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**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

██████ a Student, by and through  
Parent ██████  
Petitioners,  
v.  
Sedona-Oak Creek Unified School District  
Respondent

No. 16C-DP-012-ADE

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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**HEARING:** Convened on three dates: January 21, 2016, January 22, 2016 and March 23, 2016, with the record left open to receive transcripts, to receive written closing legal arguments, and for review of entire hearing record.<sup>1</sup>

**APPEARANCES:** Petitioner Parent ██████ (“Parent”), appeared on his own behalf and on behalf of Petitioner Student ██████ (“Student”) and was accompanied by Student’s Parent ██████

Attorneys Patrice M. Horstman and Alex D. Ivan, HUFFORD, HORSTMAN, MONGINI, PARNELL & TUCKER, P.C., represented Respondent Sedona Oak Creek Unified School District No. 9 (“District”), accompanied by school representative Michael L. Remus, Director of Student Support Services.

Certified Court Reporter Annette Satterlee, PERFORMANCE REPORTERS, INC., was present and recorded the proceedings as the official record of the hearing.

**WITNESSES:**<sup>2</sup> Parent; Tiffany Wilson, **Service Coordinator**; Rebecca Belanger Vess, **Special Education Teacher**; Michael L. Remus, District Director of Student Support Services; Scott Keller, West Sedona School Principal (and former District Director of Special Education); Trina D. Spencer, Ph.D., BCBA-D.

**ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn

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Parent brought this due process action, on behalf of Student, maintaining that District failed to provide a free appropriate public education (“FAPE”). 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

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<sup>1</sup> The 45<sup>th</sup> day was recalculated at the end of the review of record on July 29, 2016, to be August 16, 2016.

<sup>2</sup> Throughout this Decision, proper names of parents and Student’s teachers are not used in order to protect confidentiality of Student and to promote ease of redaction. Pseudonyms (appearing above in bold type) will be used instead. Proper names of administrative personnel, service providers, and expert witnesses are used.

1 2004),<sup>3</sup> and its implementing regulations, 34 Code of Federal Regulations (“C.F.R.”)  
2 Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes  
3 (“A.R.S.”) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative  
4 Code (“A.A.C.”) R7-2-401 through R7-2-406.

5 Procedural History

6 Petitioners filed the Due Process Complaint on September 24, 2015. The  
7 Complaint alleged that District failed to provide Student a FAPE because the goals and  
8 objectives contained in Student’s Individualized Educational Program (“IEP”) dated  
9 August 6, 2015, only addressed a limited selection of specific skill areas identified in  
10 the Spring 2015 ABLLS-R instead of containing goals and objectives to meet “each” of  
11 Student’s academic and functional needs.

12 Petitioners’ proposed remedy, at the time of the Complaint, was for the IEP  
13 Team to be instructed to “create a new IEP that not only appropriately identifies the  
14 educational and functional needs of [Student] under 34 C.F.R. § 300.320(a)(1)(i) but  
15 also meets ‘each’ of the academic and functional needs as well with appropriate goals  
16 and objectives, and determine corresponding quantity and type of educational services  
17 under 34 C.F.R. § 300.320(a)(4).” Additionally, Petitioners requested that District  
18 “receive professional training from a certified third party provider in how to use the  
19 ABLLS-R assessment in an appropriate, proper manner.”

20 By ORDER dated November 13, 2015, the due process hearing was set to  
21 convene for a two-day hearing beginning on January 21, 2016.

22 By ORDER dated November 20, 2015, the Administrative Law Judge  
23 memorialized rulings that were made at the October 27, 2015 telephonic pre-hearing  
24 conference, on various motions of the parties, as follows:

- 25 1. As to District’s October 2, 2015 Motion to Dismiss for Failure to State a  
26 Claim (“Motion to Dismiss”) and Parent’s October 4, 2015 Reply, the  
27 Administrative Law Judge denied the Motion to Dismiss and referred the  
28

29  
30 <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.

1 parties to her ORDER dated October 21, 2015 setting the sole issue for  
2 hearing as follows:

3 Respondent is alleged to have failed to provide FAPE to  
4 Student because the goals and objectives contained in  
5 Student's IEP dated August 6, 2015<sup>4</sup> only addressed a  
6 limited selection of specific skill areas identified by the  
7 Spring 2015 ABLLS-R instead of containing goals and  
8 objectives to meet "each" of Student's academic and  
9 functional needs.<sup>5</sup>

- 10 2. As to Parent's October 22, 2015 Motion to Preserve Evidence and  
11 District's October 27, 2015 Response, the Administrative Law Judge ruled  
12 that the Tribunal is not a court of competent jurisdiction regarding  
13 District's internal policies and procedures regarding retention of records  
14 with the admonition that educational records would be required to be  
15 maintained pursuant to District's internal retention policies and in  
16 accordance with the Family Educational Rights and Privacy Act  
17 ("FERPA").
- 18 3. As to Parent's October 4, 2015 Motion to Disqualify Attorney ("Motion to  
19 Disqualify")<sup>6</sup> and District's October 9, 2015 Response along with Parent's  
20 October 16, 2015 Reply, the Administrative Law Judge denied the Motion  
21 to Disqualify concluding that Ms. Horstman is not a necessary witness  
22 regarding the IEP meeting in question as there were numerous other  
23 participants that could be called upon as to the events of the IEP meeting.
- 24 4. As to District's October 9, 2015 Motion to Continue,<sup>7</sup> the Administrative  
25 Law Judge granted the Motion to Continue due to unavailability of the

26 <sup>4</sup> Parent provided such dated IEP as Exhibit A to the Complaint. At the pre-hearing conference, District  
27 indicated that this particular IEP was the subject of multiple meetings on subsequent dates and was  
28 finalized at a subsequent date.

29 <sup>5</sup> Parent agreed at the October 27, 2015 pre-hearing conference that the issue as rephrased by the  
30 Administrative Law Judge was the Complaint issue. See *Ford v. Long Beach Unified Sch. Dist.*, 291  
F.3d 1086, 1090 (9<sup>th</sup> Cir. 2002) (due process hearing officers may reorganize and restate issues in their  
own words as long as they address the merits of all issues).

<sup>6</sup> Parent requested that Patrice M. Horstman, one of the District's attorneys of record in this matter, be  
disqualified as an attorney in this matter.

<sup>7</sup> Parent filed no response.

1 District's Special Education Director on the originally scheduled dates.

2  
3 Despite a clear disclosure date<sup>8</sup> for the documents to be exchanged for  
4 purposes of possible admission at the due process hearing having previously been set  
5 by the Administrative Law Judge, Petitioners moved that there be punitive action  
6 against District with regard to his earlier records request; according to the filings, this  
7 was a request that Parent had made on December 14, 2015, for a complete set of  
8 copied documents to be provided to him by January 8, 2016.<sup>9</sup> Parent argued that  
9 District deliberately prevented him from being able to review records prior to the  
10 disclosure deadline, and Parent requested the ability to enter into evidence "any" of the  
11 educational records "without the need for disclosure." District responded explaining the  
12 delay until January 11 or January 12, 2016.<sup>10</sup> By ORDER dated January 12, 2016, the  
13 Administrative Law Judge found that the timing of Parent's records request was of his  
14 own making and there was no evidence that anything had prevented him from  
15 accessing the educational records at any time since the filing of the Complaint on  
16 September 24, 2015.<sup>11</sup>

17 On January 13, 2016, District requested that the Tribunal rule on underlying  
18 legal issues, arguing that an answer to questions of matters of law should resolve the  
19 Complaint without the need for due process hearing. On January 13, 2016, Parent  
20 responded asserting that District was attempting to subvert the IDEA's procedural  
21 safeguards and prevent Petitioners' right to a due process hearing.

22 By ORDER dated January 14, 2016, the Administrative Law Judge denied the  
23 motion, ruling that Petitioners had the burden to demonstrate with relevant evidence  
24 that District failed to provide FAPE as was alleged in the sole issue raised in the  
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26 <sup>8</sup> According to Tribunal records, Parent has filed nine prior due process complaint notices, five of which  
27 had gone to due process hearing. Therefore, Parent was well aware that the disclosure date in IDEA due  
28 process hearings was five business days prior to the hearing.

29 <sup>9</sup> Parent had apparently received some requested records on January 8, 2016, and the remainder on  
30 January 11 or January 12, 2016.

<sup>10</sup> District explained that Parent received a box with 3500 pages on January 8, 2016, and that the later-  
received documents were the IEPs from May 2015 through December 2015, each of which Parent was  
already in possession of (with the exception of the signature pages).

<sup>11</sup> The Tribunal has no authority to take punitive action regarding such matters.

1 Complaint and that the Tribunal would not make a ruling regarding underlying legal  
2 issues, except jurisdictional issues, prior to the presentation and consideration of  
3 relevant evidence for a determination whether Petitioners had met their burden.

4 Last minute pre-hearing concerns of the parties regarding each other's  
5 disclosure were addressed by the Administrative Law Judge by ORDER dated January  
6 15, 2016.<sup>12</sup> The Administrative Law Judge noted that her pre-hearing ORDER dated  
7 November 20, 2015, with regard to disclosure, could have specified that the disclosure  
8 was required to be of "paper" documents for hearing. However, such direction was not  
9 thought to be necessary because (a) disclosure through digital or electronic means had  
10 never been permitted for any of Petitioners' prior due process hearings, or for any other  
11 due process hearings conducted by the Tribunal, and (b) the use of digital or electronic  
12 documents simply was not possible for hearings conducted in remote locations (*i.e.*, in  
13 locations other than the Tribunal's own hearing rooms).<sup>13</sup>

14 In addition to the previously mentioned motions, the parties have filed numerous  
15 motions, responses, and replies.<sup>14</sup> The volume and nature of such filings only serves to  
16 demonstrate and document the relationship that exists between the parties.<sup>15</sup>

17 *Evidence and Issues at Hearing*

18  
19 <sup>12</sup> District was concerned that Petitioners had simply provided a box of paper documents and two DVDs,  
20 noting that the majority of the proposed documents were exclusively on the DVD, were not indexed and  
21 multi-page documents were not paginated. Petitioners responded that there was no legal requirement for  
22 "paper" documents to be provided and offered to present paper copies at the hearing.

23 <sup>13</sup> The judges do not travel with equipment that will accommodate the judge's or witnesses' use/access to  
24 digital or previously-filed electronic documents.

25 <sup>14</sup> On January 15, 2016, and January 17, 2016, respectively, Petitioners filed (a) an additional motion  
26 regarding the possible, and past, use of federal and state rules of evidence, and (b) an additional motion  
27 requesting sanctions for District misrepresentation of compliance with disclosure (due to unpaginated  
28 exhibits of District) allegedly intended to deliberately discredit and harass Petitioners by alleging  
29 Petitioners' noncompliance with disclosure and by requesting a ruling on the underlying legal issue at this  
30 time; the Tribunal has no authority to create or impose sanctions in these matters. Finally, Petitioners  
subsequently complained about the proffered availability dates of the District and its witness for the final  
hearing session despite the fact that the District, its witness (Dr. Spencer), and the Administrative Law  
Judge all offered to stay late and complete the due process hearing on January 22, 2106. Thus, the third  
day of this hearing was necessitated by Parent not wanting to conduct cross-examination of District's  
final witness on January 22, 2016, due to the late hour of the day.

<sup>15</sup> As the U.S. District Court of Arizona noted in prior litigation, "[t]he record clearly shows that Parents  
have been actively involved in Student's education by vigorously pursuing the rights and remedies  
allotted under the IDEA." The Court concluded that "Parents' actions, however, have contributed to an  
increasingly strained relationship with District." [REDACTED] v. Sedona-Oak Creek Unified Sch. Dist. #9,  
IDELR [REDACTED], LRP [REDACTED] ([REDACTED]).

1 The parties presented testimony and exhibits at formal evidentiary hearing  
2 sessions conducted on January 21, 2016, January 22, 2016, and March 23, 2016. The  
3 parties presented testimony from the witnesses listed above.<sup>16</sup> The parties stipulated  
4 and offered into evidence Petitioners' Exhibits AA through AZ, BA through BZ, CA  
5 through CK, DA through DX, MA through MM, and (References on DVD) RA through  
6 RM,<sup>17</sup> and District's Exhibits Roman I through Roman V, including all subparts (with the  
7 exception of several withdrawals).<sup>18</sup>

8 On February 1, 2016, following two days of due process hearing including  
9 Petitioners' presentation of their case in chief, District renewed its October 2, 2015  
10 Motion to Dismiss, further arguing that (a) Petitioners had failed to meet their burden  
11 and (b) Parent had admitted during the hearing that (i) the ABLLS-R assessment alone  
12 does not, in fact, define the educational needs of the Student and (ii) the ABLLS-R  
13 assessment alone does not define goals within an IEP.

14 By ORDER dated February 2, 2016, the Administrative Law Judge denied the  
15 renewed Motion to Dismiss, indicating that it would be considered at the conclusion of  
16 the hearing process, including the post-hearing legal argument.

17 In Petitioners' May 9, 2016 post-hearing brief, Parent noted that the initial  
18 remedy requested, to create a new IEP, was now moot for the reason that there were  
19 only two weeks left in the 2015-2016 school year and "the special education services of  
20 the August 6<sup>th</sup> final IEP expire ... on May 12, 2016." Parent requested compensatory  
21 services for academic goals and objectives "that were not tied to the specific seven  
22 academic needs stated in the IEP."<sup>19</sup>

23  
24 <sup>16</sup> Transcripts of the testimony have been added to the hearing record; the transcripts are the official  
25 record of this hearing.

26 <sup>17</sup> Petitioners' proposed Exhibit FT and proposed Exhibit GD were documents that were not disclosed by  
27 Petitioners on the disclosure date and, therefore, were not admitted to the hearing record. However, on  
28 consideration of the entire record, the Administrative Law Judge found that Exhibit FT is the same as  
29 District's Roman III #43.

30 <sup>18</sup> Prior to the hearing, District withdrew Exhibits Roman III #1, #9, #10, and #26.

<sup>19</sup> Parent's calculations are set forth in the post-hearing brief as minutes per week, averaged per day and  
then multiplied by the 180 days "in an academic year" for a calculated total of 648 hours per academic  
year. Parent then, apparently allowing that 5 needs "identified by the August 6<sup>th</sup> IEP [had] corresponding  
goals and objectives" and concluding that 7/12 of the special education service minutes Student had  
received "were utilized for goals and objectives not meeting the academic needs of [Student]," reduced



1 August 2015, and two IEP meetings were convened in September 2015.<sup>25</sup> At the end of  
2 the IEP process, the duration of Student's annual IEP period was noted to be  
3 September 15, 2015, through August 5, 2016 ("2015-2016 IEP").<sup>26</sup> .

4 5. The 2015-2016 IEP indicates that "[t]he ABLLS-R assessment was  
5 performed in the spring of 2015 and all goal decisions were made based off of the  
6 levels found during ABLLS-R assessment."<sup>27</sup>

7 6. Based on the Spring 2015 ABLLS-R, during the IEP meetings, Special  
8 Education Teacher presented the prioritized areas on which Student's educational  
9 needs and his goals and objectives should focus to the IEP team, and the IEP team  
10 discussed at great length during the multiple meetings Student's educational and  
11 functional needs, teacher input, parental input, and the proposed goals and  
12 objectives.<sup>28</sup>

13 7. In prioritizing the focus areas, Special Education Teacher testified that  
14 most of the priorities for Student needed to be on basic learner skills, which were the  
15 first 15 areas in the ABLLS-R.<sup>29</sup> Special Education Teacher indicated that half to two-  
16 thirds of the goals typically come from the first 15 areas of the ABLLS-R assessment.<sup>30</sup>  
17 Special Education Teacher noted that the purpose of the prioritization was to teach the  
18 basic skills that would "allow [Student] to learn the most things later on."<sup>31</sup>

19 8. Special Education Teacher generally described the prioritization of skill  
20 areas to be "which areas together lead us to more learning opportunities later on."<sup>32</sup>

21 \_\_\_\_\_  
22 <sup>25</sup> One other meeting in September 2015 was not considered to be an IEP meeting. At hearing, Parent  
23 fixated on many of the details relating to the meetings, such as the drafts and the evolution of the final  
24 goals, looking to find in them "intent" or alleged "bad faith" regarding the process. However, Parent  
25 failed to recognize that all the details regarding the various IEP meetings and discussions therein are not  
26 relevant to the sole issue at hand in this matter. It must be noted that it is evident that the entire IEP  
27 process that takes place each year is generally presented by Parent as the springboard of continued  
28 disagreements of not only multiple minute details but also the overall quality and content of each of  
29 Student's IEPs. While Parent has such disagreements, such concerns are not the subject matter of the  
30 instant Complaint. The IEP process that took place for the 2015-2016 school year is contained in District  
Exhibits Roman I-1 through Roman I-8, including the various subparts.

<sup>26</sup> See Exhibit Roman I-8F.

<sup>27</sup> *Id.*, ref. Current Classroom-Based Data.

<sup>28</sup> Vess testimony, January 21, 2016, Transcript Vol 1, page 128-29.

<sup>29</sup> This testimony was echoed by Dr. Spencer.

<sup>30</sup> *Id.*, pages 131-32; see also Roman V, ABLLS-R Guide, page 29 (Basic Learner Skills).

<sup>31</sup> *Id.*; see also pages 153-54.

<sup>32</sup> *Id.*, page 150.

1 Additionally, she indicated that there were things that had been taught to Student “for  
2 multiple years” that he had not learned and that “if we’re not successful in the basic  
3 skill, it’s time to find a new basic skill to replace it with so we can meet those higher  
4 skills, rather than spend more on [a] basic skill that we don’t seem to be getting  
5 anywhere with.”<sup>33</sup>

6 9. During the time period of the IEP meetings for development of the 2015-  
7 2016 IEP, Parent provided input and expressed multiple and various concerns  
8 regarding annual goals to be considered for Student’s 2015-2016 IEP.<sup>34</sup> Multiple drafts  
9 of the 2015-2016 IEP contain large amounts of parental input.<sup>35</sup>

10 10. The Summary of Student’s Educational Needs indicated as follows:

11 Based on the information from the current multidisciplinary  
12 evaluation, academic achievement, functional performance,  
13 and transition based data (if applicable), the IEP team has  
14 determined that the student has educational needs in the  
15 following areas: Basic Reading Skills, Interper./Soc. Skills,  
16 Math Reasoning, Workplace Skills, Occupational Therapy,  
17 Speech, Special Education Transportation.<sup>36</sup>

18 11. The 2015-2016 IEP was created through the consensus of the IEP team.<sup>37</sup>  
19 The 2015-2016 IEP contained fourteen (14) goals,<sup>38</sup> nine (9) of which reflected Parent’s  
20 recommended Student-need areas and Parent’s proposed goals.<sup>39</sup> All 14 goals align to  
21 the Spring 2015 ABLLS-R assessment.<sup>40</sup>

22 <sup>33</sup> *Id.*, page 152.

23 <sup>34</sup> Parent testimony, January 22, 2016, Transcript Vol II, pages 132-33.

24 <sup>35</sup> See Exhibit Roman I-1(C)(2)(a), parent information dated May 4, 2015; see also Exhibit Roman I-  
25 1(C)(2)(c), parental goal priorities dated May 5, 2015, which Parent had aligned to the skill area in the  
26 ABLLS-R assessment [Parent testimony, January 22, 2016, Transcript Vol II, page 78]. Dr. Spencer  
27 acknowledged that the discussions at the IEP meetings [infer, she attended] “went way beyond the pages  
28 of the IEP” and that the developed goals had come from “needs that had been discussed, repeatedly in  
29 some cases, in the IEP [meetings] from May through September.” Spencer testimony, January 22, 2016,  
30 Transcript Vol II, pages 228-29.

<sup>36</sup> See Exhibit Roman I-8F.

<sup>37</sup> None of the specialized instruction, goals and objectives, or the related services that are set forth in  
the 2015-2016 IEP are at issue in the instant Complaint.

<sup>38</sup> See Exhibit Roman I-8F. Student has 5 Language Arts goals, 2 Math goals, 1 Daily Living Skills goal,  
2 Communication goals, 1 Social Emotional Goal, and 3 Related Services goals.

<sup>39</sup> Spencer testimony, March 23, 2016, Transcript Vol. III, page 75, lines 9-14.

<sup>40</sup> Spencer testimony, January 22, 2016, Transcript Vol. II, pages 223-31.

1 12. Student's various needs, both academic and functional, are set forth in  
2 the 20156-2016 IEP under Section 3: Present Levels of Academic Achievement and  
3 Section 4: Functional Performance (collectively, "PLAAFP").<sup>41</sup> Parental input,  
4 consisting of a great deal of detail of historical and current information,  
5 recommendations, and suggestions, is contained in Section 3: Present Levels of  
6 Academic Achievement.<sup>42</sup>

7 13. Petitioners complained that the 2015-2016 IEP is deficient by virtue of  
8 lacking goals and objectives addressing "each" of Student's academic and functional  
9 needs that were identified in the Spring 2015 ABLLS-R assessment and, therefore,  
10 District failed to provide a FAPE. By way of background for this position, at hearing,  
11 Parent indicated that there were goals that "aren't reflective either of my list or the  
12 seven needs that were identified in the PLAAFP." Parent specified the ABLLS-R task  
13 codes, as compared to his parental input, for which there were, and were not, goals in  
14 the 2015-2016 IEP.<sup>43</sup> Essentially, Parent argued that there were unaddressed needs  
15 identified in the ABLLS-R for which there were no goals in the 2015-2016 IEP.

16 14. During the hearing, Parent made several acknowledgments that  
17 contradicted Petitioners' various positions taken initially and throughout the subsequent  
18 presentation of Petitioners' case.

19 15. Under the section entitled, Number of Objectives, the ABLLS-R Guide  
20 states as follows:

21 It is important to consider the number of educational objectives – too  
22 many objectives can interfere with the quality of the necessary skills to be  
23 addressed, while too few objectives can often result in a failure to  
24 adequately address the needs of the learner. Too many or too few  
25 objectives are often indicative of a failure to realistically prioritize the  
26 necessary skills to be developed.

27 An effective IEP will most often contain 20-30 instructional objectives. Any  
28 one child is not likely to require objectives from all 25 skill areas of *The*

28 <sup>41</sup> See Exhibit Roman I-8(F).

29 <sup>42</sup> *Id.*

30 <sup>43</sup> Parent testimony, January 22, 2016, Transcript Vol. II, pages 139-41. Parent's "list" is the parental input listed in the present levels of academic achievement in the 2015-2016 IEP; the list includes references and designations of ABLLS-R task coding. See Roman I-8F.

1            *ABLLS-R Protocol*. Typically, when one or two objectives are written for  
2 any of the 15 skill areas within the Basic Learner Skills Section, it is  
3 relatively easy to identify 20 appropriate instructional objectives. It is  
4 important to avoid an excessive number of objectives as this will likely  
5 impact the training time available to ensure the development and  
6 acquisition of critical skills (in addition to the ability of the educational staff  
7 to effectively maintain and track each objective. Furthermore, it is  
8 important to allow time within the educational environment to  
accommodate opportunities for incidental teaching and to facilitate and  
promote generalization of the existing skills. The alternative to having an  
excessive amount of objectives is to add new learning tasks as the  
existing objectives are met.

9            16. When asked to find any reference in the ABLLS-R Guide that the term  
10 “instructional objectives” as used in the ABLLS-R Guide referred to “goals” in an IEP  
11 and that an “effective IEP would have 20 to 30 goals,” Parent was unable to point to  
12 any such specific statements.<sup>44</sup>

13            17. Under the section entitled “Content of the IEP,” the ABLLS-R Guide states  
14 as follows:

15            The selection of educational objectives for an individual child must be  
16 based upon the unique needs of the child. As such, it is impossible to  
17 specify the exact criteria for the selection of objectives for children.  
18 However, it is possible to provide some general guidelines to help with  
the selection process.

19            The ABLLS-R Guide goes on to provide general information regarding the four major  
20 sections of the ABLLS-R protocol: basic learner skills, academic skills, self-help skills,  
21 and motor skills.

22            18. At hearing, Parent acknowledged that the IEP team determines the  
23 educational needs of a student.<sup>45</sup>

24            19. At hearing, Parent acknowledged that the ABLLS-R assessment alone  
25 does not determine all of the educational needs of a student.<sup>46</sup>

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29            <sup>44</sup> Parent testimony, January 22, 2016, Transcript Vol II, pages 122-25. See Exhibit Roman III, #20  
(page 4), an apparent reference to the ABLLS-R Guide (page 28).

30            <sup>45</sup> Parent testimony, January 22, 2016, Transcript Vol. II, page 130.

<sup>46</sup> *Id.*, page 129.

1           20. At hearing, Parent acknowledged that the purpose of the ABLLS-R is to  
2 identify language and other critical skills that are in need of intervention.<sup>47</sup> Parent  
3 acknowledged that a secondary purpose is to provide a curriculum guide for an  
4 educational program.<sup>48</sup>

5           21. At hearing, Parent acknowledged that it was important for the IEP team to  
6 prioritize educational objectives. Parent also acknowledged that prioritizing  
7 educational objectives did not mean that the IEP team was limiting the goals and  
8 objectives.<sup>49</sup>

9           22. At hearing, Parent acknowledged that he did not believe there needed to  
10 be a goal and objective for each of the 25 ABLLS-R domains.<sup>50</sup>

11           23. At hearing, District acknowledged that the 2015-2016 IEP addressed a  
12 limited, prioritized, selection of skill areas that had been identified from the Spring  
13 ABLLS-R that were the most important skill areas for Student's goals and objectives.

14           24. Dr. Trina D. Spencer has consulted with District since January 2012 with  
15 regard to Student.<sup>51</sup> Dr. Spencer worked closely with Special Education Teacher to  
16 help design and develop classroom programs, including curriculum development, and  
17 goal development for the 2015-2016 IEP.<sup>52</sup>

18           25. Dr. Spencer opined that District had, in developing the 2015-2016 IEP,  
19 correctly used the Spring 2015 ABLLS-R assessment in determining the educational  
20 and functional needs for Student and in determining Student's goals and objectives.<sup>53</sup>

21           26. Following the above testimony and because the hearing sessions were  
22 not yet completed, Parent had opportunity to re-evaluate whether to continue to litigate  
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24 <sup>47</sup> *Id.*, pages 127-28.

25 <sup>48</sup> *Id.*, page 128.

26 <sup>49</sup> *Id.*, page 131.

27 <sup>50</sup> *Id.*

28 <sup>51</sup> Dr. Spencer has a bachelor's degree in psychology, a master's degree in school psychology and a  
29 Ph.D. in disability disciplines in special education. Dr. Spencer is also a board certified behavior analyst  
30 ("BCBA") at the doctorate level; a BCBA assesses and designs behavior analytic strategies (i.e.,  
programs) to increase behavioral deficits or decrease behavioral excesses. See Exhibit Roman IV #1  
and #2.

<sup>52</sup> Spencer testimony, January 22, 2016, Transcript Vol II, pages 152-56.

<sup>53</sup> Parent presented no expert opinion in dispute. Although Parent has sought and obtained some  
additional knowledge and training in ABLLS-R, he is not considered to be an expert in this area. The

1 this Complaint.<sup>54</sup> However, the Tribunal was not advised that the matter was resolved  
2 and a third hearing session convened on March 23, 2016. Since the filing of the post-  
3 hearing argument, the Tribunal has not been advised that the matter was resolved.

4 27. Post-hearing, Parent noted that the IDEA requires District to use a variety  
5 of tools and assessment to determine eligibility or programming.<sup>55</sup> Parent continued to  
6 argue, however, that District had failed to provide FAPE because the 2015-2016 IEP  
7 did not contain goals and services to address “each of the needs identified by the  
8 assessment in all areas of disability”<sup>56</sup> for the reason that the IDEA mandates that a  
9 student be assessed “in all areas of suspected disability.”<sup>57</sup> Parent argued that an IEP  
10 must contain measureable goals designed to “meet each of the child’s ... educational  
11 needs that results from the child’s disability.” Relying on this provision, Parent’s  
12 position post-hearing was that every academic and functional need identified in every  
13 evaluation must be addressed in an IEP. Parent argued that, in this case, the District  
14 limited the needs addressed in the 2015-2016 IEP by virtue of the proffered goals (*i.e.*,  
15 the prioritization process) and then “backfilled” the 2015-2016 IEP with needs that met  
16 the prioritized goals.

17 28. Post-hearing, Parent further argued that District’s position is incorrect that  
18 the IEP team defines the educational and functional needs of a student, arguing that it  
19 is the “evaluation itself, including assessments (e.g. ABLLS-R), themselves that  
20 ‘identify all of the child’s special education and related services needs’ and not the IEP  
21 team.”<sup>58</sup> Essentially, Parent argued that no matter how many assessments there are,  
22 “the needs [identified] by each and every assessment ... are the needs to be answered  
23 by the goals and objectives of the [2015-2016] IEP.”<sup>59</sup> Other than simply referencing  
24 the two law provisions, one requiring that a school evaluate in “all” areas of suspected  
25

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26 ABLLS-R Guide does not support Parent’s allegation that the ABLLS-R Guide called for a different  
27 application for goal development.

28 <sup>54</sup> At the end of the second hearing session on January 22, 2016, Parent made a procedural inquiry  
29 regarding what to do if the parties were able to resolve the matter prior to the third hearing session.

30 <sup>55</sup> 20 United States Code (“U.S.C.”) § 1414(b)(2).

<sup>56</sup> Petitioners’ Post-Hearing Brief, page 3.

<sup>57</sup> 20 U.S.C. § 1414(b)(3)(B).

<sup>58</sup> 34 C.F.R. § 300.304(c)(6).

<sup>59</sup> Petitioners’ Post-hearing Brief, page 4.

1 disability and the other requiring that an IEP contain goals designed to meet “each” of  
2 the student’s educational needs, Parent presented no legal authority for Petitioners’  
3 position.

4 29. Despite his acknowledgment at hearing that it was important for the IEP  
5 team to prioritize educational objectives, and that prioritizing educational objectives did  
6 not mean that the IEP team was limiting the goals and objectives, Parent inexplicably  
7 argued post-hearing that District “cherry-picked” Student’s needs under the false guise  
8 of prioritization because the prioritization took place during the process of the IEP  
9 development and multiple meetings.<sup>60</sup>

10 30. Parent’s argument that only Special Education Teacher made the  
11 decision to prioritize is simply not borne out by the hearing record, which demonstrated  
12 that Special Education Teacher along with Dr. Spencer worked to review the Spring  
13 2015 ABLLS-R and look for the skill areas that were either working, or not, and to  
14 identify the skill areas that, if Student were able to learn them, District would be able to  
15 build skills thereon. Based on that review, the IEP team reached a consensus as to the  
16 appropriate skills to be addressed in the 2015-2016 IEP.

17 31. District argued that Petitioners’ positions fail as a matter of law in that the  
18 IDEA mandates that a variety of assessments be utilized to help identify a student’s  
19 educational and functional needs and that, pursuant to the IDEA, it is the IEP team that  
20 determines educational and functional needs.

### 21 CONCLUSIONS OF LAW

22 1. A parent who requests a due process hearing alleging non-compliance  
23 with the IDEA must bear the burden of proving that claim.<sup>61</sup> The standard of proof is  
24 “preponderance of the evidence,” meaning evidence showing that a particular fact is  
25

26  
27 <sup>60</sup> Parent essentially alleged that District improperly prioritized the determined Student’s educational  
28 needs and improperly limited the Student’s goals and objectives. While this is not an issue for hearing  
29 determination, it must be stated that Parent provided no support for these allegations in light of the  
30 testimony presented in this case and taking into consideration the ABLLS-R Guide. Parent argued that  
the ABLLS-R is the key in one sense only, for addressing “all” needs, but Parent fails to appropriately  
apply and utilize the ABLLS-R assessment.

<sup>61</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

1 “more probable than not.”<sup>62</sup> Therefore, Petitioners bear the burden of proving their  
2 claim and complaint by a preponderance of evidence.

3 Free Appropriate Public Education - FAPE

4 2. Through the IDEA, Congress has sought to ensure that all children with  
5 disabilities are offered a free appropriate public education that meets their individual  
6 needs.<sup>63</sup> These needs include academic, social, health, emotional, communicative,  
7 physical, and vocational needs.<sup>64</sup> To do this, school districts must identify and evaluate  
8 all children within their geographical boundaries who may be in need of special  
9 education and services. The IDEA sets forth requirements for the identification,  
10 assessment and placement of students who need special education, and seeks to  
11 ensure that they receive a free appropriate public education. A FAPE consists of  
12 “personalized instruction with sufficient support services to permit the child to benefit  
13 educationally from that instruction.”<sup>65</sup> The IDEA mandates that school districts provide  
14 a “basic floor of opportunity,” nothing more.<sup>66</sup> It does not require that each child’s  
15 potential be maximized.<sup>67</sup> A child receives a FAPE if a program of instruction “(1)  
16 addresses his unique needs, (2) provides adequate support services so he can take  
17 advantage of the educational opportunities and (3) is in accord with an individualized  
18 educational program.”<sup>68</sup>

19 Evaluations

20 3. In conducting evaluations, school districts must use a variety of  
21 assessment tools and strategies to gather relevant functional, developmental, and  
22 academic information, including information provided by the parents to assist in  
23 “determining (i) whether the child is a child with a disability; and (ii) the content of the  
24

25 <sup>62</sup> *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279  
26 (1993) (quoting *In re Winship*, 397 U.S. 358, 371-372 (1970)); see also *Culpepper v. State*, 187 Ariz. 431,  
27 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action*  
28 *No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

29 <sup>63</sup> 20 U.S.C. § 1400(d); 34 C.F.R. § 300.1.

30 <sup>64</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)).

<sup>65</sup> *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 203 (1982).

<sup>66</sup> *Id.* at 200.

<sup>67</sup> *Id.* at 198.

1 child's individualized education program."<sup>69</sup> A school district may not use any single  
2 measure or assessment as the sole criterion for determining whether a child is eligible  
3 or for determining an appropriate educational program for the child.<sup>70</sup> In evaluating a  
4 child, the school district must ensure that the child "is assessed in all areas related to  
5 the suspected disability" and that the evaluation is sufficiently comprehensive so to as  
6 to identify all of the child's special education and related service's needs.<sup>71</sup>

#### 7 The IEP Team

8 4. The IDEA provides that the public agency, the school, must "ensure" that  
9 the IEP team includes certain persons, typically those with specific and/or particular  
10 knowledge of the student and the types of resources and services available for a child  
11 with that student's disabilities.<sup>72</sup> Additionally, a parent has the discretion to include  
12 other persons "who have knowledge or special expertise regarding the child, including  
13 related services personnel as appropriate."<sup>73</sup> The determination of knowledge and  
14 expertise is made by the party who invited the other person to be a member of the IEP  
15 team.<sup>74</sup> When conducting MET and IEP meetings, and other administrative matters  
16 regarding the IDEA procedural safeguards, the parties "may agree to use alternative  
17 means of meeting participation, such as video conferences and conference calls."<sup>75</sup>  
18 Finally, an IEP meeting may take place in the absence of parents if the public  
19 agency/school is unable to convince the parents to attend; the public agency/school  
20 must keep a record of its efforts to arrange "a mutually agreed time and place" for the  
21 meeting.

#### 22 The Individualized Education Program - IEP

23 5. Once a child is determined eligible for special education services, a team  
24 composed of the child's parents, teachers, and others formulate an IEP that, generally,  
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26 <sup>68</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)).

27 <sup>69</sup> 20 U.S.C. § 1414(b)(2)(A); *see also* 34 C.F.R. § 300.304(b).

28 <sup>70</sup> 20 U.S.C. § 1414(b)(2)(B); *see also* 34 C.F.R. § 300.304(b)(2).

29 <sup>71</sup> 20 U.S.C. § 1414(b)(3)(B); *see also* 34 C.F.R. § 300.304(c)(4) and (6).

30 <sup>72</sup> 20 U.S.C. § 1414(d)(1)(B) - (D); 34 C.F.R. § 300.321(a).

<sup>73</sup> 20 U.S.C. § 1414(d)(1)(B)(vi); 34 C.F.R. § 300.321(a)(6).

<sup>74</sup> 34 C.F.R. § 300.321(c).

<sup>75</sup> 20 U.S.C. § 1414(f); 34 C.F.R. § 300.322(c); *see also* 34 C.F.R. § 300.328.

1 sets forth the child's current levels of educational performance and sets annual goals  
2 that the IEP team believes will enable the child to make progress in the general  
3 education curriculum.<sup>76</sup> The IEP tells how the child will be educated, especially with  
4 regard to the child's needs that result from the child's disability, and what services will  
5 be provided to aid the child. The child's parents have a right to participate in the  
6 formulation of an IEP.<sup>77</sup> The IEP team must consider the strengths of the child,  
7 concerns of the parents, evaluation results, and the academic, developmental, and  
8 functional needs of the child.<sup>78</sup> The IEP is to include a statement of measureable goals,  
9 including academic and functional goals that are designed to "meet the child's needs,"  
10 resulting from his/her disability, "to enable the child to be involved in and make  
11 progress in the general education curriculum," and to "meet each of the child's other  
12 educational needs that result from the child's disability."<sup>79</sup> Annually, the IEP team must  
13 review the student's IEP to determine whether the annual goals are being achieved and  
14 to revise the IEP as appropriate to address the lack of progress toward the annual  
15 goals, the results of any re-evaluation, information about the child provided by parents,  
16 the child's anticipated needs and any other relevant matters.<sup>80</sup> To foster full parent  
17 participation, in addition to being a required member of the team making educational  
18 decisions about the child, school districts are required to give parents written notice  
19 when proposing any changes to the IEP,<sup>81</sup> and are required to give parents, at least  
20 once a year, a copy of the "procedural safeguards," informing them of their rights as  
21 parents of a child with a disability.<sup>82</sup>

## 22 DECISION

23 6. Parent failed to make a reasoned argument in connection with the  
24 Complaint. The Administrative Law Judge concludes that Parent simply finds the two  
25 words in the two separate IDEA provisions, "all" and "each," to somehow be correlated  
26

27 <sup>76</sup> 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

28 <sup>77</sup> 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a)(1).

29 <sup>78</sup> 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).

30 <sup>79</sup> 20 U.S.C. § 1414(d)(1)(A)(II); 34 C.F.R. § 300.320(a)(2)(A) and (B).

<sup>80</sup> 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.324(b)(1).

<sup>81</sup> 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

<sup>82</sup> 20 U.S.C. § 1415(d); 34 C.F.R. § 300.504. Safeguards may also be posted on the Internet.

1 regarding what is required to be in an IEP. Parent misconstrues the “evaluation”  
2 parameter with the development of an IEP. An appropriate evaluation must be  
3 sufficiently comprehensive so to as “to identify” all of the child’s special education and  
4 related services’ needs. The sufficiency of evaluation parameter exists for purposes of  
5 identification of disabilities or deficits.

6 7. Clearly in this case, Student has been appropriately identified by District  
7 for many years. What remains for District to accomplish on behalf of Student is to  
8 determine and develop the specific IEP goals and educational objectives that will offer  
9 the opportunity to Student for access to the general education curriculum through  
10 specially designed instruction.

11 8. The IDEA mandates that District provide a basic floor of opportunity, *i.e.*,  
12 “access” to education. Additionally, District has to determine which supportive and  
13 related services will offer Student the ability to benefit educationally from special  
14 education. A school satisfies the provision of FAPE through personalized instruction  
15 with adequate support services to permit the child to benefit educationally from that  
16 instruction.<sup>83</sup>

17 9. In this case, District has demonstrated that, in its development of the  
18 2015-2016 IEP, it utilized not only the ABLLS-R assessment but also input, including  
19 observations and data from educators, from its BCBA consultant, and from Parents in  
20 identifying Student’s capabilities and deficiencies. The hearing record demonstrated  
21 that the 2015-2016 IEP was specific to Student’s unique needs and was individualized  
22 as to Student’s current abilities and disabilities, including those found and documented  
23 in the Spring 2015 ABLLS-R, to allow Student to benefit educationally from a program  
24 of instruction.

25 10. Petitioners were unable to demonstrate that the IDEA permits the use of  
26 one assessment as the sole basis for determining a student’s educational and  
27 functional needs. The IDEA mandates the use of a variety of assessments.  
28 Additionally, Petitioners failed to support their contention that the IDEA would mandate  
29  
30

1 a goal and objective developed for “each” need identified in one assessment tool, in  
2 this case, in the Spring 2015 ABLLS-R assessment, based on an IDEA provision that a  
3 child be “assessed in all areas of suspected disability.” Therefore, Petitioners have  
4 failed to establish a violation of the IDEA by District as was alleged in the Complaint.

5 11. The Administrative Law Judge concludes that Petitioners have not  
6 demonstrated by a preponderance of evidence that District failed to offer, or failed to  
7 provide, Student with FAPE by providing an IEP that did not address “each” need  
8 identified in the Spring 2015 ABLLS-R assessment. The Administrative Law Judge  
9 concludes that Petitioners have failed to meet the burden of proof and, therefore,  
10 Petitioners’ Complaint should be dismissed and Petitioners’ remedy for compensatory  
11 hours should be denied.

12 12. Given the conclusion that Petitioners have failed to meet the burden of  
13 proof, resulting in dismissal of Petitioners’ Complaint and res judicata of the issue, the  
14 Administrative Law Judge concludes that Respondent’s motion to dismiss is moot.

15 **ORDER**

16 Based on the findings and conclusions above,

17 IT IS ORDERED that Petitioners’ Complaint is dismissed with prejudice and  
18 Petitioners’ request for relief is denied. Accordingly, District is deemed the prevailing  
19 party.

20 ORDERED this day, August 16, 2016.

21  
22 /s/ Kay A. Abramsohn  
23 Administrative Law Judge

24 **RIGHT TO SEEK JUDICIAL REVIEW**

25 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this  
26 Decision and Order is the final decision at the administrative level.  
27 Furthermore, any party aggrieved by the findings and decisions made  
28 herein has the right to bring a civil action, with respect to the complaint

29 <sup>83</sup> *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 203 (1982); *see also Park v.*  
30 *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)).

1 presented, in any State court of competent jurisdiction or in a district court  
2 of the United States. Pursuant to A.A.C. § R7-2-405(H)(8), any party may  
3 appeal the decision to a court of competent jurisdiction within thirty-five  
4 (35) days of receipt of the decision.

5 Copy mailed/e-mailed/faxed August 16, 2016 to:

6   
7  
8  
9 Patrice M. Horstman, Esq.  
10 Hufford, Horstman, Mongini, Parnell & Tucker, PC  
11 120 N. Beaver St.  
12 P.O. Box B  
13 Flagstaff, AZ 86002  
14 **pmh@h2m2law.com**

15 Kacey Gregson  
16 Arizona Department of Education  
17 1535 West Jefferson  
18 Phoenix, AZ 85007  
19 **kacey.gregson@azed.gov**

20 By Felicia Del Sol  
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27  
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