

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

Student, by and through his Father¹

v.

Case No. 2024-0068

District²

Leah Trinkala
Impartial Hearing Officer

FINAL DETERMINATION AND ORDER

JURISDICTION.

The IHO has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S. C. §1400 et seq. and the Illinois School Code, 105 ILCS 5/148.02a et.seq.

PROCEDURAL BACKGROUND.

On October 10, 2023, the Petitioner (Father) filed a due process complaint (Complaint) against the District on behalf of his seven year-old son (Student) with a disability.³ On October 16, 2023, the Illinois State Board of Education (ISBE) appointed this IHO as the Independent Hearing Officer (IHO) in this case.⁴ The District is represented by Melissa Mazzeo and McKenna Kohlenberg; the Father represented himself. On October 25, 2023, the District filed a Notice of Insufficiency and a Motion to Dismiss.⁵ On October 28, 2023, the Father requested leave to file an amended complaint and the District withdrew its Notice of Insufficiency.⁶

¹ Personally identifiable information is found in Appendix A.

² Personally identifiable information is found in Appendix A.

³ IHO Ex. 1.

⁴ IHO Ex.2.

⁵ IHO Ex. 6.

⁶ IHO Ex. 8.

On November 10, 2023, the Father filed an Amended Complaint and the timeline was reset to January 24, 2024 due to new issues being raised.⁷ On November 13, 2023, a briefing schedule was set for the District to file an amended motion to dismiss the Amended Complaint.⁸ On November 20, 2023, the District filed its Motion to Dismiss the Amended Complaint (Amended Motion) and its Response to the Amended Complaint.⁹ The District sought dismissal of the Amended Complaint arguing the Father lacked standing to file a complaint because he does not have educational decision-making authority.¹⁰ The Mother has significant educational decision-making authority based upon an Allocation Judgement dated August 2, 2023.¹¹ The Father filed his Response to the Amended Motion on November 29, 2023.¹² The District filed its Reply to its Amended Motion on December 7, 2023.¹³

On December 11, 2023, this IHO issued an Interim Order: Partial Denial of District's Motion to Dismiss (Interim Order).¹⁴ This IHO dismissed the Father's substantive issues in the Amended Complaint because the Father lacks educational decision-making authority.¹⁵ The IHO held the Father only has standing to raise procedural violations concerning the receipt of prior written notice, the procedural safeguards and requested student records for an IEP meeting.¹⁶

On December 19, 2023, the parties agreed to waive the resolution meeting and participate in mediation.¹⁷ On December 19, 2023, the parties requested a continuance of the 45-day timeline to have additional time to complete mediation and for the Father to receive the requested student records.¹⁸ The IHO granted the parties joint motion for a continuance and the 45-day timeline was extended to February 23, 2024.¹⁹ On January 18, 2024, the parties requested a second continuance of the 45-day timeline because mediation had to be rescheduled due to a family emergency.²⁰ The decision due date was extended to March 31, 2024.²¹

⁷ IHO Ex. 12.and 14.

⁸ IHO Ex. 14.

⁹ IHO Ex. 17.

¹⁰ IHO Ex. 17.

¹¹ IHO Ex. 17.

¹² IHO Ex. 20.

¹³ IHO Ex. 22.

¹⁴ IHO Ex. 23.

¹⁵ IHO Ex. 23.

¹⁶ IHO Ex. 23.

¹⁷ IHO Ex. 26.

¹⁸ IHO Ex. 27.

¹⁹ IHO Ex. 27.

²⁰ IHO Ex. 32.

²¹ IHO Ex. 32,

On February 5, 2024, the Father filed a second due process complaint (Second Complaint).²² The IHO issued a Dismissal Order of Second Due Process Complaint on February 6, 2024.²³ The Second Complaint was dismissed because the Father lacked standing to challenge the Student's placement, raised gender basis which the IHO does have jurisdiction to hear under the IDEA and the remaining issues were duplicative.²⁴

On February 6, 2024, the Prehearing Conference was completed, and a hearing date was set at this conference.²⁵ The Prehearing Report and Order was issued on February 12, 2024.²⁶ The parties did not submit any requested changes to the Prehearing Report and Order.

The hearing commenced on March 15, 2024 via the Zoom Platform and was a closed hearing.²⁷ The Father, via email, on March 14, 2024, requested a continuance of the hearing due to anxiety and a post-traumatic stress disorder.²⁸ The Father visited the emergency room and received a Doctor's note excusing the Father from strenuous activity until March 21, 2024.²⁹ The District objected to the continuance. This IHO denied the request because the Father would be participating in the hearing in his home and testifying and questioning witnesses does not constitute strenuous activity. The Father testified at the hearing and the District questioned the Father. The Father indicated his head was hurting and called 911 after his testimony was completed. The hearing had to be postponed due to the Father's undertakings.

On March 18, 2024 at Status Conference was held to schedule a second hearing date and the parties agreed to set the hearing for April 12, 2024.³⁰ On April 5, 2024, another Status Conference was held because this IHO had to reschedule the hearing due to an expedited case

²² IHO Ex. 35.

²³ IHO Ex. 35.

²⁴ IHO Ex. 35. The Father had raised allegations that the IHO and the District's Attorneys were biased against him because the Father was the only male in this due process matter.

²⁵ IHO Ex. 15 & 16.

²⁶ IHO Ex. 16.

²⁷ The Father requested an in-person hearing and an open hearing. The Mother requested a closed hearing to protect the Student's privacy and the Mother and the District requested a virtual hearing. The Mother had safety concerns and the District requested a virtual hearing due to the costs of an in-person hearing and the difficulty with staffing coverage. The IHO issued an Order for the hearing to be closed and a virtual hearing. See, IHO Ex. 41.

²⁸ IHO Ex. 52. The Father sent requests for a continuance, via email, only to the IHO. The emails were immediately forwarded to the parties and the Father was informed again that I cannot engage in ex parte communications with him and informed the emails were in violation of the Standing Order issued in this case.

²⁹ IHO Ex. 51.

³⁰ IHO Ex. 54.

assigned to the IHO.³¹ At this Conference, the parties agreed to reschedule the final hearing date for May 9, 2024.³² The decision due date was extended to May 23, 2024.³³

The hearing was completed on May 9, 2024 on the Zoom platform. The District called two witnesses to testify and the Father called one witness to testify. Admitted into the record were the District's Exhibits: SD 2-1 through SD-5 and Joint Exhibits 1 through 14. The District and the Father provided hard copies of their written closing statements on May 11, 2024.³⁴ The District also provides courtesy copies of their cited case law.³⁵

The decision of the IHO is due within ten calendar days of the conclusion of the hearing excluding Saturdays, Sundays, and any state holidays.³⁶ As such, the IHO did not have the benefit of a transcript. This decision is based on the IHO's copious personal notes and recollection of the testimony provided at the hearing. In rendering this decision, the IHO carefully considered all the documents admitted into evidence and the testimony of the witnesses whether specifically referred to or cited when making her final determination. The IHO also considered the parties' closing arguments, the parties' suggested case law and statutes, as well as the IHO's own independent research. This decision was issued within ten calendar days excluding Saturdays, Sundays, and any state holidays of the conclusion of the hearing as required by Illinois law.³⁷

ISSUES AND REQUESTED REMEDIES

The issues to be determined are as follows:

1. Whether the District failed to provide the Father with prior written notice at least 10 days prior to the proposed action to change the educational placement of the Student from general education to a therapeutic day school at the 9/29/2023 and 10/3/2023 IEP meetings?³⁸

Defense: The District maintains the Father is not entitled to prior written notice since the Father is not a Parent under the IDEA. The District; however, provided the Father with prior written notice. A Notice of Conference of the IEP meeting was sent on 9/20/2023 to the Father, the draft IEP was provided on 9/25/2023 and the Father virtually attended

³¹ IHO Ex. 58.

³² IHO Ex. 58.

³³ IHO Ex. 58.

³⁴ IHO Ex. 62.

³⁵ IHO Ex. 62.

³⁶ 105 ILCS 5/14-8.02a(g55)(5).

³⁷ 105 ILCS 5/14-8.02a(g55)(5).

³⁸ IHO Ex. 38.

and actively participated in the IEP meeting on 9/29/2023 when the IEP team determined by a consensus to change the Student's placement to 100% removal from the general education setting to a therapeutic day school. The Father was provided with the non/finalized draft IEP for the reconvened IEP meeting on 10/3/2023 and the Conference recommendations identified the proposed change of placement and the Procedural Safeguards.³⁹

2. Whether the District committed a procedural violation by not affording the Father meaningful participation at the 9/29/2023 and 10/3/2023 IEP meetings by not providing the Father with the requested Student records and by not permitting the Father to raise concerns about not receiving the Student records?⁴⁰

Defense: The District contends the Father is not entitled to student records in advance of an IEP meeting since he is only entitled to duplicate originals of the Student's records under the Allocation Judgement. The Father did not request any Student records until 10/3/2023. The District did provide the Father with the Notice of Conference for the 9/29/23 IEP meeting and the Father received all written materials more than three school days in advance of the 9/29/23 IEP meeting which was the Student's draft IEP. The Father also could communicate with the school staff by email. The Father received the procedural safeguards and the notice of conference. The Father is not entitled to raise concerns at an IEP meeting since he is not a Parent under the IDEA and is not a decision-making member of the Student's IEP team pursuant to the Allocation Agreement. The Father was an active participant in the IEP meetings on 9/29/23 and 10/3/23.⁴¹

The Father's remedies are as follows:

1. Order the District to hold the IEP meeting again with the process being followed appropriately with the procedural guidelines and protections.⁴²

The District remedies are as follows:

1. Dismiss the amended complaint with prejudice and order anything else the IHO feels would be fair and equitable.⁴³

REVISED JOINT STIPULATIONS OF FACT AND MATERIAL ADMISSIONS

(JOINT STIPULATIONS OF FACT).

The Father and the District hereby agree upon and stipulate to the following facts:

1. The Student, is currently a first-grade student of the District.⁴⁴

³⁹ IHO Ex. 38

⁴⁰ IHO Ex. 38

⁴¹ IHO Ex. 38

⁴² IHO Ex. 38

⁴³ IHO Ex. 38

⁴⁴ IHO Ex. 51.

2. The Student’s date of birth is January 21, 2017.⁴⁵
3. Prior to the 2023-2024 school year, the Student was found eligible for special education and related services under the IDEA category of Developmental Delay and an IEP was developed.⁴⁶
4. The Student attended J Elementary for the 2022-2023 school year and from the beginning of the 2023-2024 school year through January 28, 2024.⁴⁷
5. The Student had an IEP for the duration of the time he attended J Elementary.⁴⁸
6. The Student’s Parents are Father and Mother (“the Parents”).⁴⁹
7. The Father’s email address is OHubert83@gmail.com.⁵⁰
8. The Parents attended an IEP meeting for the Student on September 29, 2023.⁵¹
9. The Case Manager emailed the Father a copy of the draft IEP for the September 29, 2023 IEP meeting on September 25, 2023.⁵²
10. During the September 29, 2023 IEP meeting, the Father raised concerns about his access to student records and about the team’s subsequent proposal to change the Student’s placement.⁵³
11. When the IEP team finished reviewing and revising all pertinent sections of the Student’s IEP at the September 29, 2023 IEP meeting, the team did not indicate that the IEP meeting needed to be reconvened.⁵⁴
12. The Case Manager was the Student’s IEP case manager for the duration of his enrollment at J Elementary.⁵⁵
13. On September 29, 2023, after the IEP meeting, the Case Manager emailed the Father the following documents: a copy of the *Procedural Safeguards*; a copy of the IEP that was

⁴⁵ IHO Ex. 51.

⁴⁶ IHO Ex. 51.

⁴⁷ IHO Ex. 51.

⁴⁸ IHO Ex. 51.

⁴⁹ IHO Ex. 51.

⁵⁰ IHO Ex. 51.

⁵¹ IHO Ex. 51.

⁵² IHO Ex. 51.

⁵³ IHO Ex. 51.

⁵⁴ IHO Ex. 51.

⁵⁵ IHO Ex. 51.

revised during the meeting; the Parent/Guardian Notice of Conference Recommendations for the meeting; and a copy of ISBE’s Illinois ABE brochure.⁵⁶

14. The Mother’s email address is fletchererica@yahoo.com.⁵⁷
15. The Notice of Conference sent to the Parents prior to the September 29, 2023 for the IEP meeting states the purpose of the meeting as: “Review and/or revise [the Student’s IEP to determine special education and related services and placement.”⁵⁸
16. With regard to access to student records for the Student, a state-court ordered *Allocation Judgment* (the “*Allocation Judgment*”), entered on August 2, 2023 by Judge Naomi Schuster of the Circuit Court of Cook County, Illinois in Case # 2020-D-79483, gives both Parents the right to “Duplicate originals of the minor child’s school records (including but not limited to grade reports, class placements/schedules, tests reports, meeting notices, field trip notices, school picture forms, etc.).” A true and correct copy of the *Allocation Judgment* is contained in the Parties’ Joint Exhibits at J-2.⁵⁹
17. With regard to participating in school meetings for the Student, the *Allocation Judgment* gives both Parents the right to “Confer with minor child’s teachers, counselors, administrators, or other educational providers for the minor child. This includes attendance at school open-houses, parent-teacher conferences, etc.”⁶⁰
18. The Father sent a request for student records dated October 3, 2023 by certified mail to the Principal.⁶¹
19. The Principal provided the student records requested in the Father’s October 3, 2023 request to the Father by handing the records to him in person on October 19, 2023.⁶²
20. The District’s School Assignment Office assigned the Student to M Day School on January 16, 2024.⁶³
21. The Father was first made aware that the Student was assigned by the District’s School Assignment Office to M Day School on January 29, 2024 through the receipt of a duplicate original of the Student’s M Day School, assignment letter from the District.⁶⁴

⁵⁶ IHO Ex. 51.

⁵⁷ IHO Ex. 51.

⁵⁸ IHO Ex. 51.

⁵⁹ IHO Ex. 51.

⁶⁰ IHO Ex. 51.

⁶¹ IHO Ex. 51.

⁶² IHO Ex. 51.

⁶³ IHO Ex. 51.

⁶⁴ IHO Ex. 51.

22.M Day School is a therapeutic day school.⁶⁵

23.The Student’s first day of attendance at M Day School was January 29, 2024.⁶⁶

FINDINGS OF FACT.

After considering all the evidence as well as the arguments of the parties, the facts are as follows:

A. ALLOCATION JUDGEMENT.

1. At the end of the 2022-2023 school year, the Parents entered into an Allocation Judgement which the Parents signed on August 1, 2023 and August 2, 2023.⁶⁷ Both parties had the benefit of attorneys in the drafting of the Allocation Judgement.⁶⁸ The Allocation Judgement, designated the Mother as the primary custodian for purposes of State and Federal statutes and designated the Mother as having sole decision-making authority for signification decisions relating to the student’s education.⁶⁹ This agreement has not been modified.⁷⁰
2. In the Allocation Judgement, the Parents agreed that parental involvement in the education process is critical to the best interests of the Student.⁷¹ The Allocation Judgement informed the Father the Student was receiving private services. The Allocation Judgement provided for the continuation of the Student’s therapy sessions which include speech therapy and trauma-informed occupational therapy and psychotherapy.⁷²

⁶⁵ IHO Ex. 51.

⁶⁶ IHO Ex. 51.

⁶⁷ J-2, p. 36. Testimony of Mother.

⁶⁸ Testimony of Mother. J-2, p. 22.

⁶⁹ J-2, p. 24. Testimony of Mother.

⁷⁰ Testimony of Mother.

⁷¹ J-2, p. 24.

⁷² J-2, p. 26.

2. Prior to the scheduled IEP meeting, the Parents and the IEP team were sent calendar invites for the IEP meeting and the Father had responded yes, he would attend the scheduled IEP meeting.⁸²
3. The Father was notified of his rights to review or copy the student records prior to the IEP meeting and to receive copies of the written materials for the IEP meeting. The September 20, 2023 Notice of Conference informed the Parents the District must provide copies of the written materials to be considered at the IEP meeting three school days prior to the scheduled IEP meeting and informed the Parents they had the right to review or copy the student's records prior to the IEP meeting.⁸³
4. The Father received the Notification of the Conference. The Father sent an email to the Case Manager on September 28, 2023, indicating a meeting was scheduled to review the Student's IEP and the subsequent recommendations; however, a link to access the meeting was not received.⁸⁴ The Case Manager resent the link to the Father on September 28, 2023.⁸⁵
5. The District provided written materials to the Father to review prior to the scheduled IEP meeting. The Father was provided with a copy of the draft September 2023 IEP to review prior to the September 29, 2023 IEP meeting. The Case Manager emailed the draft IEP to the Father's email address (ohubert83@gmail.com) on September 25, 2023, four days prior to the scheduled IEP meeting.⁸⁶ The Father claimed he did not receive any documents. Find the Father's testimony to not be credible. This is the Father's email address in the Stipulations of Fact and he did receive other emails regarding the IEP meeting sent via email.

⁸² J-4, p. 44. Testimony of Case Manager.

⁸³ J-3, p. 37.

⁸⁴ J-8, p. 83. Testimony of Case Manager.

⁸⁵ J-8, p. 83. Testimony of Case Manager.

⁸⁶ J-7, p. 81. Testimony of Case Manager.

6. The Draft IEP provided information to be considered at the scheduled IEP meeting to enable the Father to meaningfully participate in the scheduled IEP meeting for September. The Draft IEP contained the Student's grades for the first five weeks of school and the IReady math and reading scores for the tests administered on September 5, 2023 and September 1, 2023.⁸⁷ The Draft IEP contained the General Considerations in the Development of the IEP which included the Student's general academic needs, Math needs, preferred learning style, and functional needs.⁸⁸ The Draft IEP also included the Student's present levels of academic achievement and functional performance.⁸⁹

7. The Draft IEP contained the proposed Functional Behavioral Assessment and the Behavioral Intervention Plan for the Student.⁹⁰ The Draft IEP discussed the ABC data collected on the Student under the General Considerations in the Development of the IEP and under the FBA.⁹¹ The data showed the Student's behavior was impacting the Student's progress. Ninety percent of the days when the Student is in attendance the Student has at least one incident of escalation and the escalation results in the removal of the Student.⁹² The Student has exhibited aggression towards his peers and staff and has damaged materials and items in school.⁹³

8. The Draft IEP contained information regarding the supports for the Student and the Student's prior eligibility for an IEP. The Draft IEP states the Student receives an IEP with direct supportive services for ELA, Math, independent functioning, occupational therapy minutes, and social work minutes.⁹⁴ The Student is eligible for an IEP under the disability category Development Delay and has been diagnosed with a reactive attachment disorder.⁹⁵

⁸⁷ J-6, p. 49.

⁸⁸ J-6, p. 48-51.

⁸⁹ J-6, p. 58-71.

⁹⁰ J-6, p.73-77.

⁹¹ J-6, p. 48-51 and 73.

⁹² J-6, p. 48.

⁹³ J-6, p. 48.

⁹⁴ J-6, . 70.

⁹⁵ J-6, p. 70.

9. The Father participated in the Student's IEP meeting held on September 29, 2023. The Parents, the Case Manager, the Principal, the special education teacher, the general education teacher, the occupational therapist and the social worker were in attendance at this meeting.⁹⁶ The Father had sent an email to the Principal on September 29, 2023 that his attorney may attend this meeting.⁹⁷ The attorney is not listed as a participant.⁹⁸

10. The IEP team reviewed the Draft IEP at the September 29, 2023 IEP meeting. The IEP team discussed a change in the Student's placement due to the Student's behavior and dysregulation of his emotions.⁹⁹ The Student is already receiving services in the general education setting and in a smaller classroom setting with a dedicated paraprofessional and the Student is still presenting with physically aggressive behaviors that prevent him from fully engaging in class and impede his learning in the smaller classroom setting and requires increased support.¹⁰⁰

11. The IEP Team agreed to change the Student's placement to a separate therapeutic day school.¹⁰¹ The Father disagreed with the IEP Team's decision.¹⁰² The Mother agreed with the change of placement based upon the Draft IEP, the recommendations of the Student's prior service providers and based upon the Student already receiving therapeutic services which includes psychotherapy, occupational therapy and speech services.¹⁰³ The IEP Team recommended the change in placement after a review of the Student's academics, social/emotional status and behavior needs and the current supports and related services in place.¹⁰⁴ A separate therapeutic day school was accepted because the Student needs a lower student/teacher ratio.¹⁰⁵ A small structured setting where there is not an audience will limit distractions for the Student and OT services and Social Work services cannot be provided with non-disabled peers because the Student needs a quiet environment to

⁹⁶ J-9, p. 83. Testimony of Case Manager and Principal.

⁹⁷ SD-4, p. 23. Testimony of Case Manager.

⁹⁸ J-9, p. 83.

⁹⁹ J-9, p. 86, 87, 97, 98, 101, 103, 105 and 110.

¹⁰⁰ J-6, p. 51.

¹⁰¹ Testimony of Case Manager.

¹⁰² Testimony of Father.

¹⁰³ Testimony of Mother.

¹⁰⁴ Testimony of Case Manager.

¹⁰⁵ J-9, p. 113.

receive these services.¹⁰⁶ The Father was a question mark because the Father believed he did not have enough information.¹⁰⁷ At the meeting, the Case Manager informed the Father had he had received the records.¹⁰⁸ The Father testified he requested to see the incident reports and ABC data.¹⁰⁹ The Case Manager and Principal indicated the Father had not requested to receive any specific records at the IEP meeting.¹¹⁰ The Father stated he did not receive any documents and the Case Manager and the Principal explained the Father had received the Draft IEP prior to the meeting and the Student's current IEP.¹¹¹ The Case Manager stated the Father did not request the meeting to be rescheduled to obtain the student records.¹¹²

12. The Record is devoid of any evidence that the Father submitted a records request or requested access to the student records to the District prior to the September 29, 2023 IEP meeting. The Record shows the Father did not submit a formal student records request until October 3, 2023.

C. PRIOR WRITTEN NOTICE.

1. The District provided the Father with prior written notice regarding the recommended change in placement from the District. The Notice of Conference Recommendations stated the IEP Team determined the Student required a separate Day School Setting.¹¹³ The Notice informed the Parents to refer to the IEP conference summary report which contains these recommendations.¹¹⁴ The Notice also informed the Parents the Case Manager could be contacted to discuss any concerns or have any questions concerning your rights.¹¹⁵ The Notice instructed the Parents to review the parental rights information in the Explanation of Procedural Safeguards.¹¹⁶

¹⁰⁶ J-9, p. 113. Testimony of Case Manager.

¹⁰⁷ Testimony of Case Manager.

¹⁰⁸ Testimony of Case Manager and Principal.

¹⁰⁹ Testimony of Father.

¹¹⁰ Testimony of Case Manager and Principal.

¹¹¹ Testimony of Case Manager and Principal. See also, J-9, p. 121.

¹¹² Testimony of Case Manager.

¹¹³ J-10, p. 125.

¹¹⁴ J-10, p. 125.

¹¹⁵ J-10, p. 125.

¹¹⁶ J-10, p. 125.

2. The finalized September 29, 2023 IEP contains the proposed action the IEP Team took regarding the Student's change in placement and the rationale for the change in placement. The finalized September 29, 2023 IEP states the IEP team removed the Student from the general education setting for 100% of the time outside the general education class.¹¹⁷ The IEP provides the rationale for this setting is because the Student needs a lower student to teacher ratio and a small structured setting.¹¹⁸ The Student cannot receive social work services and occupational therapy services with non-disabled peers because the Student requires a quiet environment free from distractions.¹¹⁹

3. The finalized September 29, 2023 IEP provides a description of the other placement options considered by the IEP Team. The IEP team considered placement in the general education setting for 100% of the day with supplementary aides and services, placement in a general education setting with special education support 20% or less or the day outside the general education setting, and placement in a general education setting with special education support 21-60% of the school day outside the general education setting.¹²⁰ These placements were rejected because these placements were not sufficient to meet the behavioral/emotional needs of the Student, do not provide the support and services needed to achieve academic and behavioral/emotional success.¹²¹ These placements were also rejected because the Student requires a small structured setting and a lower student to teacher ratio.¹²²

4. The finalized IEP also provides a description of the assessments and other factors relevant to the recommended change of placement. The IEP provides the Student's behavior is impeding the Student's learning and have addressed the Student's behavior with accommodations and by conducting an FBA and developing a BIP.¹²³

¹¹⁷ J-11, p. 112-113. Testimony of Case Manager. .

¹¹⁸ J-11, p. 112-113. Testimony of Case Manager.

¹¹⁹ J-11, p. 112-113. Testimony of Case Manager.

¹²⁰ J-11, p. 112-113. Testimony of Case Manager.

¹²¹ J-11, p. 112-113. Testimony of Case Manager.

¹²² J-11, p. 112-113. Testimony of Case Manager.

¹²³ J 11, p. 89.

5. The Prior Written Notice was provided to the Father prior to 10 days of the change in placement. The District did not issue a letter informing the Parents the Student's placement would be implemented at M Day School until January 26, 2024.¹²⁴

D. REVISION OF THE SEPTEMBER 2023 IEP.

1. On October 3, 2023, an IEP revision meeting was held.¹²⁵ The Mother participated in this meeting via phone.¹²⁶ The Father was not invited to this meeting.¹²⁷ The purpose of this meeting was to remove the consultation minutes in Social Science between the general education teacher and the special education teacher.¹²⁸ This error was brought to the District's attention when the September 2023 IEP was finalized and a change made in the school assignment.¹²⁹ A general education teacher would not be present at a therapeutic day school.¹³⁰ There was no further discussion regarding the change of placement decision made at the September 2023 IEP meeting.¹³¹

CONCLUSIONS OF LAW AND DISCUSSION OF THE ISSUES

Based upon the above Findings of Fact, the arguments and suggested legal authority provided by counsel as well as the IHO's own legal research, the IHO's Conclusion of Law and Discussion of the Issues is as follows.

Under the IDEA, hearing officers have jurisdiction concerning the identification, evaluation, or educational placement of a child with a disability or a provision of FAPE to a child. A hearing officer's decision must be based on substantive grounds. For procedural violations, a hearing officer may find a procedural inadequacy amounted to a denial of a FAPE

¹²⁴ Sd-5, p 24. Testimony of Mother.

¹²⁵ Testimony of Case Manager. See J-13, p. 129 and 166.

¹²⁶ Testimony of Case Manager.

¹²⁷ Testimony of Case Manager.

¹²⁸ Testimony of Case Manager. See J-13, p. 166.

¹²⁹ Testimony of Case Manager.

¹³⁰ Testimony of Case Manager.

¹³¹ Testimony of Case Manager.

to child, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provisions of a FAPE or caused a deprivation of educational benefits.¹³²

To file a due process claim under the IDEA, a parent who meets the definition of a parent under the IDEA may bring forth a claim. Under IDEA Regulation 34 § 300.30, a parent is defined to include the biological parent of a child. If a judicial decree or order identifies a certain person to act as the parent or to make educational decisions on behalf of the child, then such person shall be determined to be the parent under IDEA Regulation 34 §300.30. Where a divorce decree which provides joint custody of the student but designates one parent with sole decision-making authority, the parent without decision making authority lacks standing to challenge educational decisions.¹³³

Under Illinois Law, where the parents are getting a divorce, the court shall allocate significant decision-making responsibilities unless the parties agree otherwise in writing.¹³⁴ Education, including the choice of schools and tutors, is considered a significant issue.¹³⁵

Under the IDEA, there are procedural requirements which provide parents with the right to be involved in the development of their children's education plan to ensure their involvement in all stages and development and implementation of the individual educational program.¹³⁶ The Courts have held that the purpose of the IDEA was to protect the rights of the parents and not just custodial parents.¹³⁷ Parents are entitled to receive prior written notice and procedural safeguard notices. Under IDEA Regulation, 34 CFR § 300.504, parents are entitled to receive a copy of the procedural safeguards from a school district once a year. Non-custodial parents have the right to receive educational records and receive their procedural safeguards.

In *Smith v. Meeks*, 68 IDELR 29, (N.D. Ill. 2016), the District Court agreed this non-custodial parent's only right under the IDEA is to seek relief for procedural violations of her right to prior written notice and access to educational records. In *Navin v. Park Ridge School District*, 35 IDELR 239 (7th Cir. 2001), the 7th Circuit vacated the district's court dismissal of the pending action for the lack of standing. The 7th Circuit noted that the noncustodial parent

¹³² 23 U.S.C. §1415(f)(3)(E)(ii).

¹³³ See, *Saucon Valley School, District*, 114 LRP 45479. (PSEA 2014).

¹³⁴ See, 750 ILCS 5/602.5.

¹³⁵ See, 750 ILCS 5/602.5.

¹³⁶ See, *Amanda J. v. Clark County School District*, 267 F. 3d 877 (9th Cir. 2001); *Collingsgu v. Palmyra Bd. of Education*, 161 F. 3d 225 (3rd Cir. 1998).

¹³⁷ *Faucouer v. Committee on Specia Ed., District 3, New York City Bd. of Ed.*, 37 IDELR 250 (S.D. N.Y. 2002).

retained some important rights which encompasses the opportunity to be informed and remained involved in the education of the student.¹³⁸

In Re: Student with a Disability, 116 LRP 27414 (ISEA 2016), the IHO found the non-custodial parent could raise procedural violations in a due process complaint even though the non-custodial parent did not have decision making authority to raise substantive violations under the IDEA. The IHO ordered the school district to provide the non-custodial parent with the IDEA notices and ordered the school district to not restrict the non-custodial parent's access to the student records.¹³⁹ The IHO also ruled that the non-custodial parent could not raise any substantive issues.¹⁴⁰

A. **Whether the District failed to provide the Father with prior written notice at least 10 days prior to the proposed action to change the educational placement of the Student from general education to a therapeutic day school at the 9/29/2023 and 10/3/2023 IEP meetings?**

Under, the Federal Regulations, school districts are required to prior written notice when the school district proposes or refuses to initiate or change the identification, educational placement of the child or the provision of FAPE to the child.¹⁴¹ The written notice must be provided to a parent within a reasonable time.¹⁴² The Illinois Administrative Code (Code) defines a reasonable time as ten days.¹⁴³ The notice must contain the following items:

- (1) "A description of the action proposed or refused by the agency; and
- (2) An explanation of why the agency proposes or refuses to take the action; and
- (3) A description of each evaluation procedure, assessment, record or report the agency used as a basis for the proposed or refused action; and
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- (5) Sources for parents to contact to obtain assistance in understanding the

¹³⁸ *Navin v. Park Ridge School District*, 35 IDELR 239 (7th Cir. 2001).

¹³⁹ *In Re: Student with a Disability*, 116 LRP 27414 (ISEA 2016)

¹⁴⁰ *In re: Student with a Disability*, 2016-DP-0077 (ISEA 2016).

¹⁴¹ 34 CFR § 300.503(a).

¹⁴² 34 CFR § 300.503(a)

¹⁴³ Ill. Ad. Code 226.250.

- provisions of this part; and
- (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the agency's proposal or refusal."¹⁴⁴

The notice also must be written in language which is understandable to the general public and in the parent's native language.¹⁴⁵ A revised IEP can constitute prior written notice if the document meets the requirements under 34 CFR § 300.503(a).¹⁴⁶ OSEP explained a school district can meet the notice requirement by providing the parents with its notice form and referencing the IEP for the actual changes.¹⁴⁷

In the instant case, the Father has failed to prove the District committed a procedural violation by not providing prior written notice of the change of placement to a separate day school. The Findings of Fact and the Stipulations of Fact unequivocally demonstrate the District did in fact provide the Father with the requisite prior written notice in accordance with the IDEA, the Federal Regulations, and the Code.¹⁴⁸ The Notice of Conference Recommendations which referenced the finalized IEP met the requirements under the IDEA per the OSEP guidance. Moreover, the contents of the Notice of The Notice of Conference Recommendations and the finalized IEP contain all the seven required elements as required under the Code. The finalized IEP and the Notice of Conference Recommendations informed the Father of the action proposed by the IEP team to change the Student's placement and provided an explanation for the recommended change in placement.¹⁴⁹ The Notice of Conference Recommendations also informed the Father to refer to the procedural safeguards regarding the provided protections and informed the Father he could contact the Case Manager to ask questions in understanding the provisions of the procedural safeguards.¹⁵⁰ A copy of the procedural safeguards was emailed to the Father.¹⁵¹ The finalized IEP contained a description of the other placement options

¹⁴⁴ 34 CFR § 300.503(a).

¹⁴⁵ 34 CFR § 300.503(c).

¹⁴⁶ See, *El Paso County SD 2*, 113 LRP 44602 (CSE, 2013).

¹⁴⁷ *Letter to Lieberman*, 52 IDELR 18 (OSEP, Aug. 15, 2008).

¹⁴⁸ SOF 13. FOF C1-C5.

¹⁴⁹ FOF C1-C2.

¹⁵⁰ FOF C1.

¹⁵¹ SOF 13.

considered by the IEP team and why those options were rejected.¹⁵² The finalized IEP also included a description of the assessments used to support this decision which included the proposed FBA and BIP.¹⁵³ The Findings of Fact and Stipulations of Fact show the Notice of Conference Recommendations and the Finalized IEP were emailed to the Father on September 29, 2023 which is more than 10 days prior to the change of the Student's placement in January 2024.¹⁵⁴ Based upon the foregoing, the District has met its procedural requirements under the IDEA and the Code.

B. Whether the District committed a procedural violation by not affording the Father meaningful participation at the 9/29/2023 and 10/3/2023 IEP meetings by not providing the Father with the requested Student records and by not permitting the Father to raise concerns about not receiving the Student records?

Under Federal Regulation 34 CFR § 300.322(a), a school district is required to take steps to ensure that one or both parents are present at an IEP meeting and are afforded an opportunity to participate which includes the scheduling of the meeting at a mutually agreed time and place and notifying the parents early enough to ensure the parents have an opportunity to attend the IEP meeting. Under the Code, a school district is required to provide a written notification of a conference no later than 10 days prior to the proposed date of the IEP meeting.¹⁵⁵ The notification must inform the parents of their right to receive the written materials three days prior to the scheduled IEP meeting with the written materials to be considered at the IEP meeting and must inform the parents of their right to review and copy the child's student records prior to the IEP review meeting.¹⁵⁶ For a student who is already eligible for special education and related services, the written materials must include a copy of all IEP components that the IEP team will be discussing at the meeting.¹⁵⁷ The parents' participation at IEP meetings must be meaningful and not just a mere formality.¹⁵⁸

¹⁵² FOF C3.

¹⁵³ FOF C4.

¹⁵⁴ SOF 13, 20, 21, 23. FOF C5.

¹⁵⁵ Ill. Ad. Code, Title 23, Chap. 1 Section 226.530(a).

¹⁵⁶ Ill Adm. Code Section 226.530.

¹⁵⁷ Ill. Admin. Code, Title 23 Chap. 1 Section 226.530(a).

¹⁵⁸ See, *Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6th Cir. 2004).

Under the Federal Regulations, parents must be afforded an opportunity to inspect and review records in order to participate in IEP meetings.¹⁵⁹ In *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001), the Court explained the right to inspect and review records is to guarantee parents the ability to make informed decisions. The regulations also require parental involvement in placement decisions.¹⁶⁰ The Parent without decision-making authority is still entitled to participate in IEP meetings.¹⁶¹ The 7th Circuit, however, has held that non-custodial parents may not use the IDEA process to “upset choices committed to the custodial parent by state law or to challenge an educational decision in any way that is incompatible with the custodial parent’s exercise of his rights under the IDEA.” *Smith v. Meeks*, 68 IDELR 29, (N.D. Ill. 2016)

In *Beavertown School District*, 41 IDELR 48 (OSEA 2004), the IHO ruled that a school district was not required to consider a custodial and non-custodial parents opinions equally at an IEP meeting since the custodial parent has the decision making authority with regard to education decisions and an administrative law judge has no authority to modify the custody judgement and provide a parent with more rights. The IHO found the noncustodial parent lacked standing to challenge the child’s placement since the custodial parent approved the placement.¹⁶²

In this case, this IHO had already ruled in an Interim Order that the Father could not raise substantive violations under the IDEA since the Allocation Judgement provided the Mother with significant education decision-making authority. The Father has failed to prove the District committed a procedural violation by denying the Father meaningful participation at the September IEP meeting. The Father never submitted a formal request for student records before the September 29, 2023 IEP meeting.¹⁶³ The Father was informed he had the right to obtain duplicate copies of the student records under the Allocation Judgement, could obtain access to the District’s online portal to obtain access to student records and was informed of his rights to review and copy student records in the Notification of Conference for the September 2023 IEP meeting.¹⁶⁴ Even if the Father did not receive the student records provided by the District in

¹⁵⁹ 34 CFR § 300.501(a)(b).

¹⁶⁰ 34 CFR § 300.501(c)

¹⁶¹ See, *Saucon Valley School, District*, 114 LRP 45479. (PSEA 2014).

¹⁶² *Beavertown School District*, 41 IDELR 48 (OSEA 2004).

¹⁶³ FOF B12.

¹⁶⁴ SOF 15 and 16. FOF A3, B3 and B4.

August 2023, he was aware he could request and obtain access to the Student's records.¹⁶⁵ Despite being informed of his rights, the Father failed to avail and act upon his rights until after the September 29, 2023 IEP meeting.

Moreover, even though the Father has limited rights under the Allocation Judgement since he is not designated as the primary custodian and is not the significant educational decision maker, the District afforded the Father meaningful participation at the September 29, 2023 IEP meeting. The Findings of Fact and Stipulations of Fact show the District invited the Father to attend the September 2023 IEP meeting to afford the Father an opportunity to participate in the scheduled IEP meeting and provided the written materials to be considered at the IEP meeting which consisted of the Draft IEP.¹⁶⁶ The Findings of Fact and the Stipulated Facts show the Father attended the September IEP meeting and was able to raise his concerns regarding his allegations that he never received any records.¹⁶⁷ The Father was in fact reminded that he had received the Draft IEP and the Student's current IEP to review for the meeting.¹⁶⁸ The Father alleged he did not have the ABC data and the incident reports, however, the Findings of Fact demonstrate the collected ABC data was discussed in the Draft IEP and also contained in the FBA and BIP which were based upon the collected ABC data.¹⁶⁹ The Father never requested the meeting to be reconvened and was present at the meeting to ask any questions he had regarding the recommended change of placement for the Student and was able to be engaged in the educational process concerning the Student.¹⁷⁰ Additionally, the Mother participated in the September IEP meeting and indicated she received sufficient information to support the decision to change the Student's placement. The Mother explained the Draft IEP was a basis of her decision to agree to the placement change along with the Student already receiving private therapeutic services.¹⁷¹

As in *Beavertown*, the District was not required to treat the Parents equally regarding their opinions at the September IEP meeting. The Mother has the significant educational authority regarding the education of the Student and the Mother agreed to the recommended

¹⁶⁵ SOF 16. FOF A3 and B3.

¹⁶⁶ FOF B2-B8.

¹⁶⁷ SOF 8 and 10. FOF B9 and B11.

¹⁶⁸ FOF B11.

¹⁶⁹ FOF B7 and B11.

¹⁷⁰ FOF B11. SOF 11.

¹⁷¹ FOF B11.

change in placement.¹⁷² The Father is not permitted under the law to undermine or upset the Mother's decision to support the recommended placement change.

The Father has also failed to prove the District committed a procedural violation by not inviting the Father to the October 3, 2023 IEP meeting. Under the regulations, the District is required to ensure one Parent is present to participate in the Student's IEP meeting and the purpose of the October 3, 2023 meeting was to correct an oversight in the finalized September 29, 2023 IEP.¹⁷³ The finalized September 29, 2023 mistakenly included the consultation minutes between the general ed teacher and the special ed teacher,¹⁷⁴ The Student would not have a general education teacher at the separate day school because the Student was removed from the general education setting.¹⁷⁵ Only the Mother has authority under the Allocation Judgement to approve the correction to the IEP since she holds the significant education decision-making authority and not the Father.¹⁷⁶ The Findings of Fact demonstrate there was no further discussion of the placement change since the placement change had already been decided at the September 29, 2023 IEP meeting.¹⁷⁷ The prior written notice issued on September 29, 2023 confirmed the IEP team changed the Student's placement to a separate day school.¹⁷⁸ Overall, the Father has failed to prove the District committed a procedural violation by not affording the Father an opportunity to meaningfully participate in the scheduled IEP meetings on September 29, 2023 and October 3, 2023.

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

1. The Father's claims and requested relief are hereby denied.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h), either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification must specify the portions of the decision for which

¹⁷² FOF A1 and B11.

¹⁷³ FOF D1.

¹⁷⁴ FOF D1.

¹⁷⁵ FOF B11, C2, C4 and D1.

¹⁷⁶ FOF A1.

¹⁷⁷ FOF D1.

¹⁷⁸ FOF C1-C3.

clarification is sought. A copy of the request must be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: May 16, 2024

Leah Trinkala
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPENDIX A

Student Dash Hubert v. [REDACTED]
ISBE Case No. 2024-0068

Child/Student	[REDACTED]
Location of the Hearing	Remote Hearing
Father/Parent	[REDACTED]
Mother/Parent	[REDACTED]
J Elementary	[REDACTED] Elementary School
M Day School	[REDACTED]
Case Manager	[REDACTED]
Principal	[REDACTED]

CERTIFICATE OF SERVICE

The IHO certifies that a true and correct copy of the Final Decision and Order was sent to the Parties through their respective counsel identified below and to ISBE by UPS (signature required) and electronic mail and a true and copy of the Final Decision and Order was mailed to the Parents by UPS (signature required) and directed to:

Ms. Melissa Mazzeo, Esq.
Ms. McKenna Kohlenberg, Esq.
[REDACTED] Due Process & Mediation
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

and

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

and

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

and

Andy Eulass
Due Process Coordinator
Illinois State Board of Education
100 N. First Street
Springfield, IL 62777-0001
Electronic Mail: aeulass@isbe.net

On May 16, 2024

Leah M. Trinkala
Impartial Hearing Officer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]