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STATE OF IOWA

TERRY BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF EDUCATION
BRAD A. BUCK, DIRECTOR

April 27, 2015

Via First Class Mail and Electronic Mail

FATHER
ADDRESS
West Des Moines, IA 50265

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*IDEA State Complaint Decision*,
27 D.o.E. App. Dec. 593 (2015).

Paternal Grandmother
c/o FATHER
ADDRESS
West Des Moines, IA 50265

MOTHER
ADDRESS
West Des Moines, IA 50265

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*Complaints # 15-07 & #15-08*
*Decision*

Dear Parties:

On January 27, 2015, the Iowa Department of Education ("Department") received an IDEA state complaint from FATHER, alleging violations of the Individuals with Disabilities Education Act ("IDEA") concerning his children, X.X. (born in the fall of 2007, complaint # 15-07) and Y.Y. (born in the late fall of 2005, complaint # 15-08). XXXXXXXXX, the children's paternal grandmother, joined in

FATHER's complaints. The West Des Moines Community School District ("District") and Heartland AEA ("AEA") provided responses. The AEA and the District have denied FATHER's allegations. The children's mother, MOTHER, has not filed any documents or provided any evidence to the Department. The complaints contain multiple allegations, which are grouped into similar broad issues and presented below. I have reviewed the records provided by the parties. I have offered them opportunities to present whatever evidence they care for the Department to review. I have also taken official notice of the items contained in on-line data systems accessible to the public, including court records available in computer-aided legal research databases. I have also obtained additional information from the office of the Clerk of District Court and additional clarifying information from the office of the Polk County Attorney. The record is closed.

After fully considering the record in light of the applicable law, these complaints are NOT CONFIRMED.

## I. Parties, Jurisdiction, and Timelines

The Department has jurisdiction of the parties. Iowa Admin. Code r. 281—41.151(1). The Department has jurisdiction of the subject matter. *Id.* r. 281—41.153(2). The deadline had previously been extended based in part on the novelty of the legal questions presented. Those reasons justify a further extension of the timeline to today's date, including a recent argument from FATHER that his constitutional rights were violated. *Id.* r. 281-41.152(2).

FATHER has standing to file these state complaints as a parent of two eligible individuals. *Id.* r. 281—41.151(1). Paternal Grandmother also has standing to join in these complaints because the state complaint process is not limited to parents of children with disabilities. *Id.*

FATHER alleges that some of the violations about which he complains occurred more than one year to the filing of his complaints. To the extent this is so, those violations are time-barred and will not be considered. *Id.* r. 281—41.153(3). I will only consider alleged violations that occurred within one year before the filing of these complaints. *Id.*

## II. Allegations

FATHER's complaints contain the following three broad allegations.

1. The AEA and the District violated his IDEA rights to participate in his children's individualized education programs ("IEPs") by complying with an order of protection entered by the district court restraining FATHER from having contact with MOTHER.
2. The AEA and the District violated the IDEA by not attaching a summary of IEP meeting discussions to his children's IEPs, and by not having him sign IEPs.
3. The AEA and the District violated the IDEA by not providing "formal testing" to his daughters.

## III. Findings of Fact

I make the following findings of fact by a preponderance of the evidence when the record is considered as a whole. *Letter to Reilly*, 64 IDELR 219 (OSEP 2014). Consistent with *Letter to Reilly*, I do not assign the burden of producing evidence to either party.

### *A. General.*

FATHER and MOTHER are the parents of X.X. and Y.Y. X.X. and Y.Y. are students in one of the District's elementary schools. X.X. and Y.Y. are eligible individuals under the IDEA.

The marriage of FATHER and MOTHER was dissolved in April 2014 by decree of the Iowa District Court for Polk County ("District Court"). The parties have joint legal custody. MOTHER has physical care and FATHER has visitation.

### *B. Allegation One: Order of Protection*

On October 23, 2012, in connection with a deferred judgment in a criminal case, the District Court entered an order of protection that prohibited FATHER from having any contact with MOTHER. On March 28, 2013, the District Court modified its order to allow FATHER and MOTHER to "communicate by text only about their children's needs, activities, and to arrange parental visitations." This March 2013 modification is the most recent order. The AEA and District have a copy of this order. There is no court order that would permit FATHER and MOTHER to have voice communications or to be present in the same place

or be on the same telephone call. To the contrary, the current court orders prohibit such contact.

FATHER completed the terms of his deferred judgment. The records are now expunged and the records of that proceeding are kept confidential. While this court file is no longer publicly available, the order of protection remains in effect and is enforceable.

The AEA and District no longer offer to FATHER and MOTHER separate IEP meetings. The AEA and the District have offered FATHER participation in his children's IEP meetings by a relay arrangement in which the IEP team proceedings are described to FATHER and his responses or feedback are relayed back.

FATHER asserts he has the right to listen to statements made by MOTHER and to speak directly to the IEP team. The AEA and District have concluded that doing so is not permissible in light of the order of protection, and have communicated this to FATHER on multiple occasions, including by a letter from attorney James C. Hanks, dated January 26, 2015.

Domestic violence is a national problem. "On the average, a woman is battered in the United States by a partner every twelve to fifteen seconds." Dawn Bradley Berry, *The Domestic Violence Sourcebook* 8 (1998). About one in four women will be targets of domestic violence at some point in life. Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Abuse, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 J. Am. Med. Ass'n 572 (2001). Domestic abuse is one of the leading causes of death and injury to American women of all ages. *See, e.g.*, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States* (2003) (hereinafter "*CDC*"). The harm to the national economy caused by domestic abuse is measured in billions of dollars. *Id.* at 32.

*C. Allegation Two: Meeting Minutes and IEP Signatures*

The facts alleged by FATHER are true. The IEPs at issue were not signed by FATHER. The IEPs did not have meeting minutes or meeting notes attached.

*D. Allegation Three: "Formal Testing"*

FATHER's demand for "formal testing" is, at its core, a request for IQ testing.

While it is true that the AEA and the District have not conducted the requested "formal testing," both children have received a comprehensive evaluation. The assessment measures and techniques employed by the AEA and the District are research-based. They give a reliable and valid picture of each child's educational performance and instructional need. These measures and techniques include curriculum-based measures and structured observations and interviews. There is no evidence that the requested "formal testing" would yield any relevant information in addition to – or different from – the substantial amount of information gathered by the District and the AEA for each child.

## IV. Conclusions of Law

### *A. General.*

IDEA regulations and state rules require the Department to investigate any complaint alleging a public agency violated a provision of the IDEA. Iowa Admin. Code r. 281—41.153(2). The Department is to make an independent assessment of the complaint. *Id.* r. 281—41.152(1). If a violation of the IDEA is confirmed, the law requires the Department to craft a remedy. *Id.* rr. 281—41.151(2), 281—41.152(2). No remedy is required if there is no confirmed violation. *Id.* r. 281—41.151(2).

FATHER, being a joint legal custodian, is entitled to parental rights under the IDEA. Iowa Admin Code r. 281—41.30(2)"a". Parents are entitled to procedural safeguards, including the right to be "present at" or "participate in" meetings, as well as notice of meetings. *See generally id.* rr. 281—41.322, 281—41.500 through 281—41.537. Meetings must be scheduled at a "mutually agreed-upon time and place." *Id.* r. 281—41.322(1)"b". Parent requests and information must be considered, *see Fort Osage R-1 Sch. Dist. v. Sims*, 641 F.3d 996 (8th Cir. 2011); however, LEAs and AEAs are not bound thereby, *see K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011).

Each child with a disability must be evaluated in a manner consistent with the IDEA. Iowa Admin. Code r. 281—41.301 through 281—41.313. Each initial evaluation and reevaluation must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child." *Id.* r. 281—41.304(2)"a". Each State has latitude in establishing state policies for implementing the IDEA's evaluation requirements. 20 U.S.C. § 1412(a)(7).

The law describes the content that must be contained in an IEP. Iowa Admin. Code r. 281—41.320. If an item is not specifically listed in the law as required in an IEP, an IEP will not be out of compliance due to the item's absence. *See* 20 U.S.C. § 1414(d)(1)(A)(ii)(I).

*B. Allegation One: Order of Protection*

The validity of this order of protection is not properly before me. It is conclusively valid. Any attacks on its validity are outside of the Department's jurisdiction and must be directed to the District Court. I will not second-guess the District Court's findings and conclusions, and I will not speculate on what would happen if the District Court were called to reexamine the current need for this order of protection. I will not speculate about whether law enforcement officials would choose to prosecute anyone for violating an order of protection. What law enforcement officials may do is not at issue. The issue is what school officials must do.

Iowa's laws allowing for the issuance of civil and criminal orders of protection from domestic abuse are part of a national effort to more effectively address domestic violence. *Cf. CDC*. Those efforts are embodied in the federal Violence Against Women Act (VAWA), Pub. L. 103-322, initially passed in 1994 and reauthorized in 2005 and 2013. As a part of VAWA, the United State Code now provides that a valid domestic abuse order of protection is entitled to Full Faith and Credit and is enforceable in any state or territory. 18 U.S.C. § 2265.

A violation of an order of protection is punishable by contempt. Iowa Code chs. 236, 664A; *Henley v. Iowa District Ct.*, 533 N.W.2d 199 (Iowa 1995). This authority to punish includes aiding and abetting violations of an order of protection. *Id.* In *Henley*, the Iowa Supreme Court concluded that a protected party could be found in contempt for aiding and abetting the restrained party's violation of an order of protection by consenting to and enabling his contact with her. *Id.*

In effect, FATHER frames this matter as a matter of federal supremacy: his IDEA right to participate in his children's IEP meetings must take precedence over state-court-issued domestic abuse orders of protection. For two reasons, I conclude otherwise. First, combatting domestic abuse is not just a state law matter. Second, the supremacy argument presumes that the AEA and the District cannot give effect to both the IDEA and the order of protection.

Concerning the first reason why FATHER's supremacy argument is misplaced, I conclude that this is not a federal-law-versus-state-law issue; rather, there are two federal laws that must be balanced and harmonized: the IDEA and VAWA. The balancing requires consideration of congressional intent. *See, e.g.*, *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). This balancing requires that both statutes be given a reasonable construction. *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994). I am unable to conclude that Congress, when enacting VAWA and providing for nationwide enforcement of orders of protection, *see* 18 U.S.C. § 2265, somehow reasonably intended to exempt orders of protection from enforcement during IEP meetings. Federal policy against domestic abuse is so strong, *id.*, and the harms of domestic abuse are so catastrophic, *see generally CDC*, that I cannot conclude Congress, in enacting the IDEA, intended for FATHER to be in the same room or on the same call as MOTHER during an IEP meeting, but at no other time and in no other place. This would be a manifestly absurd result. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Such a reading of the IDEA would render the IEP meeting, whether a face-to-face meeting or a virtual meeting, a place of potential danger and intimidation for targets of domestic violence. This cannot be.

If this clearly absurd result were required based on the language of federal law and if IDEA and VAWA were in irreconcilable conflict, I would be compelled to conclude that VAWA, as the more recently enacted and reauthorized statute, implicitly repealed IDEA to the extent that IDEA would purport to require schools to permit persons subject to orders of protection to be physically present or in communication with protected parties. *Cf. Connecticut Nat'l Bank*, 503 U.S. at 253; *see also Letter to Schaffer*, 34 IDELR 151 (OSEP 2000) (CAPTA, being more recently enacted, is an exception to FERPA). This presumes that VAWA and IDEA are not reconcilable; however, under the present facts they are. That is the second reason why FATHER's argument must fail.

In essence, FATHER asserts he has the right to be physically present or telephonically present during each IEP meeting, with the uninhibited right to listen to IEP team discussions, including contributions of MOTHER, if not to speak directly to the IEP team, including to MOTHER. The IDEA does not clearly confer this right. The IDEA requires he be "present at each IEP team meeting *or* … afforded the opportunity to participate" in such a meeting. 34 C.F.R. § 300.322(a) (emphasis added). The fact that the IDEA provides an alternative to physical presence immediately addresses the first component of FATHER's core argument: his physical presence is not legally required. This alternative to physical presence does not mean that AEAs and Districts may

unilaterally exclude parents from being physically present at IEP meetings; however, it does mean that AEAs and Districts must do so when necessary to comply with a current order of protection. The IDEA does not compel school officials to place themselves and the parents in a situation where a contempt of court will undoubtedly occur. *Henley*, 533 N.W.2d 199.

Since FATHER's physical presence cannot be required (because it is prohibited), he is entitled to an alternate means to exercise his IDEA rights. 34 C.F.R. § 300.322(a). Those alternative means require mutual agreement. *See, e.g.*, *id.* § 300.328. In this case, the parties' ability to agree is legally and functionally constrained by the District Court's order of protection. FATHER and the AEA and District may only agree to an alternative means that complies with the order of protection. This would preclude any manner in which FATHER may have contact with MOTHER (as well as any manner in which MOTHER may have contact with FATHER, *see Henley*, 533 N.W.2d 199).

What is left is the manner of participation offered by the AEA and the District: participation by telephone relay. This would allow FATHER to provide his input into the IEP team and hear descriptions of the deliberations of the rest of the IEP team, all in a manner that does not violate the terms of the order of protection. This also complies with the IDEA, which has a non-exhaustive (see 34 C.F.R. § 300.20 (a list beginning with "include" or "including" is not exhaustive)) list of means of meeting participation, *id.* § 300.328, including "individual … telephone calls" – the procedure employed here, *id.* § 300.322(c). The procedure employed by the AEA and the District complied with the IDEA. The fact that FATHER does not hear a real-time, verbatim discussion of the IEP team's proceedings is not an IDEA violation, so long as he is able to participate and understand the team's decision-making process. The record establishes he has been able to do so. He has forcefully and clearly provided input to the IEP process, and there is absolutely no evidence in the record that the AEA or the District withheld any decision rationale, piece of evidence, or data point from FATHER.

FATHER asserts this arrangement violates the United States Constitution. He asserts that he has a liberty interest in child rearing, and the AEA and District have deprived him of that interest in violation of the Due Process Clause. I find and conclude it is necessary to address this allegation to fully resolve these state complaints. After reviewing the record and the law, I cannot agree with FATHER's assertion. FATHER had the process to which he was due under the Constitution in the criminal case, and the matters about which he complains are

the results of a lawfully entered judgment of conviction and order of protection. I cannot conclude he was deprived of a liberty interest without due process of law. *See generally Borlaug v. City of Cedar Falls*, 710 N.W.2d 541 (Iowa Ct. App. 2006) (exclusive possession of a dwelling pursuant to a criminal no-contact order does not constitute a "taking" for Fifth Amendment purposes).

To the extent that FATHER seeks an IEP meeting for him and an IEP meeting for MOTHER, this is not permitted under the IDEA. Each child's IEP is developed by one IEP team. Separate IEP meeting for each cannot be permitted because that would call into question at which meeting the decisions were actually made. At the first meeting or at the second? Whether caused by orders of protection, parental schedules, or one parent's distaste for the other parent, AEAs and school districts must ensure that each child has one – and only one – IEP team. The practice of having separate IEP meetings under these or similar circumstances is hereby disapproved as a matter of state special education law.

As a final matter, I must make two additional observations. First, FATHER asserts that the IEP meetings may occur at the West Des Moines police department. Assuming that to be true, the AEA and the District must agree to meet at that location. 34 C.F.R. § 300.322(a). Second, the AEA and District offered to allow MOTHER to consent to listening to her statements and responding to them. To the extent that this arrangement might run afoul of *Henley v. District Court*, the AEA and District should exercise this potential arrangement with great care.

FATHER may participate in IEP team meetings in the manner in which he desires if and only if the District Court grants him the permission to do so by modifying its order of protection.

As to this allegation, I conclude there is no violation of the IDEA or implementing state rules and federal regulations.

*C. Allegation Two: Meeting Minutes and IEP Signatures*

FATHER asserts the AEA and the District violated the IDEA by not attaching IEP team meeting minutes and by not obtaining his signature on the IEPs. While attaching a summary of discussion or obtaining parental signatures might be considered by some educators to be advisable practice, neither is required by the law. *See, e.g.*, *Letter to Anonymous*, 20 IDELR 1460 (OSEP 1994) (discussions at IEP team meetings not adopted by the team are not required to be included in IEPs);

*Analysis of Comments and Changes*, 71 Fed. Reg. 46,539, at 46,682 (Aug. 14, 2006) (IDEA does not require that parents sign IEPs). In fact, the United States Department of Education concluded that a requirement for parents to sign IEPs would be "overly burdensome." 71 Fed. Reg. at 46,682.

FATHER asserts that his "needs are specific for legal purposes." The standard applied in IDEA state complaints is not whether the complainant has other needs for a particular action, but whether the particular action is required by the IDEA and its state and federal implementing regulations. Neither of these demanded actions are so required. Please note that if the AEA and the District maintain meeting notes or a sound recording of IEP meetings concerning his children, FATHER would have a right to inspect and review those records. *See generally* 34 C.F.R. pt. 99; *see also* 34 C.F.R. § 300.613(a).

I conclude there is no violation of the IDEA or implementing state rules and federal regulations.

*D. Allegation Three: "Formal Testing"*

To the extent that FATHER asserts that IQ testing be a part of all special education initial evaluations or reevaluations, the United States Department of Education has spoken clearly and conclusively to the contrary: "Nothing in the Act nor in the Part B regulations require the use of IQ tests as part of an initial evaluation or a reevaluation." *Letter to Baumtrog*, 39 IDELR 159 (OSEP 2002). To the extent that FATHER takes issue with the evaluations of his daughters, I conclude those evaluations met the requirements of the law. They relied on multiple sources of data, addressed areas of need, and yielded educationally relevant information. The evaluations were legally compliant. Iowa Admin. Code r. 281—41.301 through 281—41.313.

The fact that other states require the "formal" testing that FATHER seeks is not a matter of my concern. 20 U.S.C. § 1412(a)(7).

FATHER has requested an evaluation meeting his requirements from an outside provider. That outside provider requires the consent of both parents. The outside provider's consent policy is not within the Department's jurisdiction.

I conclude there is no violation of the IDEA or implementing state rules and federal regulations.

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## V. Final Matters

I make the following findings and conclusions related to two other requests made during the course of these state complaints.

FATHER has repeatedly demanded that a Department representative appear with him at his children's IEP meetings. While parents are entitled to have assistance at IEP meetings, it is not the Department's responsibility under the law to provide such assistance.

FATHER and PATERNAL GRANDMOTHER have requested meetings with Department officials to discuss requirements to require IEP meeting minutes to be attached to the IEP and IEPs to be signed. No meeting will be necessary or provided.

## VI. Remedy

There being no violation of the IDEA, there are no remedies to order. Iowa Admin Code r. 281—41.151(2).

## VII. Conclusion

These complaints are NOT CONFIRMED.

There are no fees or costs to be awarded in these matters. Any party that disagrees with the Department's decisions may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any party may also file a due process complaint with the Iowa Department of Education under the Individuals with Disabilities Education Act (IDEA). That procedure is explained in the procedural safeguards manual.

Because the issues in Allegation One concern matters of broad public importance, a de-identified copy of this decision shall be published in the Department's appeal book.

Every attempt has been made to address these complaints in a neutral manner, and in compliance with state and federal law. The Department's involvement in

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these matters is closed and the Department will take no further action regarding them or any item discussed therein.

Sincerely,

*ORIGINAL SIGNED*

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Concur,

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