

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION**

PROCEEDINGS BEFORE THE IMPARTIAL DUE PROCESS HEARING OFFICER

Case Number: NMPED DPH 1011-33

**FINAL DECISION
(with Clerical Corrections)**

Statement of Proceedings

Parents filed a Request for Due Process Hearing Against the Local Educational Agency (“Request”) with the New Mexico Public Education Department (“NMPED”) on March 24, 2011, alleging that District denied their son a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) 20 U.S.C. §§ 1400 et seq. (which took effect July 1, 2005) and implementing state rules (6.31.2 et seq. NMAC, effective June 29, 2007, and amended through December 31, 2009) and federal regulations (34 C.F.R. Part 300, effective August 14, 2006, and amended through December 1, 2008).

The mandated resolution session was not timely conducted having been held on the last day of the 30-day suspension of the due process timeline thus substantially curtailing the opportunity to explore settlement. There was no suggestion or evidence that District was unable to obtain the participation of Parents in a resolution session. The only prehearing motion was submitted by the District seeking to compel Parents to release Student’s private mental health records. This motion was denied by Order entered May 12, 2011. The parties were unable to complete the hearing on the merits as projected. The parties indicated they would explore settlement during the ensuing two week recess. The hearing reconvened for one more day for presentation of the District’s case. District’s request to keep the record open beyond that date to take the testimony of one more witness that had been available during the initial week of hearing was denied. Tr. 1453-1456.

District requested an initial extension of the 45-day due process timeline, without objection from Parents. The expansion and recess of the hearing and post hearing work conflicts necessitated granting

further extension requests and this decision is timely filed if delivered to NMPED and the parties no later than August 1, 2011.

The due process hearing was held May 23-27 and June 14, 2011. One or both Parents were present throughout and represented by counsel. One of District's Directors of Special Education was intermittently present on behalf of the District and the District was represented by counsel. All procedural safeguards were observed. The parties timely submitted a Statement of Stipulated Facts as required by 6.31.2.13(I)(14) NMAC. Exhibits offered by Parent were identified by numbers. District's single exhibit was identified by a letter. Joint exhibits were identified by double letters. Page numbers on all exhibits refer to the pagination in the lower right-hand corner.

The DPHO, having heard the oral testimony of all witnesses, having reviewed the exhibits admitted as evidence, having considered all argument and citations of authority submitted and the parties' requested findings of fact and conclusions of law and being otherwise advised in the premises, makes the following findings of fact, conclusions of law and orders.

Statement of Issues

After extended discussion at the prehearing conference of the parties' claims and defenses, the DPHO identified the following specific issues to be determined at the due process hearing in the Summary of Prehearing Conference of record at April 26, 2011, and modified of record on May 6, 2011.

1. Whether the District was obligated to evaluate Student during the 2009-2010 school year.
2. Whether the District's decision to exit Student from special education in February 2010 was appropriate.
3. Whether District provided Student with appropriate special education and/or related services in all areas of need during the 2009-2010 school year.
4. Whether District inappropriately relied on Parents to assist in managing Student at school and providing instruction at home during both school years in question and, if so, whether such reliance amounted to a deprivation of FAPE.
5. Whether the evaluation done of Student in December 2010 was timely conducted.