

**In the Matter of**

**ALBUQUERQUE PUBLIC SCHOOLS,**

**Petitioner,**

**v.**

**Case No. DPH 1314-06**

**Parent,**

**on behalf of Student,**

**Respondent.**

**FINAL DECISION OF THE DUE PROCESS HEARING OFFICER  
AND CONSENT DECREE ADOPTING THE TERMS  
AGREED TO BY THE PARTIES**

**Jane B. Yohalem, Due Process Hearing Officer**

This matter comes before the due process hearing officer upon the request of the Albuquerque Public Schools (APS) for an Expedited Due Process Hearing. Student has identified as eligible for special education services under IDEA as a student with an “emotional disturbance” (E.D.).

At the time the due process request was filed, APS had suspended Student for 10 days pursuant to APS disciplinary rules applicable to all Students following an incident on September 27, 2013. APS had subsequently conducted a manifestation determination review and had concluded that the conduct which resulted in Student’s suspension was caused by, or had a direct and substantial link, to Student’s disability.

On October 4, 2013, APS requested an expedited hearing pursuant to 20 U.S.C. § 1415(k)(3)(A). The District alleged that returning Student to his then-current educational placement in an E.D. class at Student’s Elementary School at the end of the 10-day suspension would be substantially likely to result in injury to Student or to others.

A hearing officer is authorized to order a change of placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. 34 C.F.R. § 300.532(b)(2)(ii).

An expedited hearing in this matter was timely scheduled for October 31, 2013, within 20 school days of the date of the complaint. 34 C.F.R. § 300.532(c)(2). The District and the Petitioner agreed on a temporary placement for Student during the pendency of the due process proceedings.

In Petitioner's response to the District's expedited hearing request and again at the commencement of the due process hearing, Petitioner conceded that returning Student to the E.D. class placement he was in on September 27, 2013, would create a substantial likelihood of injury to Student or to others.

Because the likelihood of injury is the central issue for determination by the hearing officer in this expedited due process proceeding, the hearing officer ruled that partial summary judgment in favor of the District on this question was proper based on the concession of the Petitioner.

The parties then privately reached agreement on the temporary placement of Student for the remainder of the 45 school-day period set by the IDEA. *See* 34 C.F.R. § 300.532(b)(2)(ii). Parent and the District also reached a number of other agreements concerning Student, all of which the parties requested leave to place on the record at the October 31, 2013, hearing. That leave was granted by the hearing officer. The parties also asked the hearing officer to reflect the terms of the parties' agreement in the hearing officer's order, adopting the parties' agreement as a consent decree. Once again, the hearing officer agreed.

The terms of the parties' agreement, as adopted by the hearing officer, are as follows:

(1) Student will remain in his temporary agreed placement at Aztec for the 45-school-day period which began on October 16, 2013. Student receives 1:1 instruction from a teacher, with an aide, two and a half hours a day. Parent receives reimbursement for transportation to the program. These particulars will not change.

(2) The parties will promptly conduct an IEP meeting to determine Student's placement upon the expiration of the 45-school-day period.

(3) If the Parent disagrees with the placement adopted by the IEP team and files a due process complaint challenging the appropriateness of that IEP placement, Student's stay-put placement during the due process proceeding will continue to be the temporary agreed placement described in paragraph (1) above. The District agrees to continue to provide reimbursement for Student's transportation expenses during the stay-put period so long as Parent completes the necessary paperwork.

(4) By entering into this agreement with the District, Parent has not agreed to give up any challenge she may have to the appropriateness of the special education and related services provided to Student by the District prior to September 27, 2013. Nor has Parent, by entering into this agreement, agreed to give up any claim she may have that the need to place Student in an Interim Alternative Educational Setting (IAES) arose only because of the inappropriateness of the services provided by the District prior to September 27, 2013. Finally, by entering into this agreement, Parent is not agreeing to give up any claim she may have to compensatory education for the period Student is in the temporary placement should Parent prevail on her claims concerning FAPE prior to September 27, 2013. If, however, the hearing officer holds that APS provided FAPE to Student prior to September 27, 2013, or that any denial of FAPE did not contribute to or cause Student to be

placed in an IAES placement, then Parent agrees not to challenge as an inappropriate the particulars of the temporary agreed placement.

### **CONCLUSION**

For the reasons stated above, the partial summary judgment is granted to the District on its claim that maintaining the then-current educational placement of child is substantially likely to result in injury to the child or others. The hearing officer adopts as a consent decree the agreement of the parties stated herein.

### **RIGHT TO APPEAL**

Any party aggrieved by this decision has the right to bring a civil action in a State or federal court of competent jurisdiction pursuant to 20 U.S.C. § 1415(I) (2004), 34 C.F.R. 300.516, and NMAC 6.31.2.13(I) (25) (2007). Any such action must be filed within 30 days of receipt of the hearing officer's decision by the appealing party.

**THIS DECISION IS ENTERED THIS THE 12<sup>th</sup> DAY OF NOVEMBER, 2013.**

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Jane B. Yohalem  
Due Process Hearing Officer

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this *Final Decision of the Due Process Hearing Officer* was mailed by certified mail to the Secretary of Education, State of New Mexico Public Education Department, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 and to counsel for the District and for the Parent, on November \_\_\_ 2013, to the following addresses:

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Jane B. Yohalem  
Due Process Hearing Officer