

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: 10/21/2024
)	
v.)	
)	Hearing Officer: David A. Stephens
SCHOOL DISTRICT,)	
)	
Respondent.)	

INTRODUCTION

This matter comes before the undersigned hearing officer on Petitioner’s Notice of Due Process Complaint filed on May 24, 2024, (hereinafter “Complaint”), HO 1.² I was appointed as the hearing officer on June 4, 2024. HO 2. Respondent’s Response to the Complaint was filed on or about May 24, 2024. HO 3. A resolution meeting was held. The parties, however, were not able to reach an agreement.

PRELIMINARY MATTERS

This case arises out of a due process complaint filed by the Student on May 24, 2024. The Hearing Officer was appointed on June 4, 2024.

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

² The Hearing Officer Exhibits will be referred to as HO followed by an exhibit number; Joint Exhibits will be referred to as J followed by an exhibit number. Petitioner’s Exhibits will be referred to as P followed by an exhibit number and Respondent’s Exhibits will be referred to as R followed by an exhibit number. When citing any exhibit the second number will refer to the page number within the referenced exhibit.

At the Status Conference the parties indicated that the hearing would take three days. The parties jointly moved to extend the decision deadline on June 21, 2024. Based upon the joint motion and a finding of good cause, the hearing officer entered an order extending the decision deadline to October 21, 2024.

A Pre-hearing Conference in the matter was scheduled for, and held, on September 17, 2024. HO 4. At the September 17, 2024, 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. The Pre-hearing Conference Report and Order was issued on September 18, 2024. HO 5.

The following individuals testified during the hearing; Assistant Director of Cleveland Clinic Children’s Autism Development Solutions, (“Director”), Special Education Teacher for Student for 2022-2023 and 2023-2024, (“Student’s Teacher”), Assistant Principal at School Student attends, (“Assistant Principal”), School Psychologist at School Student attends, (“Psychologist”), Student’s Mother, (“Mother”), Student’s Expert and prior private ABA provider, (“ABA Expert”).³

The hearing was held on October 9, 10, and 11, 2024. The Hearing was held by video conference. It was a closed hearing, and the Petitioner was represented by Lyssa LeMay, Esq., and Chris Owens, Esq. Respondent was represented by Daniel Ebihara, Esq.

Hearing Officer exhibits HO-1 through HO-5 were admitted. HO-6 was not admitted. HO-6 is composed of documents from the School District that were produced during the Hearing. Joint Exhibits J-1 to J-13 were admitted. Petitioner offered into evidence exhibits P-6, P-7, P-9, P-12, P-13. P-14, P-16, P-17, P-18, and P-19 which were admitted. Respondent offered

³ See Appendix B for the identifying information regarding these witnesses.

into evidence exhibit R-1, which was admitted.⁴

The decision is due on October 21, 2024, and has been issued within the required timeline pursuant to 34 C.F.R. §§ 300.515(a)(1) and (2) and within a properly extended timeline pursuant to 34 C.F.R. § 300.515(c)(1).

JURISDICTION

The due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Education Act (hereinafter, “IDEA”), 20 U.S.C. §1400 et seq.,⁵ and its implementing regulations, 34 C.F.R. §300 et seq., the Nevada Revised Statutes (NRS), chapter 388 and the Nevada Administrative Code (NAC) chapter 388.

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.

ISSUES

The issues to be determined are as follows:

A. Whether the School District failed to appropriately assess the student for suspected disability, in the areas of functional behavior, speech language, occupational therapy and psycho education analysis from May 24, 2022 to present, and if so was the Student denied a FAPE.

B. Whether from May 24, 2022, the Student’s IEPs were reasonably calculated to

⁴ A more detailed list of Exhibits is attached as Appendix C to this Decision.

⁵ In 2004, Congress reauthorized the Individuals with Disabilities Education Act as the Individuals with Disabilities Education Improvement Act. See Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with Disabilities Education Act. See Pub. L. Chapter 388, and the Nevada Administrative Code (NAC), Chapter 388.

enable the Student to make progress appropriate to the Student's circumstances with respect to the Student's focus, aggressive behavior, educational progress, elopement and restraints, and if not was Student denied a FAPE.

C. Whether from May 24, 2022, the School District failed to properly implement the Student's IEPs in the areas of aggressive behavior, elopement, inability to attend to tasks and supplemental services, and if so, was Student denied a FAPE.

D. Whether from May 24, 2022, the IEP Team impeded the ability of Student's Parent to participate in formulating Student's IEPs by failing to provide prior written notice, by not considering Parent's input relative to the Student, and failing to provide parent complete assessments and records, and if so was Student denied FAPE.

FINDINGS OF FACT

A. BACKGROUND FACTS

1. Glossary of terms:

a. IDEA means the Individuals With Disabilities Education Act, codified as 20 USC⁶ §§1400, et a seq.;

b. IEP means an Individualized Education Program under the IDEA;

c. IEP Team means the team of persons who meet to formulate or amend an IEP and is composed of at least the following persons; LEA, (representative of the local education agency, in this case the School District), parents, the Student's special education teacher, and the Student's general education teacher. See, 34 CFR 300.28 and 300.321;

d. MDT means multidisciplinary team which assesses students for **disabilities**

⁶ USC refers to the United States Code.

and eligibility for special education;

e. Applied Behavior Analysis (“ABA Therapy”) is a behavioral therapy that uses positive reinforcement to help people with autism and other developmental disorders learn new skills and reduce challenging behaviors. (Testimony of Supervisor).

f. A Free Appropriate Public Education, (“FAPE”), means special education and related services provided to every child with a disability through in individualized education program (“IEP”), that is reasonably calculated to enable a child to make progress appropriate to that child’s unique circumstances, at no cost to the child’s family. (See 34 CFR §§300.17 and 300.101).

g. “Autism spectrum disorder” (“Autism”), means a condition which:

(a) Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;

(b) Is usually apparent before the age of 3 years; and

(c) Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

(See, NAC 388.028 and testimony of Director.)

h. A behavioral intervention plan (BIP) is a written plan that helps students improve challenging behaviors and replace them with more appropriate behaviors.

i. PECS means Picture Exchange Communication System, which is a picture communication booklet to help nonverbal students to communicate. (Testimony of **Supervisor**

and Student's teacher).

2. The MDT found Student was eligible for special education on May 11, 2016, based on evaluations that led to findings of disabilities related to autism. The Student was almost six years old when this initial assessment was made. (J-6). See, also NAC 388.387.

3. Based on the findings of the MDT, an initial IEP was developed for the Student. The Student's IEP was annually updated. (See J-7 to J-11).

4. The Student has not been assessed since 2016.⁷ (Testimony of School Psychologist).

5. The Student's Mother waived assessments in 2021. She testified that she waived the assessments because Student was already eligible for special education services, and new assessments would not change that.

6. However, assessments are for more than determining whether a student is eligible for special education services. Those assessments also help to determine where a student is at and what a student's ongoing needs are. (Testimony of ABA Expert).

7. The Student has been attending a specialty school for students with Autism, ("Autism School"), the last two academic years, and is in the disability category of autism. The Student is still attending the Autism School. (Testimony of Assistant Principal).

8. There are no general education students at the Autism School. It is a specialty school. (Testimony of Assistant Principal).

9. The Cleveland Clinic for Children's Autism Solutions, ("Cleveland Clinic"), and the Autism School have worked together since 2012. The Cleveland Clinic assists each autism classroom with training on autism, interventions, reinforcements, ABA therapy, strategies for

⁷ The School Psychologist testified that assessments of the Student were being conducted at the

teaching, and curriculum. The Cleveland Clinic also has a data collection system, (J-13), and it trains teachers using the data collection system. The data system should be uniform across classes. (Testimony of Supervisor)

10. Data collection on behaviors is very important. The data drives behavior decisions. Without accurate data the people working with the Student they cannot decide what programs work or do not work. (Testimony of Supervisor).

11. Consistency is essential with autistic students. (Testimony of Supervisor).

12. From the end of COVID until January, 2023, the Student was receiving private ABA therapy. The ABA therapy eventually went to five days a week for an hour a day and then to up to three hours per day. This ABA therapy was focused on functional communication and behavior. (Testimony of ABA Expert).

13. The ABA Expert was allowed to participate in the Student's education process including submitting forms for the teacher to complete as to the Student's daily successes and failures. (See, P-6).

14. After the Student was hospitalized for the first time, the Student no longer received private ABA therapy, which had been paid for by insurance. The Student no longer received ABA Therapy due to the provider losing employees with sufficient experience to provide ABA therapy to the Student.

15. An annual IEP Meeting was held for the Student on May 23, 2022, and an IEP was developed for the Student for the 2023-2024 school year. (J-7). The Mother agreed to this IEP.

16. The Student's annual IEP dated May 23, 2022 provided measurable goals for **the**

time of the hearing, but they were not yet complete..

Student, It noted that the Student's behavior interferes with the Student's education and that of others, that the Student needed assistive technology and services, and had communication needs. It provided for supplemental aids, including PECS, and a token system. It provided related services of speech and language, occupational therapy and curb to curb transportation. (See J-7).

17. A Revision IEP Meeting was held for the Student on October 5, 2022, and a revised IEP was developed for the Student. (J-8). It was revised to review speech goals, revise communication goals and added new data. The Mother agreed to this revised IEP.

18. The Student's revised IEP dated October 5, 2022 provided measurable goals for the Student, It noted that the Student's behavior interferes with the Student's education and that of others, that the Student needed assistive technology and services, and had communication needs. It provided for supplemental aids, including PECS, and a token system. It provided related services of speech and language, occupational therapy and curb to curb transportation. (See J-8).

19. As early as January, 2023, the Student's Mother asked for the Autism School to provide a one on one aide for the Student, but this request was not granted. (Testimony of Mother).

20. An additional classroom aide was provided to the student's teacher. (Testimony of Mother).

21. On January 27, 2023, the Student was admitted to a behavior hospital. The Student was hurting himself and endangering others. These actions occurred at home, at school and at the private ABA therapy. The Student was there for six weeks. While the Student was there the

Student received occupational therapy and speech therapy. The Hospital was trying to get the Student's medications set up right.

22. Student's Mother told the Autism School he was in a behavior hospital. The Autism School said that the school would unenroll and then reenroll the Student when he was discharged. (Testimony of Mother).

23. After the Student's discharge from the behavior hospital the Autism School did not set an IEP meeting to adjust the Student's IEP. The Autism School did not ask for copies of the hospital records. (Testimony of Mother).

24. No new assessments were conducted by the IEP team following the hospitalization or prior to the next IEP Meeting. (J-9 and Testimony of Mother).

25. The IEP Team knew or should have known, that the Student needed to be reevaluated after being released from the behavior hospital.

26. An annual IEP Meeting was held for the Student on May 18, 2023, and an IEP was developed for the Student for the 2023-2024 school year. (J-9). The Mother agreed to this IEP.

27. The Student's Teacher worked with the Student in the 2022-2023 and 2023-2024 school years, which were 7th and 8th grade. (Testimony of Student's Teacher).

28. The daily data input into the Cleveland Clinic system, for the 2022-2023 and 2023-2024 school years, shows the Student was making progress in most areas. (See J-13 and Testimony of Supervisor). However, the daily data collected by the Student's Teacher for ABA Expert does not show improvement and in fact shows regression in many areas. This data was collected from September 26, 2022 until January 17, 2023.⁸ (See P-6 and testimony of ABA

⁸ This data was no longer collected after this date because the ABA Expert was no longer

Expert.)

29. Student's Teacher input the data into the Cleveland Clinic for one-half of the 2022-2023 school year and all of the 2023-2024 school year. The Student's Teacher usually inputs the data once a week. The Student's Teacher also completed the daily behavior reports requested by ABA Expert. (P-6, and Testimony of Student's Teacher).

30. No witness was able to satisfactorily explain why the two sets of data are significantly different.

31. There is no evidence that the ABA Expert's data, (P-6), was considered by the IEP team as part of this meeting.

32. The Student's annual IEP dated May 19, 2023 provided measurable goals for the Student, It noted that the Student's behavior interferes with the Student's education and that of others, that the Student needed assistive technology and services, and had communication needs. It provided for supplemental aids, including PECS, a BIP, and a token system. It provided related services of speech and language, and curb to curb transportation. It dropped occupational therapy. (See J-9).

33. As part of the May 18, 2023, IEP Meeting a Behavioral Intervention Plan, ("BIP"), for the Student was developed at the school the Student attended on May 18, 2023. It was designed to help with the Student's aggressive behaviors and attention seeking behaviors. (J-12, p.1-2).

34. On August 17, 2023, the Student was admitted to the behavioral hospital again for self violence and hurting family. The Student was there until early October, 2023. While the

providing services to the Student after this date. (Testimony of ABA Expert.)

Student was there the hospital provided occupational therapy, toileting training, and PECS training. (Testimony of Mother).

35. Again, the Student's Mother told the Autism School he was in a behavior hospital. The School said that the school would unenroll and then reenroll the Student when he was discharged. (Testimony of Mother)

36. The Autism School did not discuss or provide special education services to the Student while the Student was hospitalized. However, the Student's Mother could only visit the Student once a week while hospitalized. (Mother's Testimony). Therefore it is likely the School District could not have provided services to the Student while he was hospitalized.

37. After the Student's discharge from the behavior hospital the Autism School did not set an IEP meeting to adjust the Student's IEP. The Autism School did not ask for copies of the hospital records.

38. No new assessments were conducted by the IEP team following the hospitalization or prior to the next IEP Meeting. (J-10 and Testimony of Mother).

39. The IEP Team knew or should have known, that the Student needed to be reevaluated after being released from the behavior hospital.

40. During this time period, the Student had to be restrained many times while in school. Depending on the data, (P-6 and J-13), the exact number is in dispute. The restraints happened when the Student became agitated and began to self harm or threaten others with harm.

41. The Assistant Principal testified that being restrained seven to eight times during a school year is not unusual at the Autism School. The restraints were properly reported as required by Nevada law. (Testimony of Assistant Principal).

42. Restraints involve holding a student so a student cannot hurt others or himself. The restraints last only as long as it takes for a student to regain control. The restraint can be serial. (Testimony of ABA Expert and Assistant Principal).

43. The IEP needed to be revised due to the Student's ongoing aggressive behaviors, endangering the Student and others. This behavior was requiring regular restraints of the Student. This IEP was revised to add restraints to the present levels of performance and the dates of the restraints. The Student was having aggressive behaviors up to 12 times per day. (Testimony of Student's Teacher, and J-10, p. 1).

44. However, the Autism School did not complete a Functional Behavioral Assessment, and the Student's BIP was not revised. (See, J-10 and J-12).

45. After the fifth restraint the IEP team met and a revised IEP was prepared. The Student's IEP for 2023-2024 school year, (J-11), was revised due to the Student being restrained more than five times while at school.⁹ (J-12 and testimony of Assistant Principal).

46. The `Revision IEP Meeting was held for the Student on March 22, 2024, and a revised IEP was developed for the Student. (J-10). It was revised due to a fifth restraint of the Student. It was implemented based on the Cleveland Clinic data showing the Student was making progress on the goals. (J-13). The Mother did not agree to this IEP. A Notice of Intent to Implement was sent out to the Mother for implementation on March 22, 2024. (J-10, p. 23). The revised IEP was then implemented.

47. The Student's revised IEP dated March 22, 2024 provided measurable goals for the Student, It noted that the Student's behavior interferes with the Student's education and that of

⁹ Student's Mother and the Assistant Principal both testified that Nevada law requires a revision

others, that the Student needed assistive technology and services, and had communication needs. It provided for supplemental aids, including PECS, a BIP, and a token system. It provided related services of speech and language, and curb to curb transportation. It was essentially the same as the prior IEPs. (See J-10).

48. An annual IEP Meeting was held for the Student on May 15, 2024, and an IEP was developed for the Student for the 2024-2025 school year. (J-11). The Mother did not agree to this IEP. The annual IEP was then implemented. (J-11, p. 30).

49. The Student's annual IEP dated May 15, 2024, provided measurable goals for the Student. It noted that the Student's behavior interferes with the Student's education and that of others, that the Student needed assistive technology and services, and communication needs. It provided for supplemental aids, including PECS, a BIP, and a token system. It provided related services of speech and language, occupational therapy and curb to curb transportation. With the exception of adding occupational therapy, it was essentially the same as the prior IEPs. (See J-11).

50. As part of the May 15, 2024, IEP Meeting a BIP for the Student was developed at the school the Student attended on May 15, 2024. It was designed to help the Student with aggressive behavior. (J-12, p.1-2).

51. The Mother filed this Due Process complaint on May 24, 2024, (HO 1).

52. Student currently attends the Autism school and is in the ninth grade. (Testimony of Assistant Principal).

53. The Student at present is essentially nonverbal. The Student communicates wants

of an IEP after five restraints.

and needs by using PECS. (Testimony of Student's Teacher and Student' Mother.)

54. At present the Student is not potty trained. (Testimony of Student's Teacher and Student' Mother.)

55. Additionally, the Student struggles with grabbing behaviors, completing work, out of seat behavior, non-compliance, hitting himself and others, kicking, screaming, eloping and attention seeking behaviors. (Testimony of Student's Teacher and Student' Mother.)

56. The Student's Teacher testified that the Student needs constant support, like to play with a ball, likes to eat, likes attention, can be aggressive, hitting, head butting, scratching, usually to get attention. The Student also gets over stimulated from loud noises.

57. When the Student struggles with behavior, the Student's teacher attempts to implement the Student's BIP, including a token board. (Testimony of Student's Teacher).

58. Student's teacher testified that the Student had not met any of the goals set forth in any of his IEPs while she was teaching. She also testified that the Student had improved in many areas. The Student made progress with keeping hands to himself, and more than 50% of time, he could match numbers, and could count with one on one correspondence, for 1 and 2.

59. The Student is growing in size and strength and is becoming harder to restrain.

60. At present, the Student still has to be restrained regularly. Student hits the head a lot, both against a wall and others. The Student is now wearing a soft helmet to protect the head. The Student has not made any real progress on PECS or toileting. (Testimony of Student's Mother).

61. The IEP Team had a duty to assess and failed to assess the Student from the date the Student was released from the behavioral hospital for the first time until today's date.

62. There is no evidence that the Autism School failed to properly implement the Student's IEPs.

63. Commencing with the IEP dated May 18, 2023, the IEPs, (J-9, J-10, and J-11), were not reasonably calculated to enable the Student to make progress appropriate to the Student's circumstances with respect to the Student's focus, aggressive behavior, educational progress, elopement and restraints.

64. Due to the IEP Team's failure to assess the Student, (see Paragraph 61), the IEP Team impeded the ability of Student's Parent to participate in formulating Student's IEPs by not considering Parent's input relative to the Student, and failing to provide parent complete assessments and records.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel and the Hearing Officer's 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. 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.

2. The IDEA requires that states receiving federal education funding provide "free appropriate public education (FAPE) . . . to all children with disabilities residing in the state between the ages of three and twenty-one." 20 USC §1414(a)(1). It also establishes a procedure for creating an IEP which is a written statement of present levels of academic achievement and functional performance and goals in those areas. See 20 USC §1414(d)(1). The IEP must also include a "statement of special education services and accommodations being provided to the

child.” 20 USC §1414(d)(1)(A). It also requires measurable goals and periodic progress reports. See, 34 CFR 300.320(a)(2)(i).

3. A parent with a child with a disability who alleges a violation of the IDEA may present a due process complaint setting forth the allegations that form the complaint. See 20 USC §1415(b)(6).

4. 20 USC 1414(2) provides as to reevaluations:

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted-

(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

(B) in accordance with subsections (b) and (c) of this section.

5. 34 CFR §300.300(c) requires that generally parental consent be given to reevaluate a student.

6. Here, the Student’s Parent waived reevaluation of the Student in 2021. Thus, the School did not have a duty to reevaluate the student in 2021.¹⁰

7. However, the local education agency had a duty to seek to re-evaluate the Student after the Student was released from the behavioral hospital in February of 2023, as the local education agency was aware of the conditions that warranted reevaluation.

8. Thus the local education agency failed to properly assess the Student from February 2023 to today’s date.

¹⁰ The fact the Student’s Parent did not completely understand the reasons for reevaluation does not change the fact the Student’s Parent waived reevaluation in 2021. To the extent, if any, the Autism School did not fully explain other reasons for reevaluation, that claim is barred by the statute of limitations and was not plead in the Petition.

9. A FAPE “consists of educational instruction specially designed to meet the needs of the handicapped child, supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.” *Board of Education v. Rowley*, 458 S.Ct. 176, 188-189, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). An IEP must provide the Student the services “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. vs. School District*, 137 S.Ct. 988 (2017).

10. The instruction offered must be “specially designed” to meet a child's “unique needs” through an “individualized education program,” (IEP). 20 USC §§ 1401(29), (14). The IDEA guarantees individually-tailored educational services for children with special educational needs. See 20 USC §§ 1400(d)(1)(A), 1401(29).

11. The IDEA provides for a FAPE that must conform to a student’s IEP, which is a program detailing the student’s abilities, educational goals, and specific services that are designed to achieve those goals within a designated time frame. See 20 USC §§ 1412(a)(4), 1436(d).

12. *Amanda J. v. Clark County School District*, 267 F.3d 877, 894 (9th Cir. 2001), states: “A FAPE, as required by the IDEA, must be tailored to the unique needs of each individual child. Each child has different needs, different skills, and a different time frame for effective treatment. . . . These programs often must address a wide range of skills, ranging from academic to social to functional living skills, depending on the severity of the particular child's condition.”

13. Commencing with the IEP dated May 15, 2023, (J-9), the School District failed to provide the Student with an IEP tailored to the unique needs of the Student.

14. Thus, commencing with the IEP dated May 15, 2023, (J-9), the School District has failed to provide the Student FAPE since May 15, 2023.

15. There is no evidence that the Autism School failed to implement the Student's IEPs since May 24, 2022.

16. By failing to properly and timely assess the Student commencing in February of 2023, the IEP Team impeded the ability of Student's Parent to participate in formulating Student's IEPs.

17. *R.F. v. Cecil Cnty. Pub. Sch.*, 919 F.3d 237 (4th Cir. 2019), stated regarding whether a procedural violation results in the denial of FAPE:

However, "[i]n matters alleging a procedural violation", an ALJ "may find that a child did not receive a [FAPE]" if the ALJ determines that a procedural right was violated and that the violation "significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a [FAPE] to the parents' child." *Id.* § 1415(f)(3)(E)(ii)(II).

Under § 1415(f)(3)(E)(ii)(II), an ALJ must answer each of the following in the affirmative to find that a procedural violation of the parental rights provisions of the IDEA constitutes a violation of the IDEA: (1) whether the plaintiffs "alleg[ed] a procedural violation," (2) whether that violation "significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a [FAPE] to the parents' child," and (3) whether the child "did not receive a [FAPE]" as a result. *Id.* § 1415(f)(3)(E). Unless an ALJ determines that a given procedural violation denied the child a FAPE, she may only order compliance with the IDEA's procedural requirements and cannot grant

other forms of relief, such as private placement or compensatory education. See *Fry v. Napoleon Cnty. Schs.*, — U.S. —, 137 S.Ct. 743, 754 n.6, 197 L.Ed.2d 46 (2017) ("Without finding the denial of a FAPE, a hearing officer may do nothing more than order a school district to comply with the [IDEA's] various procedural requirements.").

R.F. v. Cecil Cnty. Pub. Sch., 919 F.3d 237, 248 (4th Cir. 2019), see also 34 CFR §300.513(2).

18. Here, the parents alleged and proved a procedural violation of the IDEA. That violation significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to their child. Additionally this procedural violation denied FAPE to the Student.

19. Thus, the IEP Team committed a procedural violation that denied FAPE to the Student.

20. While Petitioner is seeking a residential placement for the Student, at this time there is not sufficient evidence to satisfy the requirements set forth in *Ashland School Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1009 (9th Cir. 2009), for a residential placement..

ORDER

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

IT IS HEREBY ORDERED, as follows:

1. The IEP Team shall complete the evaluations it testified it has started such that the Student is fully evaluated.

2. The IEP Team shall immediately amend the Student's current IEP to provide for a one on one aide to the Student from drop off to pick up each day.

3. Once the Assessments are complete the IEP team shall meet to consider modifying the Student's IEP based on the assessments.

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 21 day of October, 2024.



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