

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 ¹ , by and through Parent,)	OFFICER
)	
Petitioner,)	Date: 11/19/2021
)	
v.)	
)	Hearing Officer: David A. Stephens
SCHOOL DISTRICT,)	
)	
Respondent.)	

INTRODUCTION

This matter came on for hearing on November 1, 2021 at 9:00 a.m. The Petitioner’s parent² was present and represented by Marianne Lanuti, Esq.³; the Respondent was represented by Daniel Ebihara, Esq.; David A. Stephens was the presiding Hearing Officer. The hearing continued on November 2, 2021, starting at 9:00 a.m. The hearing was held by video conference. The Record was closed on November 2, 2021.

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.

PRELIMINARY MATTERS

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

² Ibid.

³ Petitioner’s Parent appeared in proper person until the commencement of the Hearing, at which time Marianne Lanuti, Esq., became the attorney of record for the Petitioner.

This case arises out of a due process complaint filed by the Petitioner on August 13, 2021. The Hearing Officer was appointed on August 16, 2021.

At the Status Conference the parties indicated that the hearing would take five days. The hearing officer and the parties could not find five days for a hearing until November 1, 2021. Therefore, at the request of the School District an order continuing deadlines was entered extending the decision deadline to November 19, 2021.

The Pre-hearing Conference was held on September 27, 2021 with a Pre-hearing Report and Order being prepared and served that same day. At the initial pre-hearing conference the issues were outlined and decided by the parties in addition to other matters set forth in the Pre-hearing Report and Order, including the decision of the Petitioner's Parent that the Petitioner would attend some or all of the hearing and that the hearing would be open.

Due to concerns raised by the Petitioner, in an email to opposing counsel and the Hearing Officer, regarding the Pre-hearing Report and Order a Supplement to the Pre-hearing Report and Order was prepared and served on October 4, 2021.

A second Pre-hearing Conference was held on October 27, 2021.

The following individuals testified during the hearing; Special Education Teacher, General Education Teacher, School Nurse, LINKS Itinerant Teacher, and Petitioner's Parent, ("Parent").⁴

The School District offered Exhibits SD-4 to SD-12, SD-14, SD-15, and SD-18 to SD-20, which were admitted.

The Petitioner offered Exhibits P-2, and P-4 to P-11, which were admitted.

⁴ See Appendix A for the identifying information regarding these witnesses.

The Petitioner offered Exhibit P-3, which was not admitted.

ISSUES

The issues to be determined are as follows:

A. Whether the Student's IEPs, dated on or about 10/14/2019, with its amendments, 1/19/2021, and 5/24/2021, were reasonably calculated to allow the Student to make progress appropriate to the Student's circumstances, and if not, did this failure amount to a denial of a free appropriate public education, ("FAPE").

B. Whether the parent was denied meaningful participation in formulating the Student's IEPs, dated on or about 10/14/2019, with its amendments, 1/19/2021, and 5/24/2021, and if so, whether this failure amounts to a denial of FAPE.

C. Whether the Student was properly assessed and evaluated in formulating the Student's IEPs, dated on or about 10/14/2019, with its amendments, 1/19/2021, and 5/24/2021, and if not, whether this failure amounts to a denial of FAPE.

D. Whether the Student's IEPs, dated on or about 10/14/2019, with its amendments, 1/19/2021, and 5/24/2021, provided appropriate accommodations, including, but not limited to medical accommodations, were reasonably calculated to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances, and if not, did this failure amount to the denial of FAPE.

FINDINGS OF FACT

1. Petitioner is described as a bright and smart child. Petitioner was age nine and in the third grade at the time of the hearing.

2. Petitioner suffers from Autism Spectrum Disorder.

3. In addition to suffering from Autism Spectrum Disorder, Petitioner is medically fragile and suffers from at least the following medical conditions, some of which are life threatening: Hypoglycemia, immunodeficiency, food allergies and other allergies, celiac disease, and atrial septal defect which is a heart condition. (See testimony of Parent and the School Nurse.⁵)

4. Due to these medical problems the Petitioner must have almost immediate access to Glucagen and an Epipen, if his blood sugar falls too low or he has an allergic reaction. (Testimony of Parent and School Nurse).

5. Petitioner was assessed by the Multidisciplinary Team, (“MDT”), and the MDT determined that Petitioner qualified for special education services from the School District on September 17, 2018. (See Exhibit SD-10, p. 2).

6. Once the Petitioner started school and up until the commencement 2021-2022 school year Petitioner attended an elementary school in the School District. (See Testimony of Parent).

7. An Individualized Education Plan, (“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. 20 USC §1414(d)(1)(A).

8. In any given case the IEP is developed or updated by the “IEP team” which must include at least the following people: The child’s parent, a regular education teacher of the child, a special education teacher of the child, a representative of the local educational agency, and expert regarding interpreting evaluations and their educational implications. See 20 USC

⁵ For ease of reference and to maintain confidentiality, the various individuals testifying will be specifically identified by position, rather than name, and their names are set forth in Exhibit A attached to this decision.

§1414(d)(1)(B).

9. With respect to this matter the following IEPs are at issue. IEP dated January 10, 2019, IEP dated March 29, 2019, which amended the IEP dated January 10, 2019, IEP dated May 22, 2019, which amended the IEP dated January 10, 2019, IEP dated October 4, 2019, and IEP dated May 24, 2021. (See Exhibits SD-6 through SD-10).

10. The IEP dated January 10, 2019 was developed in an IEP meeting by the IEP team. The Parent participated. The IEP developed at the IEP Meeting 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 IEP set specific levels of performance that the Petitioner was trying to reach during the 2018-2019 school year. The IEP had measurable goals for the Petitioner. The Parent signed and approved the IEP. The IEP was then noticed for implementation commencing January 10, 2019. (See, Exhibit SD-6).

11. The Petitioner's IEP dated January 10, 2019, including the supplementary aids, (Exhibit SD-6, pp. 25-26), provided appropriate accommodations, to allow the Petitioner to make progress appropriate the Petitioner's circumstances.

12. This IEP included teaching in a general education environment and education in a resource environment. (See Exhibit SD-6).

13. The Petitioner was properly assessed and evaluated in formulating the Petitioner's IEP dated January 14, 2019, along with the supplements.

14. The March 28, 2019 IEP is an amendment of the January 10, 2019 IEP. It added additional services for social behavior, occupational therapy, and speech services. The Parent agreed to this amended IEP. (See Exhibit SD-7).

15. The May 22, 2019 IEP is an amendment of the January 10, 2019 IEP. It added additional services for social behavior, occupational therapy, and speech services. The Parent agreed to this amended IEP. (See Exhibit SD-8).

16. An annual IEP meeting was held on October 4, 2019. Parent was present at that meeting and able to participate. The IEP team at the meeting developed a new IEP plan. The Parent did not request any actions which were not included in the IEP. The IEP team agreed that this plan would meet the Petitioner's needs. The IEP set up for specific levels of performance that the Petitioner was trying to reach during the 2019-2020 school year. The IEP had measurable goals for the Petitioner. The Parent signed and approved this IEP. The IEP was then noticed for implementation commencing October 4, 2019. (See Exhibit SD-9).

17. The October 4, 2019 IEP provided for the following specialized services: social/behavior for 150 minutes per week, in resource, writing/social assessed behavior for 100 minutes per week in resource, writing social behavior for 140 minutes per week in general education, social behavior which included recess, transitions, lunches, specials for 525 minutes per week in general education, reading social behavior 550 minutes per week in general education, and math social behavior for 330 minutes per week in general education. (See Exhibit SD-9).

18. The October 4, 2019 IEP included a significant increase in supplementary aids and services for the Petitioner. The IEP shows that the Petitioner made progress under the prior IEP and was close to grade level in most areas at the time the October 4, 2019 IEP was formulated and implemented. The Petitioner also still had communication needs and deficiencies. (See Exhibit SD-9).

19. The Petitioner was properly assessed and evaluated in formulating the Petitioner's IEP dated October 4, 2019.

20. The Petitioner's IEP dated October 4, 2019 provided appropriate accommodations for the Petitioner to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances.

21. A Behavioral Implementation Plan, ("BIP"), for the Petitioner was put into place on October 13, 2019. The goal of the BIP was to help the Petitioner to improve his social behavior. The concerns included following directions, starting work independently, refusing to go forward with work, and becoming frustrated which affected the Petitioner's willingness to participate in class. (See, Exhibit SD-11).

22. The 2020-2021 school year commenced with distance learning only.

23. 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.

24. In early April, 2021 the School District went to a full time in school learning model.

25. Clearly the Petitioner struggled with the distance learning required by the School District from late March 2020 through March 2021.

26. The records show that the speech therapy services and the occupational therapy services to be provided to the Petitioner were practically non-existent during the time the School District was providing remote learning only.

27. Petitioner's report card from his second grade school year, (2019-2020), (Exhibit SD-4), shows that the Petitioner received mainly Cs, with a few As and Bs with one W which

means working on standards and below grade level.

28. The report card for his third grade school year, (2020-2021), (Exhibit SD-4), shows that Petitioner received in Semester 1 all Ws and in Semester 2 a few Ws and a few Fs. The report card for the third grade year indicates the Petitioner really struggles in math and writing.

29. Petitioner previously had been found to have strengths in the areas of reading, oral expression, and math (Exhibit SD-6, p. 18).

30. The report cards show that the Petitioner went backwards in the 2020-2021 school year. (See Exhibit SD-4).

31. For the next school year, (2020-2021), several IEP Meetings were held. The Parent was present and participated in all of those IEP meetings, except the last IEP Meeting on May 24, 2021. The IEP Team developed several drafts of a new IEP plan.

32. The initial IEP meeting for the 2020-2021 school year was held on December 16, 2020. The meeting was continued to January 4, 2021 and again to January 19, 2021.

33. During the IEP Meetings in December 2020 and January 2021 the Parent expressed concerns that the distance learning protocols put together by the School District by reason of COVID-19 concerns were not meeting the educational needs of the Petitioner, due at least in part to the Petitioner's inability to get on the computer to participate in both the general education class and special education class. The Petitioner also had difficulty in turning in assignments and missed a lot of classes online. (See Parent's testimony, Exhibit SD-10, and P-3).

34. At an IEP Meeting on January 27, 2021, Parent began expressing concerns with that the present level of performance noted in the proposed IEPs were from the Petitioner's prior year school work and did not reflect the school work the Petitioner had done since the beginning the

2020-2021 school year and thus those levels were misleading as to the Petitioner's present level of performance. Additionally, the Parent was requesting the source of the present level of performance or the identity of the author so that the Parent could meaningfully participate in the IEP Meetings. (See Parent's testimony and Exhibit SD-10, pp. 13-14, 26-28, 53, 55-56, 82-83, Exhibit 14, p. 156).

35. The Parent also requested, prior to agreeing to participate in another IEP meeting with respect to the May 24, 2021 IEP that the Petitioner be evaluated for medical accommodations in that he suffers from significant medical problems which his learning and also affect his safety at school. (See Exhibit 14, pp. 157 and 159).

36. Parent also requested an independent educational evaluation on April 29, 2021, especially with respect to the Petitioner's medical issues. (See. Exhibit 14, pp. 127, 136). There is no evidence that this independent educational evaluation occurred prior to the hearing.

37. Also during the 2020-2021 school year notices were sent to Parent with respect to meeting to modify the IEP when the School Board approved moving children into a hybrid model of education rather than a full time distance learning.

38. The IEP that was implemented by the School District was formulated at an IEP meeting held on May 24, 2021. Parent did not participate in the IEP meeting that led to the formulation of this IEP. (See Exhibit SD-10, p. 3, and Parent's testimony). Parent did not sign or approve this IEP. This School District noticed Parent of its intent to implement this IEP commencing May 31, 2021. (See Exhibit SD-10).

39. The School District notified Parent of the IEP meeting that led to the May 24, 2021 IEP on May 13, 2021 by email. The School District notified her again by certified letter sent on

May 15, 2021, to the home address which the School District had for the parent. The School District called the Parent about the IEP Meeting on May 17, 2021. On May 17, 2021, the School District sent a second written notice of the IEP Meeting which was placed in the Petitioner's back pack. On May 20, 2021, the School District sent an additional written notice to Parent by standard mail, and on May 21, 2021, the School District sent a third written notice to Parent by standard mail. (See Exhibit SD-10).

40. The May 24, 2021 IEP included specialized instruction for social behavior of 150 minutes per week, written behavior/social expression of 240 minutes per week, reading/social/behavior of 550 minutes per week, math/social behavior of 330 minutes per week, social behavior, (for lunch and transitions), of 225 minutes per week and social/behavior (special education) for 300 minutes per week and related services of speech therapy and occupational therapy for 120 minutes per month. (See Exhibit SD-10).

41. Even though the Parent did not participate or agree to this IEP, the School District implemented this IEP because the prior IEP had expired on October 4, 2020 and the School District believed that the Petitioner needed a new IEP. (See Exhibit SD-10, p. 1).

42. Petitioner's IEP dated January 10, 2019, (Exhibit SD-6), plus the two supplements to this IEP, (Exhibits SD-7 and SD-8), was reasonably calculated to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances. The instruction offered was "specially designed" to meet a child's "unique needs" through an individualized education program. See, *Andrew F. v. Douglas County School District*, 580 U.S. ___, 137 S.Ct. 988, 999, 197 L.Ed.2d 355 (2017), and 20 USC §1401.

43. The Petitioner's IEP dated October 4, 2019 was reasonably calculated to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances. The instruction offered was "specially designed" to meet a child's "unique needs" through an individualized education program. See, *Andrew F. v. Douglas County School District*, 580 U.S. ___, 137 S.Ct. 988, 999, 197 L.Ed.2d 355 (2017), and 20 USC §1401.

44. The Petitioner's IEP dated May 24, 2021 was not reasonably calculated to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances. The instruction offered was not "specially designed" to meet a child's "unique needs" through an individualized education program, (See, *Andrew F. v. Douglas County School District*, 580 U.S. ___, 137 S.Ct. 988, 999, 197 L.Ed.2d 355 (2017), and 20 USC §1401), for the following reasons:

a. The Petitioner went backwards from the previous school year and had not done well the first part of the 2020-2021 school year, but no additional services were added to make this IEP more effective than the prior IEP.

b. The IEP failed to assess and evaluate the Petitioner's needs in that it did not include some of the medical needs and protections which the Petitioner needs to attend school safely.

c. The IEP did not add any significant additional time to help the Petitioner regain his levels to prior year's academic levels or to make progress appropriate to the Petitioner's circumstances.

d. The IEP failed to properly assess and evaluate the Petitioner's needs to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances is a denial of FAPE.

45. The IEP's failure to properly assess and evaluate the Petitioner's needs to enable the Petitioner to make progress appropriate in light of the Petitioner's circumstances is a denial of FAPE.

46. The Parent was not denied meaningful participation in formulating the Student's IEPs, dated on or about 10/14/2019, with its amendments, and the IEP dated 1/19/2021.

47. For the May 24, 2021 IEP the record reflects that the Parent was provided notices of the IEP meetings, and actually attended many of the IEP meetings. However, it was clear that the Parent believed she could not meaningfully participate in the last IEP meeting until the levels of performance were updated for the COVID-19 distance learning, or alternatively the parent was provided the identities of the persons participating in preparation of the present levels of performance.⁶ The record does not show that this information was provided to the Parent prior to the IEP Meeting of May 24, 2021.

48. The Parent was denied meaningful participation in formulating the Student's IEP dated 5/24/2021, and this failure amounts to a denial of FAPE.

49. The Petitioner was properly assessed and evaluated in formulating the Student's IEPs, dated on or about 10/14/2019, with its amendments, 1/19/2021, and 5/24/2021.

50. The Petitioner was not properly assessed and evaluated in formulating the Student's IEP 5/24/2021 and this failure amounts to a denial of FAPE.

51. The IDEA's stay put provision provides that while an administrative action is pending the Petitioner must remain the then current education placement.

⁶ While it may have been wiser for the Parent to attend the IEP meeting that led to the May 24, 2021 IEP, that is not what the Hearing Officer is hereto determine.

52 The Parent maintains that the School District violated the “stay put” provisions of the IDEA during the pendency of this hearing. The School District concedes that the Petitioner was disenrolled on the first day of school in August of 2021. This was done pursuant to School District policy that when a student does not attend the first day of school the student is automatically disenrolled.

53. Parent was advised by the School District that she could reenroll the Petitioner at any time by simply bringing the Petitioner to school for enrollment. Thus, there is no violation of the stay put provisions.

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.

2. The Petitioner’s IEPs dated January 10, 2019, with its amendments, and October 4, 2019 were reasonably calculated to allow the student to make progress appropriate to the Petitioner’s circumstance.

3. For the IEPs dated January 10, 2019, with its amendments, and October 4, 2019 the Parent was not denied meaningful participation in formulating those IEPs for the Petitioner.

4. The Petitioner was properly assessed and evaluated in forming the Petitioner’s IEPs dated January 10, 2019, with its amendments, and October 4, 2019.

5. The Petitioner’s IEPS dated January 10, 2019, with its amendments, and October 4, 2019 provided appropriate accommodations, including but not limited to medical

accommodation to allow the Petitioner to make progress appropriate to the Petitioner's circumstances.

6. Either the Petitioner was not properly assessed in formulating the Petitioner's IEP dated May 24, 2021, or alternatively, the IEP dated May 24, 2021, did not provide appropriate accommodations, including, and not limited to medical accommodations, which would allow the Petitioner to make progress appropriate to the Petitioner's circumstances.

7. This failure amounted to denial of FAPE for the Petitioner for the May 24, 2021 IEP.

8. As to the IEP dated May 24, 2021 the Parent was denied meaningful participation in formulating this Petitioner's IEP.

9. The School District's failure to provide meaningful participation to the Parent for the May 24, 2021 IEP was a denial of FAPE.

ORDER

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

IT IS HEREBY ORDERED that the Petitioner's IEP dated May 24, 2021 shall be amended to state that a person trained in the use of administration of Glucagen and the use of an EpiPen shall be present at the school when Petitioner is present in school.

IT IS HEREBY ORDERED that the Petitioner's IEP dated May 24, 2021 shall be amended to indicate that when Petitioner is at a school activity off school premises, such as a school field trip, a person trained in the use of administration of Glucagen and the use of an EpiPen shall be present with Petitioner. This person may be the Petitioner's parent if a trained school staff member is not available and so trained.

IT IS HEREBY ORDERED that the Petitioner's IEP dated May 24, 2021 shall be amended to indicate that when Petitioner is at a school activity off school premises, such as a school field trip, Glucagen and an EpiPen shall be present with Petitioner.

IT IS HEREBY ORDERED that the Petitioner is entitled to compensatory education for a total of 80 hours. The compensatory education shall be divided as follows, 15 hours of occupational therapy, 15 hours of speech therapy, 25 hours of writing education and 25 hours of math education.

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 19 day of November, 2021.



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