify Student's hearing impairment at the time. T, at 347.

which included the Parent, agreed to continue special education services instead based on eligibility of hearing impairment.[25]

The November 3, 2017 IEP provided for special education services for 90 minutes per week and the related services of transportation (10 min./wk.) and speech/language pathology (30 min./wk.) for placement mostly in a general education class until November 2, 2018.[26]

For the school year at issue, which is 2018-19, Student was a second grader in the elementary school attended since kindergarten.[27]

On September 24, although Student's periodic progress reports continued to be generally positive,[28] Parent insisted on a IEE of Student for autism and ADHD at public expense and refused any other reevaluation or IEP meeting in the meanwhile.[29]

On September 26, the District agreed to provide an IEE at public expense, including notification of pertinent procedures.[30] Upon meeting with the Parent, the evaluator obtained signed consent for release to the District, per the applicable District policy and per the evaluator's standard practice.[31]

During the rest of the 2018–19 school year, Student made, with limited exception,

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[25] [Parent Exhibits 7–9 and 12A. The reevaluation noted that Student's was an English language learner, with an "emerging" level of English proficiency. Parent Exhibit 7/District Exhibit 7, at 3.]

[26] [Parent Exhibit 12B/District Exhibit 9]; T, at 339–40, 354.

[27] *E.g.*, T, at 354.

[28] Parent Exhibit 10/District Exhibit 14 The overall grades, for example, were consistently in the B–C range with the limited exception of a D in the last of these reports, which was generated on October 29, 2018. *Id*.

[29] *E.g.*, District Exhibit 2, at 5–7; D-18, at 14-15. In a letter a week later, Parent reemphasized his refusal for the District to conduct any other evaluation or to schedule "any type of meeting" for Student until after the IEE. District Exhibit 18, at 17; T, at 185–86.

[30] District exhibit 20. In the notice letter to the Parent, the procedures included the cost limit and the scheduling of a team meeting after "the IEE Report is received by the District and shared with [Student's] school." *Id*. In the detailed attachment, the evaluator criteria included the following procedure:

> The evaluator must have parental permission to communicate and share information with the [District]…. Results must be sent to the [District] prior to or on the same day that results are provided to the parents.

Id. at 12.

[31] T, at 316–17.

notable progress in reading, math, written expression, and English proficiency.[32]

On January 15, 2019, the licensed psychologist specializing in pediatric neuropsychology who completed the IEE on January 12, emailed the IEE report to the District and, two hours later, personally delivered it to and discussed it with the Parent.[33] Before conducting the IEE, she obtained signed written consent from the Parent for release of the report to the District, per the aforementioned[34] procedures.[35]

On April 23, 2019, the Parent filed the complaint for the due process hearing in this case.[36]

On April 25, 2019, the District sought the Parent's consent to conduct the additional assessments for development of a new IEP for Student.[37] In a series of immediately subsequent e-mail exchanges, the Parent made clear that his understanding was that the IEP must be solely based on the IEE.[38]

On May 17, the IEP team met, and the Parent agreed to the new IEP, which kept the student's eligibility classification as hearing impairment.[39]

V. CONCLUSIONS OF LAW

The conclusions of law for the first issue are based, by necessity, on a review of the entire record in this case. In contrast, the legal conclusions for the second issue are based on the factual

[32] *E.g.*, T, at 96–103, 115, 120–22, 193; D-15. Additionally, her grades improved during the school year. T, at 118. Finally, her related services providers reported notable gains in their respective areas of audiology and speech/language. T, at 345 and 357.

[33] T, at 311, 316.

[34] *See supra* note 30.

[35] *Id*. at 316–17.

[36] *See supra* notes 3–9 and accompanying text.

[37] [Parents Exhibit 12C, at 13.]

[38] [*E.g., id*. at 6: "I do expect her IEP to be written with goals and objectives implemented from the data taken from her IEE report and no exceptions. The District is not permitted to perform any evaluations on [Student] and all [his] evaluations will be preformed [sic] by an outside source….]

[39] [*Id*. at 21–43/District Exhibit 10.] At that time, only four school days remained in the academic year. T, at 237.

findings recited in Section IV of this decision.[40]

1. Did the hearing officer engage in prejudicial partiality, including predetermination, in this case?

First, as a general matter in line with applicable duties,[41] I conclude after examining the entire hearing record that the procedures were consistent with the relevant requirements for due process.

Second, more specifically with regard to the applicable requirements for impartiality,[42] the Parent failed to claim, and the record fails to show, any violation of the regulatory or case law requirements for impartiality. Instead, the Parent's various recusal motions appear to concern the separable standards for the competence qualifications of IDEA hearing officers.[43] For example, in his initial rejection of the hearing officer's appointment from the state-mandated list and in his subsequent recusal motion,[44] Parent seems to have insisted that hearing officers must have a legal career focused on special education law.[45] The applicable federal and state law has no such requirement. Similarly, the state statutory procedures enacted to fulfill the IDEA mandate[46] do not provide for off-list appointments.[47]

Third, providing even more allowance for the Parent's pro se status, if one were to divine

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[40] *See supra* note 23 for the boundaries of the Factual Findings section.

[41] NEV. ADMIN. CODE § 388.315(1)(b) (2019).

[42] 20 U.S.C. § 1415(f)(3)(A)(i) (2017). For the related case law, see, e.g., Peter Maher & Perry A. Zirkel, *Impartiality of Hearing and Review Officers under the Individuals with Disabilities Education Act: A Checklist of Legal Boundaries,* 83 N.D. L. REV. 109 (2007); Elaine Drager & Perry A. Zirkel, *Impartiality under the Individuals with Disabilities Education Act*, 86 EDUC. L. REP. 11, 27–30 (1994) (finding actual bias rather than appearance of bias to be the prevailing standard for IDEA hearing officers, thus providing a high hurdle for conduct-based challenges).

[43] 20 U.S.C. § 1415(f)(3)(A)(ii)–(iv) (2017).

[44] NEV. ADMIN. CODE § 388.310(16) (2019) (mandating a list of hearing officers who meet the IDEA criteria plus having completed 40 hours of training, including 24 hours in special education law, plus annual additional training).

[45] Hearing Officer Exhibit 7, at 2. He rationalized his insistence be referring to having "the person who cleans your sewage … perform a serious medical procedure on you. *Id*. Coincidentally, his official list of three choices, who instead are on the review officer list, included me. *Id*.; *see also* Hearing Officer Exhibit 12.

[46] 34 C.F.R. § 300.511(c)(3) (2018).

[47] NEV. REV. STAT. § 388.463(1)–(3) (2017).

that his reference in the appeal to bias and predetermination[48] extended to the hearing officer's conduct during the prehearing and hearing process, the Parent has not provided any specific showing of either of these claims. Indeed, an objective review of the record of the prehearing and the transcript of the hearing reveal that the hearing officer far exceeded the legal standards for impartial conduct.[49] Moreover, the hearing officer's management of the hearing exceeded the professional norms of fairness in IDEA hearings, as amply illustrated by (a) the patient responses to the repeated interruptions of the Parent[50] and the accompanying disruptions of the Parent's advocate,[51] and (b) the hearing officer's tempered guidance for the Parent, in light of his pro se status and evident misunderstandings of his legal rights,[52] to stay within the confines of the hearing, thus not only protecting the public interest in efficiency but also the Parent's and Student's interest in efficacy.[53]

Thus, the record is amply clear in this matter that the hearing officer did not engage in the prejudicial partiality, including predetermination, in this case.

2. Was the hearing officer's decision in accordance with the IDEA, specifically with regard to the rulings that the district did not deny FAPE as a result of (a) not obtaining consent for the release of the IEE report, and (b) the timing of the new IEP after issuance of the IEE?

a. Consent

The consent issue on appeal also clearly resolved in favor of the respondent-district for

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[48] *See supr*a note 15 and accompanying text.

[49] *E.g.*, Maher & Zirkel, *supra* note 42, at 180 n.44 (deriving "presumptively impartial" standard from the case law specific to hearing officer conduct); Drager & Zirkel, *supra* note 42, at 27–30 (finding that the prevailing standard in the case law is actual, rather than appearance of, bias, thus providing a high hurdle for either party's conduct-focused impartiality challenges).

[50] *E.g.*, T, at 34, 37, 295, 296, III-8, and III-23.

[51] *E.g.*, *id*. at 26, 134, 141, 283, and 290.

[52] The many examples of such misunderstanding included not only the boundless extent of the 19-page complaint (*supra* notes 8–9 and accompanying text) and the illusory rights of hearing officer qualification and selection (*supra* notes 44–47 and accompanying text), but also the following inferably asserted but legally nonexistent rights with regard to the next issue. *See infra* note 68 and text accompanying notes 54 and 58–59.

[53] An obvious example is the hearing officer's guidance about legal representation and closing statements. T, at III-6 *et seq*.

more than one reason. First, contrary to the Parent's position, neither the IDEA regulations nor the IDEA case law establishes a school district obligation to obtain parental consent before receiving a district-funded IEE.[54] Second, even if there were such an IDEA obligation, the proof is preponderant that the Parent provided said consent upon the introductory meeting with the private psychologist who conducted the IEE. The hearing officer reached this credibility-based factual finding[55] based on the testimony of the private psychologist.[56] Per the applicable review standard,[57] this finding is entitled to deference here, because neither the entire record in this case nor the non-testimonial, extrinsic evidence within it justifies a contrary conclusion. As an incidental matter, which is tangential to this issue, the Parent's implicitly asserted right to receive the IEE first[58] is without any foundation in the IDEA regulations and case law.[59]

b. Timing of the New IEP

The issuance of the IEP 122 days after the delivery of the IEE is a closer question in terms of procedural FAPE. The IDEA's stay-put requirement[60] accounted for a substantial but imprecise segment of this interval[61]; yet, whether school districts have an obligation to conduct

[54] Although not required by the IDEA, the District's policies, which the Parent received, required the IEE provider to obtain such parental permission as a condition for payment. *See supra* note 30.

[55] HOD, at 5.

[56] T, at 316–17.

[57] Even if there were such a right under the IDEA, the record shows a two-hour difference between the e-mail to the District and its in-person review with the Parent (*supra* note 33 and accompanying text) but lacks any evidence of a resulting FAPE denial for the Student or Parent. Moreover, the Parent's accompanying argument that the evaluator and the District each had a legal duty to offer the option of parental payment of the IEE is both without any basis in the IDEA and without any evidence of the requisite denial of FAPE.

[58] *E.g.*, T, at 331 and 335–36.

[59] *E.g.,* Perry A. Zirkel, *Independent Educational Evaluation Reimbursement under the IDEA*, 341 EDUC. L. REP. 555 (2017).

[60] 20 U.S.C. § 1415(j) (2017); 34 C.F.R. § 300.528 (2018).

[61] The record in this case does not make sufficiently clear the duration of the prior two proceedings, although the appeal of the one and/or the filing, then withdrawing of the second one appears to have accounted for limited parts of the period between the January 15 issuance of the IEE and the April 23 filing for the present proceeding. T, at 187–88. Moreover, it is clear that from April 23 to the issuance of the IEP, the IDEA's stay-put requirement was in effect.

the annual review of the child's IEP during stay-put is not clearly settled.[62] The Ninth Circuit appears to provide a qualified answer within a narrow set of circumstances.[63] More specifically, the court concluded that stay-put did not excuse a district's statutory obligation to have an IEP in place at the beginning of the school year in the following circumstances: (1) the IEP expired before the start of the school year; (2) the district adopted a "take it or leave it" approach, and (3) the needed IEP revisions were limited to written instruction, not amounting to a change in placement.[64] It is unlikely but uncertain that this narrow conclusion extends to the different circumstances in the present case.[65] With or without the stay-put days, the District's failure to have an IEP in place amounted to a procedural violation for the limited amount of time within the applicable hiatus after deducting (1) the days when school was not in session,[66] and (2) a reasonable period[67] for these to authorized IEP preparations: (a) to "consider" the IEE,[68] (b) to conduct any necessary reevaluation,[69] and (c) to schedule the meeting to develop the IEP.[70]

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[62] *Compare* C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 71–72 (3d Cir. 2010); Letter to Watson, 48 IDELR ¶ 284 (OSEP 2007) (yes), *with* C.P. v. Leon Cty. Sch. Bd., 483 F.3d 1151, 1157–58 (11th Cir. 2007); Kuszewski v. Chippewa Valley Sch., 131 F. Supp. 2d 926, 931 (E.D. Mich. 2001), *aff'd on other grounds*, 58 F. App'x 655 (6th Cir. 2003) (no).

[63] Anchorage Sch. Dist. v. M.P., 689 F.3d 1047 (9th Cir. 2012).

[64] *Id*. at 1056–57.

[65] In this case, for example, the IEP extended to November of the year in question, and the District requested an IEP meeting approximately a month earlier.

[66] The District school calendar shows approximately 10 school holidays during the 122-day period. D-1, at 2.

[67] *E.g.*, Perry A. Zirkel, *Child Find: The "Reasonable Period" Requirement*, 311 Educ. L. Rep. 576 (2015) (establishing reasonable time to arrange for the evaluation); M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996) (deducting from compensatory education "the time reasonably required for the school district to rectify the problem").

[68] 34 C.F.R. § 300.502(c). Again contrary to the Parent's inferable understanding, the IDEA did not obligate the District to follow the IEE and not to conduct any further reevaluation of the Student. Indeed, contrary to the Parent's adamant insistence on a publicly funded IDEA, if the District had opted not to provide it, both the applicable regulations and the case law would require the reasonable opportunity for the District's reevaluation as a prerequisite for any entitlement to an IEE. *Id.* § 300.502(b)(1) (2018); C.S. v. Governing Bd. of Riverside Unified Sch. Dist., 321 F. App'x 630 (9th Cir. 2009); *see also* G.J. v. Muscogee Cty. Sch. Dist., 668 F.3d 1258 (11th Cir. 2012); Genn v. New Haven Bd. of Educ., 219 F. Supp. 3d 976 (D. Conn. 2016); Letter to Zirkel, 52 IDELR ¶ 77 (OSEP 2008).

[69] *Id*.

[70] It took approximately 37 days to schedule the IEP meeting, which included reasonably diligent efforts to do so. *E.g*., T, at 189; District Exhibit 2, at 10–12.

Finally, however, application of the "two step" inquiry for procedural violations[71] results in the conclusion that Student did not suffer a loss of the substantively requisite[72] progress.[73] Alternatively, in light of the limited amount of residual time with or without the stay-put days, my carefully considered conclusion is that the violation did not reach the requisite level of "*significantly* imped[ing] the parent's opportunity to participate in the decision-making process."[74] Punctuating this second, closer conclusion, as the hearing officer justifiably concluded, the Parent did not provide any specific request or evidence for an equitably tailored remedy for any cognizable loss of parental participation.

Consequently, after carefully examining the record and the related case law under the applicable standard of review, the SRO concludes the hearing officer did not err in her rulings. More specifically, the IEE-consent and IEP-timing claims did not amount to violations under the IDEA and corollary state law to which the Parent was entitled to any of the requested remedies.

[71] *E.g., Anchorage Sch. Dist. v. M.P.*, 689 F.3d at 1054; 20 U.S.C. § 1415(f)(3)(E) (2017). The other Ninth Circuit cases concerning timing of IEP meetings, which did not have stay-put at issue, are too distinguishable to provide decisive guidance for this specific issue. *E.g.*, Doug C. v. Haw. Dep't of Educ., 720 F.3d 1038 (9th Cir. 2013) (ruling, in effect, that the IEP meeting was held too quickly); A.M. v. Monrovia Unified Sch. Dist., 627 F.3d 779 (9th Cir. 2010) (focusing on delay in relation to California statutory deadline upon in-state transfers).

[72] Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017) ("a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances").

[73] *See supra* note 32 and accompanying text.

[74] 20 U.S.C. § 1415(f)(3)(E)(ii) (2017) (emphasis added).

VI. DECISION AND ORDER

Tthe hearing officer's decision is affirmed.

Dated: November 1, 2019 Perry A. Zirkel, State Review Officer

NOTICE OF APPEAL RIGHTS

The decision of this SRO is final unless a party appeals the decision. A party may appeal from the decision of this SRO by initiating a civil action in a court of competent jurisdiction within ninety (90) days after receipt of this decision (NAC § 388.315).