BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ELSIE ARNTZEN
STATE OF MONTANA

In the matter of: [redacted]	Case Number: **OSPI 2023-2E** Hearing Officer: Clarence F. Snowden III **CORRECTED DECISION AND ORDER**

DECISION CORRECTING THE PREVIOUS ORDER AND MEMORIALIZING THE SEPTEMBER 19, 2023 DECISION MADE ON THE RECORD AT THE DUE PROCESS HEARING

This Corrected Decision and Order is issued on behalf of the parties to correct a technical error of the Due Process Hearing Officer when an incomplete version of an Order was issued on October 24, 2023. The Corrected Decision incorporates relevant Findings of Fact and the reasons for the Due Process Hearing Officer's Decision consistent with the requirements of IDEA. The corrected decision affirms and memorializes the original ruling on the record made during a hearing on September 19, 2023, dismissing the Petitioner's complaint with prejudice.

Appearances

[redacted] and [redacted] [The parents] appeared on behalf of the student, [redacted] and themselves as Petitioners ("Petitioners"). Elizabeth Kaleva, Esq., appeared on behalf of Respondent [redacted] School District ("Respondent").

This matter was

assigned to the undersigned Due Process Hearing Officer, Frank Snowden ("Hearing Officer").

Procedural history

The student, [redacted] (the "Student") is a 14 year old male with a diagnosis of Autism Spectrum Disorder. Petitioners submitted a written Request for Expedited Due Process Hearing to the Montana Office of Public dated April 26, 2023, which was received and entered of record on April 28, 2023. Petitioners allege violations of the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq. ("IDEA"), denial of FAPE during the 2021-22 and 22-23 school years. Specifically, the hand-written complaint alleges that the Respondents have failed to provide FAPE by: "1. Not being mainstreamed with his peers. Not being provided least restrictive environment- spends most of his day in resource room and with gym teacher. 2. He is not being provided a research core curriculum modified despite recommendations from OPI required evaluation. 3. The school district is unwilling to allow the parents any meaningful participation or mediation. 4. Would not let him go to Friday school despite being below grade level." A telephonic pre-hearing conference was held on May 4th, 2023 during which the hearing officer determined that the request for "expedited hearing" in this matter was not supported by the evidence. The petitioners provided in their initial complaint that the student had not been the subject of any disciplinary matters up to the date of

the complaint, thus the complaint was not based upon a disciplinary matter, and the school district did not allege a danger to the student or others. The district moved to dismiss, and the hearing officer bifurcated the matters, dismissing the expedited portion but preserving the non-expedited portion of the complaint for further adjudication. The parties jointly waived resolution and after a series of subsequent telephonic pre-hearing conferences, and one continuance, based upon discovery non-compliance, the matter was set for trial September 18-21, 2023.

Extensions of the due process hearing timeline have been granted at the request of one or both of the parties pursuant to 34 CFR §§ 300.510(c) and 300.515(c).

Jurisdiction: subject matter

Jurisdiction properly lies over the parties and over the subject-matter of this cause pursuant to 34 CFR § 300.507(a). Therefore, all claims presented by Petitioners under the IDEA are hearable and are reserved for decision by the Hearing Officer.

The Hearing

On September 18, 2023 and each consecutive day thereafter through September 19, 2023, an impartial due process hearing was conducted at [redacted] Hotel in [redacted] Montana, in this matter. The hearing was held in accordance with the procedural requirements of the IDEA and its implementing regulations found at 34 CFR §§ 300.507-515. Petitioners, while given some latitude in the procedural rules established and ordered by the hearing, failed to comply with certain discovery deadlines, including witness and exhibit lists. Petitioners, parents of the student, [redacted] and [redacted] each testified on their own behalf and certain exhibits were admitted. and Respondents stipulated to the admission of some but not all exhibits previously exchanged and submitted. The Respondent's witnesses included [redacted], High School Principal at [redacted], [redacted] special education director, [redacted], superintendent, and Ann Garfinkle, Ph.D., special education consultant. The hearing transcript is in two volumes totaling 468 pages.

Burden of proof

Petitioners, as the party challenging the Respondent's provision of a Free Appropriate Public Education, have the burden of proof, by a preponderance of the evidence, for all issues raised in this matter. *Schaffer v. Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005). The Tenth Circuit Court of Appeals has held that "the burden of proof in such a challenge rests with the party claiming a deficiency in the school district's efforts." *Thompson R2-J School Dist. v. Luke*., 540 F.3d 1143, 1148 (10th Cir. 2008). The Hearing Officer is satisfied that the burden of proof question was made clear to the parties and counsel for the parties.

Issues

The following issues were presented to the Hearing Officer for decision:

Procedural Issues for Hearing**:**

1. The school district is unwilling to allow the parents any meaningful participation or mediation.

Substantive Issues for Hearing:

Whether the Respondent failed to provide the Student with a Free Appropriate Public Education (FAPE) during the time the student attended the School by:

1. Not being mainstreamed with his peers. Not being provided least restrictive environment- spends most of his day in resource room and with gym teacher,

2. He is not being provided a research core curriculum modified despite recommendations from OPI required evaluation.

3. Would not let him go to Friday school despite being below grade level.

The above listed issues are quotes taken from the initial complaint filed by the petitioners and the allegations were never later clarified or defined and thus must be used as presented.

Findings of fact

After considering all the evidence in the form of oral testimony and admitted exhibits, as well as the oral and written arguments of the parties' and counsel, the Hearing Officer's Findings of Fact are as follows:

The student, [redacted], is a 14 year-old boy, and at the times in question in this matter the Student lived with the Petitioners in [redacted], Montana. Petitioners are the student's parents. He has a diagnosis of ASD, which manifests itself as behavioral challenges along with learning disabilities requiring specialized instruction. At the time of the hearing, the student had been enrolled in the [redacted] School District for five years.

The father of the student ([redacted]) testified first for the Petitioners and testified that the school district, specifically, [redacted] [the superintendent] and [redacted] [the school principal], refused a request by the parents to mainstream the student during the most recent IEP meeting. This refers to the first of the four (4) allegations listed above. However, there is no other evidence offered to support the appropriateness of the request for the student to be "mainstreamed." On the contrary, an Independent Education Evaluation, performed by Dr. Kristin Armer, was presented to the parents, at the request of the parents, and at district expense, and in that evaluation, it is specifically recommended that the student be in a self-contained classroom due to the significance of his disability. The father stated that he disagreed with the

report from Dr. Armer concerning the student's ability to choose his own electives and the recommendation for a self-contained classroom because Dr. Armer had not spent more than two hours with the student and that the student has made progress since the report in his communication. The father further testified that he believed the student to be eligible to attend "Friday School" because "he's not on grade level." However, when confronted with the eligibility criteria, with which the father testified he is familiar, he admitted that the student does not meet the eligibility requirements. Refer to allegation numer four (4) above. Mr. [redacted] further testified that the parents are not included in the IEPs that have been developed by the school system, and that the "grades" he received from the district are false. Lastly, as it pertains to the father's testimony, Mr. [redacted] testified that he believes, based on recommendations to the parents from Angela Matsen, Kelly Brown and Tanis Trenka, that the student should appropriately be offered a "modified core curriculum," and when asked if any of the aforementioned people were special ed instructors or teachers, the father asserted they are but offered no independent evidence to support such contention. While there was more testimony from the father, these are the relevant findings of fact.

The mother, [redacted], was the second and only other witness for the Petitioner. The mother testified that she has Doctorate in nursing practice and further alleged that she is an expert, saying, "I am an expert in my son and an

expert in cognitive disabilities." The mother testified to and about a number of things, and documents, that the hearing officer found to be inadmissible hearsay. She testified to the opinion of her 24 year old daughter [redacted], who is a student in the masters program in behavioral analysis. She testified about a "legal memorandum" dated approximately three weeks before the filing of the complaint herein, where an alleged attorney allegedly rendered an opinion and referenced case law allegedly pertaining to the student and the LRE. She testified about their efforts to obtain legal counsel and to certain documents from unknown authors who apparently advocate for and discuss LRE. She testified to evaluation by the "Autism Project" and alleged that the teacher, Ms. [redacted] does not know how to teach the student. She testified to an alleged report issued by OPI after a state complaint was filed and offered it to prove that the student is still not in his LRE nor is he allowed to participate in extra-curricular activities. She, like the father, relied upon recommendations from Angela Matsen including a curriculum called either Unique Learning system or New2you. She alleged that the school district is not offering a system of educating the student that is understandable to him, that he has never had an English class, never read book (modified to his level) that his peers are reading. She testified to and offered as exhibits articles from publications that discuss educational inclusion and LRE. She continues with allegations of failure to remediate the student after Covid-19 school closures. She testified to

expenses and receipts from various tutors and a speech therapist who recommended medication and a LAMP learning system. She testified to attempts to obtain student records for [redacted] and alleged that the school district and some reticence on the district's part in responding thereto and sought to show that the student had no disciplinary actions reported. The mother further testified and reiterated the husband's testimony that she believed her child was eligible for the Friday school. The mother further testified and reiterated the father's testimony that the child received no benefit from his music class based on comments made by his music teacher Mr. [redacted]. In addition, the mother further asserted that the student is getting grades that he has not earned. The mother testified that since the child has been provided with an AAC device and there are tutors that the child is learning but the only reason he is learning is because they've hired tutors. And lastly the mother testified that the school district wouldn't allow them to take his ipad device home. On cross examination the mother admitted that the majority of her contentions about the mistreatment or neglect of the student were unsupported by documentary evidence.

At this point in the process the petitioners "rested", and the hearing officer broke for lunch.

The respondent next moved for a judgment as a matter of law pursuant to rule 50(a)(2) of the Montana Rules of Civil Procedure. The respondent argued that the

parents have failed to meet their burden of a preponderance of the evidence in their case in chief. The petitioners were provided an opportunity to rebut and argue against the motion but based upon the evidence submitted to this point in the hearing, the only evidence they had offered of any substance was their own testimony and without more cannot meet their burden of a preponderance of the evidence. The motion for judgment as a matter of law as to the question of whether the child is in his least restrictive environment was granted. The Petitioners provided ample evidence that the LRE is a significant issue in the education of students with learning disabilities, Petitioners further provided testimony that they had repeatedly requested that the student be main-streamed. However, the burden of proof is on the parents and the parents have failed to show that the child or student has not been in his least restrictive environment. Specifically, they failed to show or demonstrate the academic benefits of placement in the mainstream setting, failed to address any supplementary aids and services that might be appropriate there, the non- academic benefits of such placement and the negative impacts or effects of the students presence on non-disabled peers in the class. The evidence consisted almost exclusively of their own testimony and referring to the advice of others about the least restrictive environment for the student. While the petitioners did attempt to put in a number of exhibits to support this claim, several of the exhibits were not admitted due to rules violations on discovery, others were not

admitted because they are hearsay with no authentication offered and no exception to the hearsay rule and still others were admitted but weren't specific to this student, only broadly referring to autistic students in general.

Second, the respondents moved for a judgment as a matter of law as to the question of whether the child was being provided (or should appropriately be provided) a modified core curriculum. The hearing officer found from the evidence submitted and the documentation provided, that the parents had met the burden of preponderance of the evidence on this matter and the motion for judgment as a matter of law was denied on this question, and the hearing continued upon this issue.

Thirdly, the respondents moved for a judgment as a matter of law with regard to the parents' claim that they were not allowed to be included with meaningful participation in the student's education nor in the development of the IEP's for this student. The hearing officer found from the evidence gathered during the petitioner's case in chief that they had, in fact met the burden of proof by a preponderance of the evidence with regard to this allegation and therefore the motion for a judgment as a matter of law was denied and the hearing continued on this issue.

Finally, the respondents moved for a judgment as a matter of law on the parents' allegation that the child was eligible to attend the Friday school program based on

current eligibility criteria. The hearing officer found from the evidence it submitted that the parents had not met their burden in this matter and such judgment was granted. The fact is that from the evidence submitted, the father conceded on cross examination that he was mistaken about the eligibility criteria and that his child did not have lower than 59% on any of his courses which was an established criteria. While the mother did not concede as the father did, on cross examination it was established that the child did not meet the criteria and that perhaps the mother didn't agree with the criteria, all the same, the evidence did not support this claim. The hearing officer, having dismissed two(2) of the four(4) issues in question, proceeded with the remainder of the trial on 2 remaining issues, namely, not being allowed to have meaningful participation in the development of the child's education curriculum and IEP and that the school district denied the child FAPE by not providing him with a modified core curriculum when it was appropriate to do so.

After a brief discussion on the record with counsel and both parents and the hearing officer, the hearing resumed with the Respondent’s case-in-chief.

The respondents first called [redacted] as a witness, who is a high school principal with the [redacted] School District. Mr. [redacted] testified that he had had significant contact with the student and that he had observed him in the classroom setting and other in-school settings. He further testified to his familiarity with

replacement curriculum programs such as Edmark and that in his opinion the student's cognitive disabilities would prevent him from learning without the benefit of a replacement curriculum. He further testified that despite his impairments, the student is making progress, and his progress reports demonstrate that, he also pointed out that grades for the student is performance based not standards based so he gets graded on the work and the progress he makes based on performance with the replacement curriculum. Of note, Mr. [redacted] description of a replacement curriculum contradicts the claim of the parents that the student is due to have a modified core curriculum which will be explained later. Mr. [redacted] further testified that he had been in attendance in IEP meetings for at least the last few years for the student and that he strictly denied the allegation that the petitioners we're not allowed to have meaningful participation in the development of the IEPs for the student. Also of note, on cross examination both the petitioner and Mr. [redacted] agreed that the parents specifically asked for a special education consultant named Anne Garfinkel to do evaluations and make recommendations regarding the student.

The school district's next witness was [redacted], special education coordinator for [redacted] School District. Ms. [redacted] testified to her significant history with the student and to her participation in the IEP meetings for the student as recently as the current school year. She additionally testified to

progress reports and progress report monitoring to ensure that the student was on track to meet his IEP goals. She also testified to the appropriateness of the IEP goals and the parents' involvement and input in the IEP decision making and their most recent refusal to sign off on a proposed IEP that was developed during an IEP meeting. Ms. [redacted] further testified concerning the replacement curriculum that is provided to the student, and that it is research based and was developed in conjunction with consultations with Anne Garfinkle and Mrs. [redacted] [case manager]. She further testified to the student's current level of performance and his struggle with his own cognitive disabilities and that he, in her opinion, would not come to the point where he was working on grade level. She further testified about her experience with the IEP meetings and the student and the parents and described them as contentious and continued to describe a recent IEP where the parents refused to sign the IEP, they disputed the aids and services portion of the IEP. On cross examination, she expressed, as a matter of fact, that the student was receiving a

"research-based core curriculum for autistic kids." Of note, on cross examination the petitioner and the witness both agreed that Ann Garfinkel was requested to consult, and did in fact consult, on curriculum and educational tools for the student, Ms. Garfinkel will later testify. The witness continued to discuss communication needs, evaluations, progress and specifically noted that parents were sometimes unwilling to consent to certain evaluations and that the private

providers hired by the parents refused to share their information about the student with the IEP team, Lastly, the witness denied that the district takes advantage of the parents and their lack of knowledge of signing certain documents.

The respondents next called [redacted], the Superintendent of [redacted] Schools, as a witness. This witness testified to her personal observations during the IEP meetings that the mother of the student had launched verbal assaults on her staff and had ridiculed her staff in these meetings and she had felt the need to be present at the meetings to help with meting norms enforcement during the meetings. She further testified to a disciplinary incident that occurred at the school a report of the incident that was offered into evidence. The witness also testified as to the disagreement between the school district and the parents over the type of curriculum used for the student. She indicated awareness of the request for the student to be mainstreamed with his non-disabled peers throughout the day and request that he be provided with a modified core curriculum. She also indicated that based on consultations with experts and staff that work with the student, that it was the consensus opinion that mainstreaming was not the best option for the student and that a replacement curriculum, as opposed to a modified curriculum was also in his best interest. She further stated that during the course of her tenure she has participated in the IEP meetings and noted that the parents' requests were appropriately considered by the IEP team. This witness also deferred to

consultations with Ann Garfinkel regarding the student and expressed her confidence in Ms. Garfinkel. On cross examination the witness discussed the wording in IEPs that did not include the parents as decision makers, discussed the way IEP's are usually drafted in advance of an IEP meeting as a proposed IEP and sent to the parents for their feedback. She additionally testified to her personal knowledge of a refusal by someone at the parents' residence to accept a certified mail document containing a draft IEP. The witness additionally testified that they have not declined to do anything that the [redacted] [parents] have reasonably asked them to do but they do not feel that it is in the students best interest to be mainstreamed in regular education classroom, specifically with regard to subjects like social studies because of his learning disabilities his behavioral challenges and the anxiety of being in that classroom. (While this testimony is more related to the allegation that the child is not in his LRE, it is noted that it supports the previous decision to dismiss the portion of the complaint regarding LRE). The witness further testified that a functional behavior assessment was done on the student and that the parents have refused their request to meet to discuss the FBA with the school district.

At this point in the hearing, the Respondents moved for a judgment as a matter of law with regard to the remaining two issues, namely that the parents we're not allowed meaningful participation in the development of the child's education and

IEP, and that the student was not being offered a modified curriculum when such curriculum is appropriate.

Based on the evidence thus far and the fact that the Petitioners have rested, the hearing officer granted the motion for judgment as a matter of law regarding the allegation that the parents were not allowed meaningful participation in the development of the child's education and IEP. Having heard from the parents that they were not allowed meaningful participation but also having heard from staff members describing their participation in the meetings the hearing officer found there was insufficient evidence to carry this forward and granted the judgment as a matter of law. However, regarding the motion for judgment as a matter of law for the allegation that the student was not being provided with a modified core curriculum, and by inference that it was appropriate for him to have such curriculum, the motion by the respondents was denied. After a discussion on the record with the petitioners and an explanation of the rationale by which the hearing officer determined to enter the judgment as a matter of law, respondents proceeded with its case in chief.

The Respondent next called Ann Garfinkle, Special Education Consultant. All parties and counsel stipulated to the expertise of Ms. Garfinkle in the area of special education. The witness testified that in her expert opinion the current curriculum that she had helped develop for the student is appropriate giving his

unique needs, and on the contrary, she acknowledged that the parents had asked for a modified (as opposed to replacement) curriculum and that, based on her expert opinion, this would not be an appropriate curriculum for this student based on his individual needs in essence she said that because of his cognitive disabilities the departure from the normal curriculum required by a modified curriculum would be so substantial as to virtually eliminate the substance of the core curriculum that is being modified. She also testified to her interaction with the parents and that the parents on some occasions agreed with her recommendations and on other occasions did not.

Upon the conclusion of Ms. Garfinkle's testimony, the respondents moved for a dismissal or a judgment as a matter of law with regard to the final outstanding issue which was whether the student was being offered a modified core curriculum and if so, what is a modified core curriculum appropriate. The hearing officer having heard all of the evidence thus far and having most recently heard from the selected expert and stipulated expert of the parties that a modified core curriculum was not in his best interest based on her expert judgment, and there being little to no evidence to the contrary, the hearing officer granted this motion and thus dismissed the issues in their entirety.

Discussion

General legal standards

Students with disabilities who are protected by the IDEA are entitled to be appropriately identified, evaluated, placed, and have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 USC § 1400(d); 34 CFR § 300.1(a). The IDEA further provides that a party may present a complaint and request for due process hearing with respect to any matter relating to the identification, evaluation, educational placement, or provision of a FAPE to a disabled student. 20 USC § 1415(b)(6).

The IDEA and its implementing regulations provide that in order to qualify as a "student with a disability" under the IDEA, a student must (1) meet the definition of one or more of the categories of disabilities which include: . . . a specific learning disability . . . , and (2) need special education and related services as a result of the student's disability. CFR § 300.8 (a)(1). A student is in need of special education and related services when the student requires those services in order to receive an educational benefit from the student's educational program. *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 54 IDELR 307 (7TH Cir. 2010); *Sebastian M. V. King Phillip Reg'l Sch. Dist.*, 59 IDELR 61 (1st Cir. 2012).

Petitioners' procedural issues

An allegation of a denial of FAPE to a disabled student can be based on either substantive grounds or procedural violations of the IDEA. 20 USC § 1415(f)(3)(E). *Hendrick Hudson Central School Dist v. Rowley*, 458 US 176; 102 S Ct 3034; 73 L Ed 2d 690 (1982); *Sytsema v. Academy School District No*. 20, 538 F.3d 1306(10th Cir. 2008), 50 IDELR 213. "The IDEA also sought to maximize parental involvement in educational decisions affecting their disabled child by granting parents a number of procedural rights. For example, parents are entitled to: (1) examine all records relating to their child, 20 U.S.C. § 1415(b)(1); (2) participate in the IEP preparation process, *id.*; (3) obtain an independent evaluation of their child, *id.* (4) receive notice before an amendment to an IEP is either proposed or refused, § 1415(b)(3); (5) take membership in any group that makes decisions about the educational placement of their child, § 1414(f); and (6) receive formal notice of their rights under the IDEA, § 1415(d)(1)." *Ellenberg ex rel. S.E. v. New Mexico Military Institute*, 478 F.3d 1262 (10 th Cir. 2007). The IDEA's "procedural guarantees are not mere procedural hoops through which Congress wanted state and local educational agencies to jump. Rather, the formality of the Act's procedures is itself a safeguard against arbitrary or erroneous decision making." *Daniel R.R. v. State Bd. Of Edc*., 874 F.2d 1036, 1041 (5th Cir. 1989) (internal quotation marks omitted).

However, proving a procedural violation is only a first step to obtaining relief. In Sytsema, the court held that an "IEP's failure to clear all of the Act's procedural hurdles does not necessarily entitle a student to relief for past failures by the school district." *Sytsema*, 50 IDELR at 216; *quoting Garcia v. Bd. of Educ. of Albuquerque Pub. Schs*., 520 F.3d 1116, 1125-26 & n.4 (10th Cir. 2008) ("[O]ur precedent hold[s] that procedural failures under IDEA amount to substantive failures only where the procedural inadequacy results in an effective denial of a FAPE."); *quoting Urban ex rel. Urban v. Jefferson County Sch. Dist*. R-1, 89 F.3d 720, 726 (10th Cir. 1996) (holding that a procedural failure did not entitle a student to relief because that deficiency did not result in the denial of a FAPE).

Congress provided in the 2004 amendments to the IDEA that to find a denial of FAPE based on a procedural violation, the Hearing Officer must find that the procedural violation: (1) impeded the student's right to a FAPE, (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the student, or (3) caused a deprivation of educational benefits. 20 USC § 1415(f)(3)(E)(ii); 34 CFR § 300.513(a)(2); UCA § 53A-15-301(IV)(O)(2).

The IEP process provides that the parents and school personnel are equal partners in decision-making; the IEP team must consider the parents' concerns and information they provide regarding their child. (64 Fed. Reg. 12473) (Mar. 12,

1999).) The IDEA's requirement that parents participate in the IEP process ensures that the best interests of the child will be protected and acknowledges that parents have a unique perspective on their child's needs, since they generally observe their child in a variety of situations. (*Amanda J., supra*, 267 F.3d at 891.) A parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Board of Education,* 993 F. 2d 1031,1036 (3rd Cir. 1993).) Stated another way, a parent has meaningfully participated in the development of an IEP when he/she is informed of his/her child's problems, attends the IEP meeting, expresses his/her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools*, 315 F.3d 688, 693 (6th Cir. 2003); *Fuhrmann, supra*, 993 F.2d at 1036.)

Petitioners' Procedural Issues:

1. Whether the parents were allowed to have meaningful participation in the development of the students IEP and or educational plan.

Petitioner's Substantive Issues

Petitioner's substantive issues are: (a) Whether the Respondent failed to provide the Student with a Free Appropriate Public Education (FAPE) during the time the student attended the school district by:

1. Not being mainstreamed with his peers. Not being provided least restrictive environment- spends most of his day in resource room and with gym teacher,

2. He is not being provided a research core curriculum modified despite recommendations from OPI required evaluation.

3. Would not let him go to Friday school despite being below grade level.

Conclusions of law

Based upon the foregoing Findings of Fact and analysis of issues and the Hearing Officer's own legal research, the Hearing Officer now enter the following Conclusions of Law:

1. Petitioners failed to meet their burden of proof that Respondent failed to provide the Student with a FAPE on each and every allegation made the basis of this complaint.

Order

Based upon the foregoing findings of facts, evidence in the form of testimony and exhibits, procedural and substantive issues and conclusions of law,

it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. It is ORDERED that Judgment is entered for Respondents and Petitioners' claim is dismissed with prejudice.

Dated this 26th day of October, 2023.

By:/s Clarence F. Snowden III
Clarence F. Snowden III
Montana OPI Hearing Officer

CERTIFICATE OF SERVICE

This is to certify that on the 26th day of October 2023, a true and exact copy of the foregoing was sent by electronic mail and deposited for delivery by standard mail to:

[redacted] Superintendent
[redacted] School District
[redacted]

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