

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
SPECIAL EDUCATION BUREAU  
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER**

**Case Number: NMPED DPH 1112-29**

**ABSTRACT**

Student is a 19 year old young man who authorized his Parents to act on his behalf by executing an unchallenged Power of Attorney. During the due process hearing, an Order appointing Parents to act as Student's temporary guardians was entered by a Court of competent jurisdiction.

Student is eligible for special education and related services as Multiple Disabled, the concomitant impairments being Mental Retardation, Other Health Impaired and Speech and Language Impaired. His significant and complex medical condition includes diagnoses of Fetal Alcohol Syndrome, severe seizure disorder or epilepsy and Attention Deficit Hyperactivity Disorder, which have resulted in severe deficits in cognitive abilities, receptive and expressive language, fine and gross motor functioning and overall adaptive behavior.

Student was denied FAPE when the District failed to deliver material and essential elements of his IEP, specifically: a one-on-one aide for approximately three weeks, two summers of extended school year services, all required hours of related services, transportation in the morning, adaptive physical education for two years and adequate transition assessments and services. Student's behavior was found to have deteriorated while enrolled with District.

Student failed to prove claims that he was denied an appropriate individual health care plan, that he was not educated in the least restrictive environment or that he was entitled to homebound instruction.

Parents' overriding concern for Student's safety in the context of his severe seizure disorder resulted in a progressive decline in Student's mobility over the course of the two years under review. At the time of Student's Request for Due Process, his IEP provided that he must remain in a wheelchair at all times with the only exceptions being toileting and physical therapy. He was also to wear a helmet at all times with no exceptions. Although these circumstances were found to impact Student's ability to receive FAPE, no change in these restrictions was dictated in this decision.

The District was ordered to administer an assessment(s) within 60 days of the decision appropriate to assist in transition planning for Student and to make up all undelivered related services, coordinating time and location of delivery with Parents. District was also ordered to immediately enroll Student in adaptive physical education, if available, and if not, to have an adaptive physical education course available for Student no later than the start of the 2013-2014 school year. District must continue to provide Student with specified individual and consultation related services and specified transition services through the 2013-2014 school year. Student's eligibility was extended for one year beyond his statutory eligibility. Parents are to be reimbursed for transportation costs incurred providing Student's transportation in the mornings.

Finally, Student's IEPs were found to contain vague and immeasurable goals and objectives and his progress reports failed to convey meaningful information but there was insufficient evidence to prove that these procedural errors resulted in a deprivation of FAPE. Nevertheless, District was ordered to correct these errors in future IEPs.