

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE DUE
PROCESS HEARING FOR ____
AND U.S.D. ____ SPECIAL
EDUCATION INTERLOCAL
#_____

OAH No. I8ED____ ED Case No.
I7DP____-00I

REVIEW DECISION

Pursuant to K.S.A. 72-3418

The above-captioned case was referred for decision to this presiding administrative law judge (ALJ) by the Kansas Department of Education as authorized by both K.S.A. 72-3418 and K.S.A. 75-37,12 l(d). Following reams of evidence, an extensive hearing, and an exceptionally thorough rationale issued by the local hearing officer in ruling upon this case on December 18, 2017, the appeal of that decision has now been briefed by the parties and is ripe for adjudication before the immediate tribunal. The appellant, ____, is represented by counsel _____ and the respondents, U.S.D. ____ and ____ Interlocal No. ____, are jointly represented by counsel Sarah Loquist.

Factual Findings and Conclusions of Law

1. The parties have stipulated that no further evidentiary hearing is warranted following the issuance of the hearing officer's December 2017 ruling.
2. All written analysis, factual findings and legal findings of the hearing officer transcribed on pages 108 through 118 of his December 2017 decision, beginning with the caption "Conclusions of Law" and extending through the end of paragraph No. 4 of the analysis of "Issue 6", are hereby adopted and incorporated into this Review Decision by this reference as if fully set forth herein.
3. On appeal to this tribunal, appellant contends that: the hearing officer erred in excluding from evidence certain records of ____'s services and placements that pre-date May 28, 2015; the hearing officer failed to consider and address the issue regarding ____'s occupational therapy evaluation; the hearing officer failed to consider evidence alleged to prove the denial of FAPE to ____, due to a lack of progress on his IEP goals and the failure to implement his IEP; and, the hearing officer ignored alleged procedural violations of the IEP meeting in May 2015 that allegedly caused autism to not receive the label as ____'s primary exceptionality, thereby allegedly denying FAPE.
4. Aside from the overarching duty to decide whether Due Process was provided to the parties, the ALJ's next most pressing responsibility is to apply the proper scope of review. The ALJ as review officer exercises plenary review except in matters of witness credibility for which deference is owed to the hearing officer. See, *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 707 (10th Cir. 1998) (favorably citing *Carlisle Area Schools v. Scott P.*, 63 F.3d. 520, 22 IDELR 1017 (3d Cir. 1995). Other controlling precedents in our own Federal Circuit establish that the review officer must give "due weight" to the administrative proceedings below. *Murray by and through Murray v. Montrose County Sch. Dist. RE-JJ*, 51 F.3d 921, 927 (10th Cir. 1995). In the case at hand upon review of the record as a whole, the ALJ is much more than sufficiently impressed with the quality of legal analysis and fact findings by the hearing officer and, even if deference were not required, is persuaded that they were all correct and appropriate.

5. Regarding the restriction the hearing officer imposed upon older evidence, it was all quite clearly considered by the hearing officer for the limited purpose for which it was admitted. This historical context proliferates throughout the decision now under review and key portions of it were appropriately found material by the hearing officer, e.g., the numerous placement changes for ____, several of which were at his parents' demand. The cases cited by appellant in challenging this evidentiary ruling actually support the prudence of the hearing officer, identifying examples where an historical context rationale was the appropriate limitation upon the evidence's acceptance. See, e.g., *Kevin T. v. Elmhurst Comm. Sch. Dist. No. 205*, 2002 WL 433061 at n.5 (March 20, 2002 N.D. Ill.).

6. Appellant cites several reasons for seeking a broader application of the older records: to be able to "fully develop" its arguments; to see if respondents fulfilled their obligations; to discern if the current placement is appropriate; to determine what kinds of service and placement ____ needs, including what has been successful or unsuccessful; and, to see whether the current IEP is reasonably calculated to enable ____'s progress. This ALJ finds that none of such expressed objectives by appellant were precluded by the hearing officer's evidence ruling; that is, this evidence restriction did not suppress documented data that was essential to the appellant's case. Appellant was not rendered unable, nor was it even significantly inconvenienced, from making and supporting its arguments with an abundance of other testimonial evidence and more recent documentation. Moreover, the hearing officer's evidentiary ruling was an appropriate balance of the Due Process rights of both parties.

7. Regarding occupational therapy for ____, the appellant's present characterization of this as now a potentially dispositive issue is surprising. Respondents denied an occupational therapy evaluation because their occupational therapy screening report indicated ____ had adequate fine motor skills to access the general education curriculum. The unrefuted conclusions of G ____ were that ____'s skills were near normal for his age, that her assistive suggestions did not require implementation by an occupational therapist, and that therapy was not warranted. The hearing officer was not required, without regard for materiality, to deliver a ruling on every argument raised by appellant; nor is this ALJ, but the appellant's repeated emphasis on this matter prompted some reply. The ALJ finds no procedural inadequacies in the record that resulted in the loss of educational opportunity or benefits or infringed upon the parents' opportunity to participate in the IEP process. 20 U.S.C. 1415(f)(3)(E)(ii).

8. The hearing officer appropriately dismissed appellant's argument about the failure to identify autism as ____'s primary exceptionality. As the officer accurately found, by refusing to consent to the reevaluation, ____'s parents are estopped from arguing that ____'s designated exceptionality denied him FAPE. Quite simply, the label is immaterial so long as the services needed for ____'s individual needs are being addressed by the terms of IEP. As was true on the issue of occupational therapy, the preponderance of facts on record do not establish that the parents' ability to participate in the IEP process for determining ____'s exceptionality were infringed.

9. Regarding the broader issues of supplying FAPE and implementing the IEP, the ALJ finds that appellant overlooks the forest for the trees. Whether the number of issues to now be decided in this vein are counted as four by the respondents, as six by the hearing officer, or as multiples thereof as characterized by the appellant, the ALJ sees the overarching number of issues as two, or perhaps only one: whether ____ received FAPE and whether the IEP was adequately implemented in order to achieve FAPE. Again, no tribunal is obligated to articulate its thoughts on immaterial issues and not every fact argued by appellant is important to the case's disposition. The ALJ is persuaded that the hearing officer was correct, that the record as a whole supports by a preponderance that ____ received FAPE. The thoroughness by which the hearing officer expressed his rationale on all material disputes and most of the relevant disputes is a display of conscientious adjudication that does not require redundancy. The ALJ defers to the hearing officer's finding of credible testimony by the respondents' staff and, along with all the documentary evidence reviewed *de novo*, it clearly demonstrates that ____ is a highly intelligent young man who is functioning at or near grade level academically

and continues to make academic progress. The greater weight of evidence truly does establish that, although ___'s progress within this period in controversy may not be as fast as the parents' prefer, he has been making progress.

10. The appellant's request for residential placement of ___ is hereby denied and their request for attorney fees is also denied.

OFFICE OF ADMINISTRATIVE HEARINGS

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Notice of Appeal Rights

Pursuant to K.S.A. 72-3418, this decision is subject to review in accordance with the Kansas Judicial Review Act or to an action in federal court as allowed by the federal law. Consistent with state court actions, any action in federal court shall be filed within 30 days after service of the review officer's decision.

Certificate of Service

On March 2, 2018, I electronically served a copy of this document via the OAH e-filing system to:

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