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**STATE OF NEVADA  
DEPARTMENT OF EDUCATION**

In the matter of  
  
LYON COUNTY SCHOOL DISTRICT  
  
Appellant,  
  
v.  
  
STUDENT<sup>1</sup> by and through the parent  
  
Appellees.

DECISION

State Review Officer: Joyce O. Eckrem  
Representatives:  
Parent for Appellees  
Paul Anderson, Esq., for Appellant

**I. PROCEDURAL BACKGROUND**

Lyon County School District (District) filed this appeal on March 9, 2017 from the decision of the hearing officer rendered on February 20, 2017 pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415, and NAC 388.315. The

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<sup>1</sup> Personally identifiable information is attached as Appendix A to this Decision and must be removed for public distribution.



1 *Amanda J., et al v. Clark County Sch. Dist.*, 35 IDELR 65 (9th Cir. 2001), citing, discussing,  
2 and impliedly approving the 3rd Circuit's approach in *Carlisle*.

### 3 III. ISSUES ON APPEAL

4 1. Did the hearing officer err by finding that parent was denied the opportunity to  
5 participate in the IEP meeting, resulting in a denial of a free appropriate public  
6 education to Student as a matter of law?

7 2. Did the hearing officer err in providing remedies for the above denial?

### 8 IV. HEARING DECISION AND DISTRICT'S APPEAL

9 The hearing officer found that an IEP meeting was held for Student on October  
10 13, 2016 without the parent in attendance. The parent had notified the District that she  
11 was ill and would be unable to attend, but agreed that the IEP meeting could go  
12 forward.<sup>3</sup> Parent was not offered a new date for the IEP meeting, though, at the request  
13 of the parent, a subsequent meeting was conducted with the parent on November 9,  
14 2016 to go over the IEP. Parent was under the impression that it was an IEP meeting.  
15 [Hearing Decision, pp. 7-11, FOF #4, 5, 10, 13, 14]

16 In his thorough and careful analysis and conclusions, the hearing officer noted  
17 that parent participation is an integral part of the IDEA (citing 34 C.F.R. §§ 300.322 and  
18 300.324) and that the District "at no time indicated [it] could continue the IEP meeting to  
19 another date, because October 13, 2016 was the last day to hold the meeting in  
20 compliance with the requirement of an annual review." [Hearing Decision, p. 19] He  
21 found that the parent was never informed that the IEP meeting could be held after the  
22 annual deadline for review, and the subsequent meeting was held only to inform the  
23 parent of the IEP that was adopted by the District on October 13. This meeting was not  
24 intended as an IEP meeting.

25 Pursuant to 34 C.F.R. 300.513, the hearing officer concluded that conducting the

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27 <sup>3</sup> Agreement or consent by the parent to go forward with the IEP meeting in her absence is implied from  
28 her e-mail notifying the district of her illness and asking that the "final" IEP be sent to her after the  
meeting. The parties stipulated that she "acquiesced" to the meeting going forward without her. [District  
Exhibit LCSD0279; Joint Exhibit 1]

1 IEP meeting without the parent was a violation that significantly impeded the parent's  
2 opportunity to participate in the decision making, and therefore resulted in a denial of  
3 FAPE as a matter of law.

4 The hearing officer ordered that the District implement the existing October 13,  
5 2015 IEP, modified by specified goals and services included in the October 13, 2016 IEP,  
6 until such time as an IEP meeting is conducted with parent participation. [Hearing  
7 Decision, pp. 22-26].

8 District argues that the hearing officer erred by finding a violation of the parent's  
9 right to participate, in that parent has a history of not wanting to be in physical  
10 attendance at IEP meetings. District asks the SRO to take notice of two prior decisions  
11 involving the same parties, wherein the hearing officer and SRO ruled in favor of  
12 District with regard to parent's request to attend IEP meetings by e-mail.<sup>4</sup> Based on these  
13 prior decisions, the parent's request in this case to be sent IEP materials by e-mail, and  
14 the parent's acquiescence in this case to have the meeting proceed without her, District  
15 argues that it was reasonable to assume that parent had no intention of attending the  
16 meeting when she contacted the District and said she was ill and could not attend.

## 17 V. ANALYSIS AND CONCLUSIONS

### 18 *Procedural Violation*

19 The SRO has reviewed the record in its entirety and finds no facts that would  
20 alter the hearing officer's decision. Testimony at the hearing was consistent. On  
21 September 15, after receipt of the initial notice of the IEP meeting, parent sent an e-mail  
22 to the District requesting that the IEP team proposals be sent to her via e-mail due to her  
23 disability, which affects her comprehension of verbal communications. She did not say  
24 she would not physically attend the IEP meeting. [District Exhibit LCSD0178] On  
25 September 23, District sent notice to parent that her "*request to participate* in the IEP  
26 meeting itself through e-mail" (emphasis added) was denied and offered alternative

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28 <sup>4</sup> See [www.doe.nv.gov/Special\\_Education/Reports/Due\\_Process\\_Decisions/2015-2016](http://www.doe.nv.gov/Special_Education/Reports/Due_Process_Decisions/2015-2016)  
and [www.doe.nv.gov/Special\\_Education/Reports/Due\\_Process\\_Review-Decisions/2015-2016](http://www.doe.nv.gov/Special_Education/Reports/Due_Process_Review-Decisions/2015-2016).

1 means for the parent to participate. [District Exhibit LCSD0009] The Director of Special  
2 Education misunderstood parent's request to receive the IEP materials by e-mail as a  
3 request to "attend" by e-mail, a process that had been previously decided against the  
4 parent in a hearing and by a review officer. [Tr. 34:11-37:19; *see* footnote 4] Two days  
5 before the meeting parent notified the District that she was ill and would not be able to  
6 attend the IEP meeting on October 13, 2016. Parent did impliedly agree to the meeting  
7 going forward without her. [*See* footnote 3] However, intent on meeting the annual  
8 review deadline of October 13, the District did not at this time offer the parent another  
9 date or inform her that she could request a different date.<sup>5</sup> [Tr.32-37, 51:4-19] The District  
10 conducted another meeting on November 9, 2016 that parent and her advocate attended,  
11 but the testimony was consistent that District intended this solely as a meeting to go  
12 over the contents of the October 13, 2016 IEP that District had already adopted and  
13 intended to implement. [Tr. 61:11-13, 62:7-25] A substantial portion of that meeting was  
14 devoted to informing the parent of recent evaluation results. [Tr. 64:22-65] Although the  
15 testimony established that the District could have turned that meeting into an IEP  
16 meeting, the testimony was consistent that they did not so do, and there is no evidence  
17 that they informed the parent that she could request that it be conducted as an IEP  
18 meeting to develop or alter components of the IEP. In fact, the District's response to  
19 changing the October 13 IEP meeting date was: the parent never asked. [Tr. 51:20-23; *see*  
20 also Tr. 66:4-5]

21       It is these notice flaws that are decisive herein: (1) failure to inform the parent that  
22 the IEP meeting could be rescheduled *when* she notified District of her illness, and (2)  
23 failure to inform the parent that the follow-up meeting on November 9, 2016 could be  
24 conducted as an IEP meeting rather than just a review of the adopted provisions.  
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27 <sup>5</sup> The SRO notes that in the 9/25/16 notice to the parent offering alternatives to attendance at the IEP  
28 meeting, District did note that *additional* meetings could be scheduled if parent needed time to process the  
information discussed on October 13. But there is no notice in the record or testimony that parent was  
informed the October 13 date could be *rescheduled*.

1 Since the Supreme Court's decision in 1982 it has been clear that compliance with  
2 the IDEA is a significant part of offering and providing a free appropriate public  
3 education to students with disabilities. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982)  
4 established a two-pronged test to determine whether a school district has offered a  
5 student a free appropriate public education: (1) has the district complied with the  
6 procedures set forth in the Act, and (2) was the IEP reasonably calculated to enable the  
7 student to receive educational benefit? *Id.* at 206-207. Subsequent courts have routinely  
8 and consistently ruled on the importance of parent participation in the development of  
9 the IEP. *Amanda J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877, 891, 892 (9<sup>th</sup> Cir. 2001) ["Those  
10 procedures which provide for meaningful parent participation are particularly  
11 important....Procedural violations that interfere with parental participation in the IEP  
12 formulation process undermine the very essence of the IDEA."]

14 Congress amended the IDEA to add section 1415 E, clarifying that although  
15 hearing officers must decide questions of FAPE on substantive grounds, they may find  
16 that a child did not receive FAPE in matters of procedural violations if, *inter alia*, the  
17 violation significantly impeded the parent's opportunity to participate in the decision-  
18 making process regarding FAPE. *See* also 34 C.F.R. § 300.513 (a).

19 The Ninth Circuit case relied upon by the hearing officer in finding a significant  
20 impediment to the parent's opportunity to participate is on point. *Doug C. v. State of*  
21 *Hawaii Department of Educ.*, 720 F.3d 1038 (9<sup>th</sup> Cir. 2013). The facts in the case before this  
22 SRO are almost identical to those in *Doug C.*, and the SRO finds nothing in the record or  
23 the District's argument that would alter the hearing officer's findings and conclusions.  
24 [See Hearing Decision, pp. 20-21, incorporated by reference as though fully set forth  
25 here.] District argues that *Doug C.* is distinguishable in that here the parent acquiesced to  
26 the IEP meeting proceeding in her absence [District Exhibit LCSD0279, Joint Exhibit No.  
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1 1, Stipulated Fact #9], whereas in *Doug C.* the parent objected to proceeding without his  
2 presence. Again, however, *it was the failure of notice to the parent* that is decisive in the  
3 case before this SRO. When parent notified the district that she was ill and to send her a  
4 copy of the final IEP, the District simply responded by e-mail: "I'm sorry to hear that  
5 you aren't feeling well. Take care!" [District Exhibit LCSD0279] *At this time*, District did  
6 not offer alternative dates, or renew their offer to hold additional IEP meetings after the  
7 parent had had time to review the "final" IEP.<sup>6</sup>

8 The District asks the SRO to take notice of prior decisions (see footnote 4) as  
9 evidence that parent has an established history of refusing to physically attend IEP  
10 meetings regarding her son. The SRO declines to do so on two bases. First, this case is  
11 distinguishable from the prior cases. Those cases dealt with the question of whether  
12 parent should be allowed to "participate" in IEP meetings via e-mail. Contrary to the  
13 Director of Special Education's misunderstanding, parent did not in this case request to  
14 attend via e-mail, but only to receive the written IEP meeting materials by e-mail to  
15 accommodate her disability. Second, there are no facts in the present case indicating that  
16 parent was avoiding physical attendance, and the *decisions* in the prior cases do not  
17 establish a pattern or practice of this parent avoiding physical attendance at IEP  
18 meetings. Nor did the District establish such a pattern or practice at hearing.

19 The hearing officer acknowledged that the District was faced with two conflicting  
20 compliance requirements in this case—the IEP review deadline and parent participation.  
21 Citing *Doug C.*, the hearing officer concluded that it was error for the District to prioritize  
22 strict deadline compliance over parental participation. The SRO agrees. The solution for  
23 the District was for the District to take steps to ensure the parent's participation in  
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27 <sup>6</sup> The SRO cannot assume that because the parent used the term "final IEP" that she was consenting to it in  
28 advance without the opportunity to participate further. The record is clear that she was getting draft  
materials that the district was preparing in advance of the meeting, and a reasonable assumption is that  
she was asking for a copy of what they finally came up with at the meeting. [Tr. 40:9-50:13]

1 accordance with 34 C.F.R. § 300.322. District did not do this, and therefore the hearing  
2 officer's decision is upheld.<sup>7</sup>

3 *Remedies*

4 The SRO is puzzled as to why the District objects to the remedies, since with the  
5 exception of compensatory speech services, the hearing officer's remedies were to  
6 implement portions of the disputed IEP, developed unilaterally by the District on  
7 October 13, 2016, until such time as a new IEP could be developed with parent  
8 participation. Although the hearing officer stopped short of deciding the case on  
9 substantive grounds, he did hear the entire case including the substance of the disputed  
10 portions of the IEP.

11 Hearing officers, courts and SROs have broad discretion in awarding relief. The  
12 SRO sees nothing unlawful in the remedies ordered by the hearing officer, and the  
13 District has pointed to no grounds for overturning them.

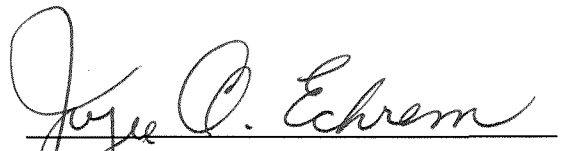
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15 VI. DECISION AND ORDER

16 For the reasons stated above, the hearing officer's decision and order is upheld.  
17 The District shall implement those orders as specified by the hearing officer, starting the  
18 timelines specified in the orders from the date of receipt of this SRO decision and  
19 continuing until such time as the IEP is reviewed and revised with parent participation.

20 [Hearing Decision, pp. 22-26]

21 It is so ordered.

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25 Date: April 7, 2017

  
Joyce O. Eckrem, State Review Officer

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28 <sup>7</sup> No doubt there would be a cut-off point in District's obligation to ensure participation, but this case does not present such facts.



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**NOTICE OF APPEAL RIGHTS**

The decision of the review officer is final unless a party appeals the decision. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction within 90 days after receipt of the decision. NAC 388.315.