

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

█, a Student, by and through Parents  
█ and █,

No. 14C-DP-022-ADE

Petitioners,

VS.

Deer Valley Unified School District,

Respondent.

ADMINISTRATIVE  
LAW JUDGE DECISION

**HEARING:** April 21-25, 2014

**APPEARANCES:** Parents appeared on behalf of Petitioners; attorneys Jennifer MacClennan, Esq. and Shelby Lile, Esq., GUST ROSENFELD PLC, appeared on behalf of Respondent Deer Valley Unified School District ("DVUSD"), accompanied by designated representatives Richard Gray, Ph.D., Administrator, Special Education Services Department, DVUSD (former) and Cheryl Parker, \*\*\*, Special Education Services Department, DVUSD (current).

**HEARING RECORD:** Certified Court Reporter Carole A. Whipple, RPR, of GRIFFIN & ASSOCIATES LLC was present and recorded the proceedings as the official record of the hearing.<sup>1</sup>

**WITNESSES:**<sup>2</sup>

**Joint Witnesses:** Megan Dudley, Speech Language Pathologist (Limited), DVUSD; Kendra Buringrud, Speech Language Pathologist, DVUSD; Linda Price-Barry, Principal, West Wing School, DVUSD; Michelle Warburton, Intervention Specialist, DVUSD; Cheryl Cooper, Speech Language Pathologist, DVUSD; Richard Gray, Manager, Student Support Services, DVUSD; Elizabeth Baker Djenic, School Psychologist, DVUSD; Nancy Persons, Developmental Preschool Teacher; Marty Doyle, Assistive Technology Consultant, DVUSD; Karey Ford, Occupational Therapist, DVUSD.

<sup>1</sup> The parties stipulated that the court reporter record is the official record of the proceedings. An audio recording was also made by the Arizona Office of Administrative Hearings.

<sup>2</sup> Throughout the body of this Decision, proper names of Student, Parents, and Student's teachers are not used in order to protect the confidentiality of Student and to promote ease of redaction. Where necessary, pseudonyms (noted above in bold type) will be used instead. Pseudonyms are not used for administrators, service providers, evaluators, and other professionals.

**Petitioners' Witnesses:** [REDACTED] **Mother:** [REDACTED] **Father** (collectively "**Parents**"); **Patti Kirkland**, Early Childhood Manager, DVUSD; **Allison Gross**, Private Music Therapist; **Lynn Carahaly**, M.A., CCC-SLP, Private Speech Therapist, Independent Evaluator.

**Respondent's Witnesses:** None

**ADMINISTRATIVE LAW JUDGE:** Eric A. Bryant

Petitioners bring this due process action on behalf of Student, claiming that Respondent School District did not provide Student a free appropriate public education ("FAPE") due mainly to various alleged procedural errors. Parents seek reimbursement for the costs of private provision of services. The law governing these proceedings is the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),<sup>3</sup> and its implementing regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code ("A.A.C.") R7-2-401 through R7-2-406.

### Procedural History

Petitioners filed their initial due process complaint on December 2, 2013, raising approximately eleven claims. They filed a motion to amend the complaint on February 14, 2014, seeking to add five new claims. That motion was granted and the amended complaint accepted on February 19, 2014.<sup>4</sup> On March 28, 2014, based on a motion to dismiss filed by Respondent School District, Claim 7 of the complaint was dismissed.<sup>5</sup>

The complaint, as amended, claims that Student was not provided a FAPE for school years 2011-2012 and 2012-2013. Petitioners claim numerous procedural violations that occurred during those years in the process of creating Student's

<sup>3</sup> By Public Law 108-446, known as the “Individuals with Disabilities Education Improvement Act of 2004,” IDEA 2004 became effective on July 1, 2005.

<sup>4</sup> ORDER GRANTING AMENDMENT OF COMPLAINT AND SETTING NEW HEARING DATES, issued Feb. 19, 2014.

<sup>5</sup> See ORDER GRANTING DISMISSAL OF COUNT 7 ONLY, issued March 28, 2014.



1 Individualized Education Programs ("IEPs"). Respondent School District denies all  
2 claims.

3 Evidence and Issues at Hearing

4 The parties presented testimony and exhibits at a formal evidentiary hearing  
5 held over five days in April 2014. The parties presented testimony from the witnesses  
6 listed above and provided pre-marked Exhibits as Joint Exhibits 1 through 59,<sup>6</sup>  
7 Petitioners' Exhibits, and Respondent School District's Exhibits.<sup>7</sup> The Joint Exhibits  
8 were admitted by stipulation. Petitioners' Exhibits were admitted as P1 through P86<sup>8</sup>  
9 and PM01 through PM14.<sup>9</sup> Respondent School District Exhibits were admitted as R1  
10 through R18.<sup>10</sup>

11 After the Exhibits and testimony were admitted, the parties submitted written  
12 arguments to the tribunal. The final memorandum was filed on August 12, 2014.  
13 Petitioners make the following claims:<sup>11</sup>

- 14 1) Respondent School District failed to provide Student a FAPE because  
15 the 2011 IEP team "did not properly consider" Extended School  
16 Year ("ESY") services for Summer 2012.
- 17 2) Respondent School District failed to provide Student a FAPE because  
18 the 2011 IEP team did not properly consider assistive technology  
19 for Student.
- 20 3) Respondent School District failed to provide Student a FAPE because  
21 the services provided to Student during the 2011-2012 school year  
22 were inadequate: the number of hours of speech therapy was too  
23 few.

24 <sup>6</sup> Identified herein as J1 through J59.

25 <sup>7</sup> The Exhibits of record consist of thousands of pages of documentation, some of which are duplicative.  
The record contains exhibit lists from both parties for specific identification.

26 <sup>8</sup> Excluding P7, P9, P11, P23, P30, P38 - P40, P47, P50, P55 - P57, P60, P69, P77, and P80 - P84. In  
27 order to make the record as clear as possible, it is hereby noted that the Administrative Law Judge DID  
NOT admit Petitioners' Exhibits P9, P30, P47, P55, P69, P77, P82, and P83 for the reasons stated on  
the record. Exhibits P53 and P74 were admitted as demonstrative only. Exhibits P7, P11, P23, P32,  
P38-P40, P50, P56 - P57, P60 P80 - P81, and P84 were not offered.

28 <sup>9</sup> Excluding PM07 - PM09 and PM13. PM07 - PM09 were not admitted. PM13 was not offered.

29 <sup>10</sup> Excluding R9, R11, and R15. Exhibits R9, R11, R15, and R19 - R21 were not offered.

30 <sup>11</sup> Petitioners' claims have, in some cases, been re-worded by the Administrative Law Judge. See, *Ford*  
*v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1090 (9<sup>th</sup> Cir., 2002) (hearing officer may reorganize  
and restate issues in her own words as long as she addresses the merits of all issues).

- 1 4) Respondent School District failed to provide Student a FAPE because  
2 the 2011 IEP does not state when progress reports will be given.
- 3 5) Respondent School District failed to provide Student a FAPE because  
4 Student did not receive speech services the first week of school in  
5 August 2012.
- 6 6) Respondent School District failed to provide Student a FAPE because  
7 Parents were denied meaningful participation during two team  
8 meetings in November 2012.
- 9 7) [This claim was dismissed by the Administrative Law Judge on March  
10 28, 2014.]<sup>12</sup>
- 11 8) Respondent School District failed to provide Student a FAPE because  
12 Student's 2013 MET team did not consider an Independent  
13 Educational Evaluation.
- 14 9) Respondent School District failed to provide Student a FAPE because  
15 no "ESY plan" was created for Summer 2013.
- 16 10) Respondent School District failed to provide Student a FAPE  
17 because Student was withdrawn from Respondent School District  
18 after being absent for 10 consecutive days in March 2013.
- 19 11) Respondent School District failed to provide Student a FAPE  
20 because Respondent School District did not issue a Prior Written  
21 Notice ("PWN") prior to the withdrawal of Student.
- 22 12) Respondent School District failed to provide Student a FAPE  
23 because Respondent School District "denied [Parents'] request for  
24 explanation and interpretation of [Student's] educational records."
- 25 13) Respondent School District failed to provide Student a FAPE  
26 because Student's progress on 2011 IEP goals was not properly  
27 measured by collection of data.
- 28 14) Respondent School District failed to provide Student a FAPE  
29 because Student's progress on 2012 IEP goals was not properly  
30 measured by collection of data.

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<sup>12</sup> Because the parties maintain the original numbering of the claims in their post-hearing memoranda, the Administrative Law Judge does as well.



- 1 15) Respondent School District failed to provide Student a FAPE  
2 because Student's October 2012 progress report was not timely  
3 given to Parents.  
4  
5 16) Respondent School District failed to provide Student a FAPE  
6 because Respondent School District "subjected [Student] and his  
7 parents to retaliatory and discriminatory actions."  
8  
9 17) Respondent School District should reimburse expenses incurred by  
10 Parents for private speech services and private music therapy due  
11 to the failure of Respondent School District to provide a FAPE.  
12  
13 18) Respondent School District should provide Student compensatory  
14 education and services in the amount of 132 hours of speech  
15 language services, 132 hours of music therapy, and an  
16 augmentative communication device.  
17  
18 19) Respondent School District should be ordered to place Student in  
19 Parent's "home-based" program as his continuing placement.

20 Dismissal of Claims 10 and 16

21 In its post-hearing response memorandum, Respondent School District argues  
22 that Claims 10 (withdrawal of Student) and 16 (retaliation and discrimination) are not  
23 IDEA claims.<sup>13</sup> The Administrative Law Judge agrees.

24 Claim 10

25 Student received speech language services, and no other instruction, from  
26 Respondent School District starting in 2011 as a preschool-age child. On February 28,  
27 2013, after Student's IEP team met and created an IEP, Respondent School District  
28 made an offer of FAPE to Student that included placement in its developmental  
29 preschool beginning March 11, 2013.<sup>14</sup> Parents rejected that placement and Student  
30 never attended the developmental preschool. After ten consecutive days of non-  
appearance at the developmental preschool, Respondent School District withdrew  
Student from it pursuant to A.R.S. § 15-901(A)(1), which states in part that  
"withdrawals" include "students absent for ten consecutive school days, except for

<sup>13</sup> Response to Petitioners' Opening Memorandum at 20, 24-26 (filed July 28, 2014).

<sup>14</sup> Exhibit J48.

excused absences. . . .” Claim 10 argues that this action by Respondent School District denied Student a FAPE.

Respondent School District’s withdrawal of Student is a question of state law that does not fall within the IDEA. IDEA due process complaints must raise claims “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. . . .”<sup>15</sup> Claim 10 does not. Therefore, Claim 10 does not raise an IDEA issue and is hereby dismissed.

#### Claim 16

Claim 16 raises a claim of discrimination by claiming retaliation against Petitioners starting in November 2012 after Mother “advocated for her son.”<sup>16</sup> However, as Respondent School District rightly points out, the IDEA is not an anti-discrimination statute.<sup>17</sup> Discrimination claims are not within its purview. Therefore, Claim 16 is dismissed.

#### Decision on the Merits

The Administrative Law Judge has considered the entire record, including the testimony and Exhibits,<sup>18</sup> and now makes the following Findings of Fact, Conclusions of Law, and Decision finding that Respondent School District provided a FAPE to Student.

#### FINDINGS OF FACT

The claims made by Petitioners are based on actions that occurred from October 2011 through March 2013. Therefore, the following factual findings are focused on that period.

#### School Year 2011-2012

1. Student was three years old in October 2011 when he was first referred to Respondent School District.<sup>19</sup> After a screening and an evaluation of Student, a team

<sup>15</sup> 20 U.S.C. § 1415(b)(b)(A).

<sup>16</sup> Petitioners’ Opening Memorandum (“POM”) at 66-68 (filed June 26, 2014).

<sup>17</sup> *Ellenberg v. New Mexico Military Inst.*, 478 F.3d 1262, 1275 (10<sup>th</sup> Cir. 2007).

<sup>18</sup> The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if the witness is not specifically mentioned in this Decision.

<sup>19</sup> Exhibit J4.



1 of educators, parents, and a speech pathologist (the Multidisciplinary Evaluation Team  
2 or "MET"), met in November 2011 to determine whether Student was eligible for special  
3 education services.<sup>20</sup> As part of this process, and as required by the IDEA,  
4 Respondent School District informed Parents of their procedural safeguards.<sup>21</sup>

5 2. The MET considered the results from a comprehensive developmental  
6 assessment performed by Respondent School District and found that Student exhibited  
7 age-appropriate skills in all areas except speech sound production:

8 Without intervention, [Student]'s speech delay will likely impact his ability  
9 to develop effective communication skills in a classroom and to fully  
10 benefit from classroom instruction. Based on his areas of need, [Student]  
11 would have difficulty answering teacher questions, participating in  
12 classroom instruction/discussion and interacting with peers and adults in  
13 the classroom.

14 [Student]'s cognitive/pre-academic concepts, adaptive behaviors, motor  
15 skills, and social/emotional skills are estimated to be within age-  
16 appropriate limits and should not impede his ability to access an early  
17 childhood curriculum.<sup>22</sup>

18 This qualified Student for eligibility under the IDEA category of Preschool Severe  
19 Delay.<sup>23</sup> The team also found that Student "would benefit from visual/voice output  
20 systems to help him express his wants/needs in the classroom."<sup>24</sup> They recommended  
21 that Student "receive support services to address his communication delay" in a  
22 recommended setting of "developmental preschool with direct speech/language therapy  
23 services integrated into the classroom routine and activities."<sup>25</sup> As is evident, the goal  
24 of the recommendations was to allow Student to access education, not to remediate his  
25 disability. Again, Parents were notified of the procedural safeguards.<sup>26</sup>

26 3. On December 1, 2011, Student's IEP team, which included Mother, met and  
27 created an IEP for Student.<sup>27</sup> The IEP contains two speech goals addressing  
28

29 <sup>20</sup> Exhibit J10.

30 <sup>21</sup> Exhibit J7.

<sup>22</sup> Exhibit J10 at 51 (hereinafter, page numbers of Exhibits will be given by using the Bates-stamp numbers without the preliminary letters and zeros).

<sup>23</sup> *Id.* at 42.

<sup>24</sup> *Id.* at 51.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 52.

<sup>27</sup> Exhibit J13.

1 articulation skills (1) for vowels in isolation and (2) for consonants in simple  
2 combinations with vowels.<sup>28</sup> Progress was to be measured by therapist data collection.  
3 The IEP states that Parents would be informed of progress through progress reports,  
4 but does not state the frequency of those reports.<sup>29</sup> The record shows that progress  
5 reports were made quarterly.<sup>30</sup> Over the next six months, Student made some progress  
6 on his goals.<sup>31</sup>

7 4. Parents decided not to place Student in preschool; the recommended  
8 placement of developmental preschool was rejected.<sup>32</sup> Therefore, the IEP provides for  
9 speech services only and no academic placement. Student received those services  
10 twice weekly for 30 minutes each session.<sup>33</sup> Additionally, the IEP states that assistive  
11 technology was not necessary for Student.<sup>34</sup> This is likely because such technology  
12 was intended to assist Student in the classroom, and Student was not going to be  
13 attending preschool.<sup>35</sup>

14 5. The IEP states that Extended School Year (“ESY”) services were considered,  
15 but because Student was just beginning special education, there was no data to  
16 support the need for such services.<sup>36</sup> Megan Dudley, the DVUSD Speech Pathologist  
17 that was Student’s therapist from December 2011 to November 2012, credibly testified  
18 that she planned to collect data and, if the data showed regression/recoupment issues,  
19 she could have called an IEP meeting later in the school year to discuss ESY for  
20 Student.<sup>37</sup> Indeed, the evidence shows that she did collect data.<sup>38</sup> She did not call for  
21  
22

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23 <sup>28</sup> *Id.* at 88.

24 <sup>29</sup> *Id.* at 89.

25 <sup>30</sup> *Id.* at 87.

26 <sup>31</sup> *Id.*

27 <sup>32</sup> Testimony of Megan Dudley, Reporter’s Transcript of Proceedings (“RTP”), Day 1 at 40 (April 21,  
28 2014). Contrary to Petitioners’ assertion, Megan Dudley was a credible and reliable witness whose  
29 testimony is given significant weight.

30 <sup>33</sup> *Id.* at 39.

<sup>34</sup> Exhibit J13 at 91.

<sup>35</sup> Exhibit J10 at 51 (Student “would benefit from visual/voice output systems to help him express his  
wants/needs in the classroom”).

<sup>36</sup> Exhibit J13 at 89; 93.

<sup>37</sup> RTP, Day 1 at 60.

<sup>38</sup> Exhibit J50.



1 an IEP meeting, because she did not feel that the data warranted it.<sup>39</sup> No one else on  
2 the team, including Parents, called for an IEP team meeting to discuss ESY that year.<sup>40</sup>

3 6. Speech services were provided one-on-one to Student throughout the  
4 remainder of the 2011-2012 school year.

5 School Year 2012-2013

6 7. Ms. Dudley resumed providing speech services to Student under the IEP in  
7 August 2012. She testified that she did not provide services to Student the first week of  
8 the school year, but did on the second week.<sup>41</sup>

9 8. In November 2012, Respondent School District recognized that Student  
10 needed a new IEP because Student's 2011 IEP was set to expire in December 2012,  
11 and also that Student would turn age five during the year of the new IEP and be school-  
12 age for starting kindergarten in September 2013. Because of this, Respondent School  
13 District set a MET meeting for November 8, 2012, to review the data and determine if  
14 Student needed further evaluation in order to determine school-age eligibility.<sup>42</sup> In this  
15 type of situation, Respondent School District creates an IEP that will provide for  
16 transition from preschool to kindergarten.<sup>43</sup> This requires that the team determine if  
17 Student has an eligible school-age disability, which disabilities can be different than  
18 eligible preschool disabilities.<sup>44</sup>

19 9. On November 8, 2012, Student's MET found that he remained eligible for  
20 special education when he became a kindergartener under the category of Speech  
21 Language Impairment ("SLI").<sup>45</sup> Mother participated in the MET meeting, although she  
22 wanted to talk about Student's IEP.<sup>46</sup> She was informed that a separate meeting would  
23  
24

25 <sup>39</sup> RTP, Day 1 at 60. See also, RTP, Day 1 at 63 (no evidence of regression upon returning to school in  
26 August 2012).

27 <sup>40</sup> *Id.* at 60.

28 <sup>41</sup> RTP, Day 1 at 64.

29 <sup>42</sup> Exhibit J18.

30 <sup>43</sup> Testimony of Megan Dudley, RTP, Day 1 at 80-81.

<sup>44</sup> See A.R.S. § 15-761(24) ("Preschool Severe Delay" only applies to a "preschool child") and  
A.R.S. § 15-761(34) ("Speech/Language Impairment" applies to kindergarten-age children and grades  
above).

<sup>45</sup> Exhibit J18.

<sup>46</sup> *Id.* at 117.

1 address that issue.<sup>47</sup> Once again, Parents were informed of their procedural  
2 safeguards.<sup>48</sup>

3 10. After the MET meeting concluded and Student's continued eligibility for  
4 kindergarten was determined, the team began a meeting that same day to create a new  
5 one-year IEP.<sup>49</sup> Discussion ensued, but due to time constraints, the remainder of the  
6 meeting was postponed to a later date.<sup>50</sup>

7 11. On November 29, 2012, the IEP team met again and created a new IEP for  
8 Student.<sup>51</sup> This time, Mother attended with an advocate. They both participated in the  
9 meeting. There are two substantial sections with parental input in the 2012 IEP.<sup>52</sup>

10 12. The new IEP noted that Student had met his two goals from his prior IEP.  
11 Four new speech goals were written,<sup>53</sup> one at the request of Mother.<sup>54</sup> Mother  
12 continued to reject developmental preschool for Student.<sup>55</sup> Service minutes remained  
13 the same, but the IEP added 60 minutes per quarter of speech consultation with Mother  
14 to help with low-tech assistive technology devices.<sup>56</sup> Eligibility for ESY was discussed  
15 and denied based on progress report data from before and after the prior summer.<sup>57</sup>  
16 Mother wanted to see specific data rather than the percentages that were in the  
17 progress reports. The team did not have that data on hand, but informed Mother that  
18 she could request it and that ESY could be revisited later in the school year.<sup>58</sup> Mother  
19 took the position that, because that data was not available at the meeting, ESY "was  
20 not discussed" at the November 29, 2012, IEP meeting.<sup>59</sup> However, the evidence  
21 shows that ESY was, indeed, discussed at the meeting.  
22

23  
24 <sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 114.

<sup>49</sup> *Id.* at 119.

<sup>50</sup> *Id.* at 120.

<sup>51</sup> Exhibit J23.

<sup>52</sup> *Id.* at 135-36 and 137.

<sup>53</sup> *Id.* at 140-41.

<sup>54</sup> Exhibit J24 at 157.

<sup>55</sup> Testimony of Megan Dudley, RTP, Day 1 at 90.

<sup>56</sup> Exhibit J23 at 144 and 142.

<sup>57</sup> Exhibit J24 at 158.

<sup>58</sup> *Id.*

<sup>59</sup> Exhibit J23 at 148.



1           13. Student did not return to receive speech services after November 14,  
2           2012.<sup>60</sup>

3           14. On December 11, 2012, Student's MET determined to gather additional data  
4           about Student by obtaining a full psycho-educational evaluation, an occupational  
5           therapy evaluation, and an assessment for assistive technology.<sup>61</sup> These evaluations  
6           were performed, along with an Independent Evaluation for Speech Therapy,<sup>62</sup> and  
7           another meeting of Student's MET occurred on February 4, 2013,<sup>63</sup> and continued over  
8           to February 7, 2013.<sup>64</sup> Parents fully participated in the meetings.

9           15. The resulting lengthy evaluation report<sup>65</sup> stated that Student was eligible for  
10          special education under the category of Developmental Delay, because he had  
11          significant delays in both communication development and physical development.<sup>66</sup>

12          16. On February 28, 2013, Student's IEP team met and created a new IEP for  
13          Student, based on the findings from the recent comprehensive evaluation.<sup>67</sup> Father  
14          participated, but disagreed with the resulting IEP, particularly the IEPs placement at a  
15          developmental preschool.<sup>68</sup>

16          17. Student's February 2013 IEP contained multiple goals in communication,  
17          fine motor skills, and preschool communication skills including use of an assistive  
18          device.<sup>69</sup> It also recommended placement at a developmental preschool as the least  
19          restrictive environment to pursue those goals.<sup>70</sup> Finally, it determined that Student was  
20          eligible for ESY in Summer 2013.<sup>71</sup>

21          18. Parents rejected the 2013 IEP. Instead, they wanted the IEP team to  
22          consider their "home-based program."<sup>72</sup> This consisted of intensive speech therapy

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24          <sup>60</sup> Testimony of Megan Dudley, RTP, Day 1 at 73.

25          <sup>61</sup> Exhibit J26.

26          <sup>62</sup> Exhibits J28-J35.

27          <sup>63</sup> Exhibit J40.

28          <sup>64</sup> Exhibit J45.

29          <sup>65</sup> Exhibit J44.

30          <sup>66</sup> *Id.* at 334.

<sup>67</sup> Exhibit J48.

<sup>68</sup> Exhibit J49.

<sup>69</sup> Exhibit J48 at 376-79.

<sup>70</sup> *Id.* at 383.

<sup>71</sup> *Id.* at 380.

<sup>72</sup> Exhibit J51 and J52.

1 and music therapy services by private therapists hired by Parents, weekly trips to the  
2 library, weekly attendance at church, group play time with family and friends, field trips  
3 and shopping trips with Mother and brothers.<sup>73</sup> The IEP team met on April 23, 2013, to  
4 consider Parents' plan, but rejected it because it had no occupational therapy, no  
5 academic or pre-academic skills addressed, and no certified teacher.<sup>74</sup> In fact, Parents'  
6 program was quite correctly characterized as "an average family's activities in addition  
7 to speech therapy and music therapy."<sup>75</sup> The members of the team other than Father  
8 (Mother did not attend the meeting) concluded that the developmental preschool setting  
9 would much better serve Student's identified needs and give him a rich language  
10 environment within which to help him progress with his speech deficits.<sup>76</sup>

11 19. According to a Prior Written Notice ("PWN") that issued February 28, 2013,  
12 Student was to begin at the developmental preschool on March 11, 2013.<sup>77</sup> He did not  
13 attend on that date or thereafter. After Student did not attend for 10 consecutive days,  
14 Respondent School District withdrew him from the district.<sup>78</sup> However, as required by  
15 the IDEA, Respondent School District continued to empanel Student's IEP team in April  
16 2013 and continued to offer him the placement and services in his 2013 IEP. Because  
17 Parents had indicated no interest in being educated under the 2013 IEP, Respondent  
18 School District reasonably concluded that Student would not be attending ESY.  
19 Parents never inquired about ESY for Summer 2013.

## 20 **CONCLUSIONS OF LAW**

### 21 **APPLICABLE LAW**

#### 22 **FAPE**

23 1. Through the IDEA, Congress has sought to ensure that all children with  
24 disabilities are offered a FAPE (free appropriate public education) that meets their  
25 individual needs.<sup>79</sup> These needs include academic, social, health, emotional,

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27 <sup>73</sup> Exhibit J53.

<sup>74</sup> Exhibit J55.

28 <sup>75</sup> *Id.* at 410.

<sup>76</sup> Exhibit J54.

29 <sup>77</sup> Exhibit J48 at 384.

<sup>78</sup> Exhibit J58.

30 <sup>79</sup> 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.



1 communicative, physical, and vocational needs.<sup>80</sup> To provide a FAPE, school districts  
2 must identify and evaluate all children within their geographical boundaries who may be  
3 in need of special education and services. The IDEA sets forth requirements for the  
4 identification, assessment, and placement of students who need special education, and  
5 seeks to ensure that they receive a FAPE. A FAPE consists of “personalized  
6 instruction with sufficient support services to permit the child to benefit educationally  
7 from that instruction.”<sup>81</sup> The IDEA mandates that school districts provide a “basic floor  
8 of opportunity,” nothing more.<sup>82</sup> The IDEA does not require that each child’s potential  
9 be maximized.<sup>83</sup> A child receives a FAPE if a program of instruction “(1) addresses his  
10 unique needs, (2) provides adequate support services so he can take advantage of the  
11 educational opportunities and (3) is in accord with an individualized educational  
12 program.”<sup>84</sup>

### 13 The IEP

14 2. Once a student is determined eligible for special education services, a team  
15 composed of the student’s parents, teachers, and others familiar with the student  
16 formulate an IEP (Individualized Education Program) that generally sets forth the  
17 student’s current levels of educational and functional performance and sets annual  
18 goals that the IEP team believes will enable the student to make progress in the  
19 general education curriculum.<sup>85</sup> The IEP tells how the student will be educated,  
20 especially with regard to the student’s needs that result from the student’s disability,  
21 and what services will be provided to aid the student. The student’s parents have a  
22 right to participate in the formulation of an IEP.<sup>86</sup> The IEP team must consider the  
23  
24  
25

26 <sup>80</sup> *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996) (quoting H.R. Rep. No. 410, 1983  
U.S.C.C.A.N. 2088, 2106).

27 <sup>81</sup> *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

28 <sup>82</sup> *Id.*, 458 U.S. at 200.

29 <sup>83</sup> *Id.* at 198.

30 <sup>84</sup> *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9<sup>th</sup> Cir. 2006) (citing *Capistrano Unified  
Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9<sup>th</sup> Cir. 1995)).

<sup>85</sup> 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

<sup>86</sup> 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

1 strengths of the student, concerns of the parents, evaluation results, and the academic,  
2 developmental, and functional needs of the student.<sup>87</sup>

3 Procedural Safeguards Notice

4 3. To foster full parent participation, in addition to being a required member of  
5 the team making educational decisions about the student, school districts are required  
6 to give parents, at least once a year, a copy of the parents' "procedural safeguards,"  
7 informing them of their rights as parents of a student with a disability:

8 The procedural safeguards notice shall include a full explanation of the  
9 procedural safeguards, written in the native language of the parents  
10 (unless it clearly is not feasible to do so) and written in an easily  
11 understandable manner, available under this section and under  
12 regulations promulgated by the Secretary relating to--

- 13 (A) independent educational evaluation;
- 14 (B) prior written notice;
- 15 (C) parental consent;
- 16 (D) access to educational records;
- 17 (E) the opportunity to present and resolve complaints, including--
  - 18 (i) the time period in which to make a complaint;
  - 19 (ii) the opportunity for the agency to resolve the complaint; and
  - 20 (iii) the availability of mediation;
- 21 (F) the child's placement during pendency of due process proceedings;
- 22 (G) procedures for students who are subject to placement in an interim  
23 alternative educational setting;
- 24 (H) requirements for unilateral placement by parents of children in  
25 private schools at public expense;
- 26 (I) due process hearings, including requirements for disclosure of  
27 evaluation results and recommendations;
- 28 (J) State-level appeals (if applicable in that State);
- 29 (K) civil actions, including the time period in which to file such actions;  
30 and
- (L) attorneys' fees.<sup>88</sup>

This requirement informs parents of their rights during the IEP creation process and  
allows them to educate themselves about the IDEA.

26 ESY

27 4. Disabled students are eligible for Extended School Year services if those  
28 services are necessary so that (1) the student will not severely or substantially regress

29 <sup>87</sup> 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).



1 in skills during recesses or the summer break, and (2) if the benefits gained by the  
2 student during the regular school year would be significantly jeopardized during school  
3 breaks without extended services.<sup>89</sup> ESY is not appropriate to provide daycare or  
4 respite services to caregivers, for summer recreation, or to maximize academic  
5 potential.<sup>90</sup> ESY is to be determined by the IEP team using retrospective data unless it  
6 is not available, in which case predictive data can be used.<sup>91</sup>

7 Reimbursement for Parental Private School Placement

8 5. Parents who dispute whether an IEP provides a FAPE to a student, and who  
9 as a result enroll that student in a private program, may receive reimbursement for the  
10 costs of that private enrollment under certain circumstances.<sup>92</sup> The program offered by  
11 the school district must fail to provide a FAPE to the student and the private school  
12 must be an "appropriate" placement.<sup>93</sup> A private school placement may be appropriate  
13 even if it does not operate under public school standards.<sup>94</sup> Under these  
14 circumstances, parents may "enroll the child in a private preschool, elementary school,  
15 or secondary school without the consent of or referral by the [school district]. . ." and  
16 seek reimbursement from the school district for the expense of that enrollment from a  
17 court or hearing officer.<sup>95</sup> Indeed, parents have "an equitable right to reimbursement  
18 for the cost of providing an appropriate [private] education when a school district has  
19 failed to offer a child a [free appropriate public education]."<sup>96</sup> Furthermore, the  
20 placement does not have to meet IDEA requirements.<sup>97</sup>

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23  
24 <sup>88</sup> 20 U.S.C. § 1415(d)(2); see also 34 C.F.R. § 300.504(c). Safeguards may also be posted on the  
25 Internet. 20 U.S.C. § 1415(d)(1)(B).

26 <sup>89</sup> A.R.S. § 15-881(A).

27 <sup>90</sup> A.R.S. § 15-881(D).

28 <sup>91</sup> A.R.S. § 15-881(B).

29 <sup>92</sup> 34 C.F.R. § 300.148.

30 <sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> 34 C.F.R. § 300.148(b) and (c).

<sup>96</sup> *Union School Dist. v. Smith*, 15 F.3d 1519, 1524 (9<sup>th</sup> Cir. 1994) (quoting *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1485 (9<sup>th</sup> Cir. 1992)).

<sup>97</sup> *Florence County. Sch. Dist. Four v. Carter*, 510 U.S. 7, 13 (1993).

6. However, an award for reimbursement can be reduced or denied in various circumstances.<sup>98</sup> An award may be reduced or denied if the parents have not given adequate notice as set forth in the IDEA.<sup>99</sup>

#### Compensatory Education

7. Compensatory education is an equitable remedy that may be awarded in appropriate cases wherein students have not been provided a FAPE.<sup>100</sup> Although the goal is to compensate a student for missed education or services, there is no obligation to provide day-for-day compensation for time missed.<sup>101</sup> Appropriate relief is that which is designed to ensure that the student is appropriately educated within the meaning of the IDEA.<sup>102</sup> Case-specific factors should be taken into account to craft an appropriate remedy.<sup>103</sup>

### **DECISION**

#### Burden of Proof and Basis of Decision

8. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.<sup>104</sup> The standard of proof is "preponderance of the evidence," meaning evidence showing that a particular fact is "more probable than not."<sup>105</sup> Therefore, in this case Petitioners bear the burden of proving by a preponderance of evidence that Respondent School District failed to provide Student a FAPE through Student's 2011 IEP (as implemented beginning August 2011), 2012 IEP, and 2013 IEP. If a denial of a FAPE is shown, Petitioners must then show that they are entitled to the compensatory education they are requesting. To be reimbursed for a private parental placement, they must also show that the parental placement at On-Track Academy was appropriate.

<sup>98</sup> 34 C.F.R. § 300.148(d).

<sup>99</sup> 34 C.F.R. § 300.148(d)(1). *Anchorage School District v. M.P.*, 689 F.3d 1047, 1059 (9<sup>th</sup> Cir. 2012) lists other equitable factors that might reduce reimbursement, none of which have been raised here.

<sup>100</sup> *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

<sup>105</sup> *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431,



1 9. This tribunal's determination of whether or not Student received a FAPE must  
2 be based on substantive grounds.<sup>106</sup> For substantive analysis of an IEP, this tribunal's  
3 review of the IEP is limited to the contents of the document.<sup>107</sup> Therefore, the question  
4 of whether an IEP is reasonably calculated to provide educational benefit to Student  
5 must be decided on the basis of the content of the IEP itself.

6 10. Procedural violations in and of themselves do not necessarily deny a  
7 student a FAPE. If a procedural violation is alleged and found, it must be determined  
8 whether the procedural violation either (1) impeded the student's right to a FAPE; (2)  
9 significantly impeded the parents' opportunity to participate in the decision-making  
10 process; or (3) caused a deprivation of educational benefit.<sup>108</sup> If one of those three  
11 impediments has occurred, the student has been denied a FAPE due to the procedural  
12 violation.

### 13 Petitioners' Claims

14 11. Petitioners' raise sixteen claims of violation of the IDEA and three claims for  
15 relief. Claims 7, 10 and 16 have already been addressed and dismissed. The other  
16 claims are addressed in turn.

#### 17 Claim 1: Respondent School District failed to provide Student a FAPE because 18 the 2011 IEP team "did not properly consider" Extended School Year ("ESY") 19 services for Summer 2012.

20 12. Petitioners argue that the IEP team did not "properly" consider ESY services  
21 when it created the December 2011 IEP<sup>109</sup> because it did not consider predictive  
22 data.<sup>110</sup> Respondent School District relies on the testimony of Megan Dudley to deny  
23 the claim. As the speech pathologist who was providing services to Student, she was

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24 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action*  
25 *No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

26 <sup>106</sup> 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. §§ 300.513(a)(1).

27 <sup>107</sup> *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6<sup>th</sup> Cir. 2001) ("only those services identified or  
described in the . . . IEP should have been considered in evaluating the appropriateness of the program  
offered) (relying on *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9<sup>th</sup> Cir. 1994) (IDEA requirement of a  
formal, written offer should be enforced rigorously)).

28 <sup>108</sup> 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

29 <sup>109</sup> Petitioners' attempt to undermine the reliability of the 2011 IEP through use of metadata from the  
software used to create the IEP is not persuasive. Petitioners failed to provide testimony from someone  
knowledgeable about the how the software works on a technical level.

30 <sup>110</sup> POM at 36-38.

1 in the best position to know whether he had issues of regression/recoupment, which is  
2 the basis for ESY.

3 13. Ms. Dudley testified that her plan was to collect data during the months  
4 subsequent to December 2011 and to see if there was an issue for which Student might  
5 need ESY services. This was a reasonable plan, given that Student was beginning  
6 speech therapy in December 2011 and had no prior data. Her testimony that she saw  
7 no evidence of the need for ESY later in the school year is found to be credible.

8 14. Petitioners argue that the severity of Student's speech disorder required  
9 ESY.<sup>111</sup> This is unpersuasive, as the IDEA focuses on a child's needs and not the  
10 child's disability category or diagnosis. No evidence has been provided that shows that  
11 Student had regression/recoupment issues in Summer 2012.

12 15. Claim 1 is not supported by the evidence.

13 Claim 2: Respondent School District failed to provide Student a FAPE because  
14 the 2011 IEP team did not properly consider assistive technology for Student.

15 16. Petitioners argue that the 2011 IEP team did not consider assistive  
16 technology for Student.<sup>112</sup> Even though the IEP states that this issue was considered  
17 and determined to not be needed, Petitioners' claim that it was not actually discussed  
18 at the IEP meeting.

19 17. Even if true, there is no showing that Student was harmed by it. Megan  
20 Dudley credibly testified about "low-tech" devices she used with Student to help him in  
21 therapy.<sup>113</sup> In addition, Student made progress during the year. Therefore, no  
22 procedural violation that harmed Student has been shown.

23 18. Petitioners' Claim 2 fails.

24 Claim 3: Respondent School District failed to provide Student a FAPE because  
25 the services provided to Student during the 2011-2012 school year were  
26 inadequate: the number of hours of speech therapy was too few.

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29 <sup>111</sup> *Id.* at 38.

30 <sup>112</sup> POM at 38-40.

<sup>113</sup> RTP, Day 1 at 48-52.



1 19. Petitioners argue that the number of hours of speech services given to  
2 Student in the 2011 IEP were "inadequate."<sup>114</sup> They state this with regard to the 2013  
3 IEP too.<sup>115</sup> Petitioners support this argument with an American Speech-Language  
4 Hearing Association ("ASHA") Technical Report on Childhood Apraxia of Speech and  
5 the opinion of Speech Therapist Lynn Carahaly. However, neither of these support  
6 Petitioners' argument.

7 20. It is important to understand that the IDEA mandates special education and  
8 services that are required in order for a child to access education and make progress in  
9 the curriculum.<sup>116</sup> Thus, Respondent School District is not required to remediate  
10 Student's disability. Lynn Carahaly is a fine evaluator and a knowledgeable witness,  
11 but her opinion in this case was based on a standard that is not consistent with  
12 requirements under the IDEA. In her evaluation report, her recommendations were for  
13 what was "medically necessary" for Student and what she thought was "clinically  
14 appropriate" within "generally accepted standards of therapeutic practice."<sup>117</sup> Her  
15 testimony at hearing was similar. There is nothing wrong with that standard; but, it is  
16 not the standard that Respondent School District is required to adhere to by the IDEA.

17 21. Moreover, the ASHA Technical Report answers the question of how to treat  
18 Childhood Apraxia of Speech. Thus, it is not persuasive. Respondent School District  
19 is not required to treat Student's disability.

20 22. The evidence shows that Student made progress with the number of hours  
21 provided for speech services in his IEPs. No persuasive evidence showing that  
22 Student could not receive some benefit from those hours was presented. Therefore,  
23 Claim 3 fails.<sup>118</sup>

24 Claim 4: Respondent School District failed to provide Student a FAPE  
25 because the 2011 IEP does not state when progress reports will be given.  
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28 <sup>114</sup> POM at 40-46.

29 <sup>115</sup> *Id.*

30 <sup>116</sup> *See Rowley*, 458 U.S. at 200.

<sup>117</sup> Exhibit J30 at 215.

<sup>118</sup> Furthermore, Petitioners' arguments based on district job descriptions are unpersuasive.

1 23. Petitioners' claim that the absence of a statement regarding the frequency of  
2 progress reports in the 2011 IEP is a denial of a FAPE.<sup>119</sup> While it is true that such a  
3 statement is not in the 2011 IEP, credible evidence shows that Megan Dudley gave  
4 Parents progress reports.<sup>120</sup> Thus, no harm has been shown.

5 24. Claim 4 is not a violation that deprived Student of a FAPE.

6 Claim 5: Respondent School District failed to provide Student a FAPE  
7 because Student did not receive speech services the first week of school  
8 in August 2012.

9 25. Petitioners argue that the fact that Student did not receive speech therapy  
10 the first week of school in August 2012 is a denial of a FAPE. However, Petitioners  
11 have not shown a material failure to implement the IEP.

12 26. In order to prevail on this argument, Petitioners must show that the failure to  
13 implement a provision of an IEP is a material failure.<sup>121</sup> A material failure occurs "when  
14 there is more than a minor discrepancy between the services provided to a disabled  
15 child and those required by the IEP."<sup>122</sup> The failure to provide speech services for one  
16 week out of the school year, in this case, is not a material failure. Claim 5 is not  
17 persuasive.

18 Claim 6: Respondent School District failed to provide Student a FAPE  
19 because Parents were denied meaningful participation during two team  
20 meetings in November 2012.

21 27. Parents claim that they were denied the opportunity to meaningfully  
22 participate in the two meetings held in November 2012.<sup>123</sup> The evidence does not  
23 support this claim.

24 28. From October 2011, Parents were informed about their procedural  
25 safeguards, as required by the IDEA. This is because the IDEA treats parents as full  
26 participants in the decision-making process and in order to be that, parents must be  
27 informed. So, while the IDEA provides many rights for parents, it also creates

28 <sup>119</sup> POM at 46-47.

29 <sup>120</sup> Testimony of Megan Dudley, RTP, Day 1 at 62.

30 <sup>121</sup> *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 811 (9<sup>th</sup> Cir. 2007).

<sup>122</sup> *Id.*

<sup>123</sup> POM at 47-50.



responsibilities for parents to get informed about the process and their child's education, so that they can be full participants. If a parent fails to do so, and then feels lost during a meeting, it is not the school district's fault.

29. Here, the evidence shows that Parents were provided the information required by the IDEA in order to be full participants in the process. In addition, the evidence shows that Parents were full participants in the process. There is not sufficient evidentiary support for Claim 6.

Claim 8: Respondent School District failed to provide Student a FAPE because Student's 2013 MET report did not include the recommended hours of services in an Independent Educational Evaluation.

30. Petitioners argue that Student's 2013 MET Report failed to include the recommended hours of speech services in Lynn Carahaly's evaluation.<sup>124</sup> Because of this, they argue, the 2013 IEP team did not have that information to consider.

31. The Administrative Law Judge has already found that the recommendations in question were based on a standard that is not applicable to Respondent School District. Therefore, even if the 2013 IEP team was unaware of those recommendations, this could not have harmed Student's rights under the IDEA. Claim 8 fails.

Claim 9: Respondent School District failed to provide Student a FAPE because no "ESY plan" was created for Summer 2013.

32. Petitioners argue that Respondent School District's failure to create an "ESY plan" denied Student a FAPE.<sup>125</sup> Petitioners have not cited any legal authority requiring Respondent School District to create "ESY plans." The 2013 IEP concluded that Student was eligible for ESY in 2013. However, Parents rejected that IEP because it did not adopt their "home-based" program. To then turn around and claim that Respondent School District should have implemented the ESY portion of the IEP is inconsistent.

33. Claim 9 is not supported by legal authority, nor is it consistent with the facts of record. Thus, it fails.

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<sup>124</sup> POM at 50-51.

<sup>125</sup> POM at 52-54.

1 Claim 11: Respondent School District failed to provide Student a FAPE  
2 because Respondent School District did not issue a Prior Written Notice  
3 ("PWN") prior to the withdrawal of Student.

4 34. Petitioners argue that Respondent School District was required to issue a  
5 PWN before Student was withdrawn in April 2013.<sup>126</sup> This argument confuses the  
6 purpose of a PWN.

7 35. School districts are required to give parents written notice when proposing  
8 any changes to the IEP.<sup>127</sup> Student's withdrawal was a matter of state law and did not  
9 constitute a change in the 2013 IEP. Therefore, Claim 11 is unsupported by law.

10 Claim 12: Respondent School District failed to provide Student a FAPE  
11 because Respondent School District "denied [Parents'] request for  
12 explanation and interpretation of [Student's] educational records."

13 36. Petitioners' argue that Respondent School District denied access to Student  
14 records when, during the November 29, 2012 IEP meeting, the data underlying the  
15 progress reports was not available.<sup>128</sup> The Administrative Law Judge finds that there is  
16 no persuasive evidence that Parents were ever *denied* access to Student's educational  
17 records.

18 37. Claim 12 fails for lack of evidence.

19 Claim 13: Respondent School District failed to provide Student a FAPE  
20 because Student's progress on 2011 IEP goals was not properly  
21 measured by collection of data.

22 38. Petitioners argue that Respondent School District failed to collect data for  
23 Student's progress on his 2011 IEP goals.<sup>129</sup> As the Findings of Fact show, Petitioners  
24 failed to prove this claim.

25 Claim 14: Respondent School District failed to provide Student a FAPE  
26 because Student's progress on 2012 IEP goals was not properly  
27 measured by collection of data.

28 <sup>126</sup> POM at 60-61.

29 <sup>127</sup> 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

30 <sup>128</sup> POM at 62-63. This argument is stated in a confusing and contradictory manner, as it seems to  
change with each sentence. The Administrative Law Judge has re-stated what he believes to be the  
argument that was intended.

<sup>129</sup> POM at 63-65.



39. Petitioners make the same argument as in Claim 13, but with regard to Student's 2012 IEP.<sup>130</sup> Once again, the evidence does not support the claim.

Claim 15: Respondent School District failed to provide Student a FAPE because Student's October 2012 progress report was not timely given to Parents.

40. Finally, Petitioners argue that an October 2012 progress report was not given to Parents in a timely manner.<sup>131</sup> Petitioners cite no factual or legal authority to support this claim.

#### Remedies

41. Petitioners' last three claims concern remedies that are available when a violation of IDEA has occurred. Because the evidentiary record does not show a violation of the IDEA, the Administrative Law Judge need not address the requested remedies.

#### DECISION

Based on the findings and conclusions above, IT IS HEREBY ORDERED that this IDEA due process complaint, as amended, be denied.

Done this day, September 2, 2014.

/s/ Eric A. Bryant  
Administrative Law Judge Pro Tem

#### RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a district court of the United States. Pursuant to Arizona Administrative Code § R7-2-

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<sup>130</sup> POM at 665.

1 405(H)(8), any party may appeal the decision to a court of competent  
2 jurisdiction within thirty-five (35) days of receipt of the decision.  
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<sup>131</sup> POM at 66.



1 Copy sent by **electronic mail** and regular mail  
2 this 3rd day of September, 2014, to:



7 Jennifer MacLennan, Esq.  
8 Shelby Lile, Esq.  
9 Gust Rosenfeld, P.L.C.  
10 201 E. Washington St., Ste. 800  
11 Phoenix, AZ 85004-2327  
12 **maclennan@gustlaw.com**  
13 **slile@gustlaw.com**

14 Transmitted electronically to:

15 Kacey Gregson, Deputy Director of Legal Services  
16 Arizona Department of Education  
17 **kacey.gregson@azed.gov**

18 By: Cruz Serrano  
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