

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

G.A., a Student, by and through Parent L.S.
Petitioners,

No. 17C-DP-012-ADE

v.

Tanque Verde Unified School District
Respondent.

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: February 13, 2017, through February 17, 2017; May 8, 2017; and May 9, 2017, with the record left open until July 3, 2017, for the submission of written closing arguments.¹

APPEARANCES: Petitioners were represented by Robert T. Mills and Sean A. Woods, ANGELINI MILLS WOODS + ORI LAW. Parent, her domestic partner, (), and Tamara Ballou, Educational Advocate, were present during the hearing. Tanque Verde Unified School District was represented by Denise M. Bainton and Sesaly O. Stamps, DECONCINI McDONALD YETWIN & LACY, P.C. Certified Court Reporter Raynbo Silva was present and recorded the proceedings as the official record of the hearing.

WITNESSES:² () Petitioner (Parent); Sally Glennon, Director of Special Education; Jayne Cooper, Ph.D., School Psychologist; Jill Vengelen, Second Grade Teacher at Tanque Verde Elementary School (**Second Grade Teacher**); Suzanne Hensel, Third Grade Teacher at Tanque Verde Elementary School (**Initial Third Grade Teacher**); Sonya Spolsky, Ph.D., Teacher for the Hearing Impaired at Tanque Verde Elementary School; Deborah Jefferson, **Private Tutor**; Debra Delabio, Licensed School Psychologist and Director of Pathways School and Evaluation Center (Pathways); Lynn Carahaly, Pediatric Speech-Language Pathologist; Amy Thomas, OD, FCOVD, Developmental Optometrist; Regina Buckley, Speech-Language Pathologist at Tanque Verde Elementary; Debbie Gentry, Special Education Teacher at Tanque Verde Elementary School (**Special Education Teacher**); and Juli Daley, Third Grade Teacher at Tanque Verde Elementary School (**Subsequent Third Grade Teacher**).

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

Parent brought this due process action, on behalf of Student, regarding Student's educational program at Respondent School District. The law governing these

¹ As a result of the record being held open, the 45th day, the day by which a decision is due, was extended to July 27, 2017.

² 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 proceedings is the Individuals with Disabilities Education Act (IDEA), 20 United States
2 Code (U.S.C.) §§ 1400-1482 (as re-authorized and amended in 2004),³ and its
3 implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 300, as well as
4 the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761
5 through 15-774, and implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401
6 through R7-2-406.

7 Procedural History

8 At the conclusion of an Individualized Educational Program (IEP) meeting on
9 February 29, 2016, Parent presented a notice that Parent was withdrawing Student from
10 Respondent School District and making a unilateral placement in a private day school.
11 Petitioners filed the Due Process Complaint on August 24, 2016 (Complaint). Following
12 a prehearing conference in this matter, the issues set forth in the Complaint were restated
13 as follows:

- 14 1. Did Respondent School District fail to provide Student a free appropriate
15 public education (FAPE) when Respondent School District failed to evaluate
16 Student in all suspected areas of disability, specifically in the areas of vision
17 impairment, specific learning disability, and hearing impairment?
- 18 2. Did Respondent School District fail to provide Student a FAPE when
19 Respondent School District failed to make Student eligible for special education
20 services in the areas of vision impairment, specific learning disability, and
21 hearing impairment?
- 22 3. Did Respondent School District fail to provide Student a FAPE when
23 Respondent School District failed to create an appropriate IEP for Student with
24 respect to services, goals, service provider, transitions, and staff training?
- 25 4. Were all of the Prior Written Notices (PWNs) Respondent School District
26 issued since August 24, 2014, insufficient in that they did not provide reasons
27 for the decisions reached?
- 28 5. Did Respondent School District fail to provide Student a FAPE when
29 Respondent School District failed to implement substantive portions of
30 Student's IEP including, but not limited to, specialized instruction, speech and
language therapy, time in the general education classroom, audiology services,
required accommodations, supplementary aides and services, work towards
goals, progress reports, and staff training?
6. Did Respondent School District deny Student a FAPE through its failure
to allow parental participation in the creation of the IEPs?

³ 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 7. Did Respondent School District deny Student a FAPE through its
2 predetermination of Student's placement and services in the creation of the
3 IEPs?

4 8. Did Respondent School District deny Student a FAPE when it failed to
5 appropriately convene the IEP meetings in that required members were not
6 present?

7 9. Did Respondent School District fail to provide Parent with a complete
8 copy of Student's educational records as requested?

9 10. Did Respondent School District deny Student a FAPE when it failed to
10 place Student in the appropriate least restrictive environment (LRE), a private
11 day school?

12 11. Did Respondent School District deny Student a FAPE when it failed to
13 offer Student Extended School Year (ESY) services in 2015?

14 On October 11, 2016, Respondent School District filed a Partial Motion to Dismiss
15 arguing that any claims alleged by Petitioners relating to events that occurred prior to
16 August 24, 2014, including the claim that Student was denied a FAPE as it related to the
17 2013-2014 IEP, which was adopted prior to August 24, 2014, and was in effect until
18 September 11, 2014. By order dated October 25, 2016, the Partial Motion to Dismiss
19 was granted in part and denied in part. Specifically, those portions of the Complaint
20 arising before August 24, 2014, were dismissed.

21 Petitioners' requested remedies included private vision therapy and a tutor,
22 reimbursement for Student's placement at a private day school, and compensatory
23 education. Respondent School District denied any violations of the IDEA.

24 Evidence and Issues at Hearing

25 The parties presented testimony and exhibits at a formal evidentiary hearing held
26 from February 13, 2017, through February 17, 2017; May 8, 2017; and May 9, 2017. The
27 parties presented testimony from the witnesses listed above⁴ and offered into evidence
28 those exhibits referenced at the hearing.⁵

29 After the Exhibits and testimony were admitted, the parties submitted written
30 arguments to the tribunal. The Administrative Law Judge has considered the entire

⁴ Transcripts of the testimony have been added to the record.

⁵ The parties agreed that the exhibits referenced at the hearing would be admitted into evidence. While Petitioners' Exhibit A20, consisting of 2222 pages of emails, was referenced at hearing, the Administrative Law Judge considered only those pages specifically raised during the hearing.

record, including the testimony and Exhibits,⁶ and now makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Student, age 12, entered Respondent School District as a second grader in August 2013. Prior to entering Respondent School District, Student had been retained and repeated first grade during the 2012-2013 school year. Student was initially found eligible for special education in the categories of other health impairment and speech/language impairment.⁷ Student had been diagnosed with epilepsy, auditory processing disorder, and apraxia.

2. On or about August 30, 2013, Student's father emailed an employee of Respondent School District indicating that Student may have ocular motor spasms, which could affect Student's ability to read. The email provided as follows:

I have some insight about [Student] that is important. It involves her reading and ocular motor spasms (left and right eye track separately). This is one of many forms of dyslexia, and one that I also have. I have observed [Student] reading on many occasions and have seen this occurring.

3. Respondent School District replied indicating that the information would be included in Student's IEP and requested that Student's father forward any evaluations regarding Student's ocular motor spasms; however, no evaluations had been done at that time.

4. In a MET Report dated September 5, 2013, it was noted that Student was screened at the beginning of the year for the motor lab program examining her reflex integration and eye-tracking. It was reported that Student demonstrated difficulty on three of the four reflexes and the eye tracking. Student had difficulty processing motor directions and, therefore, had difficulty successfully participating in motor lab. Student demonstrated poor body/spatial awareness and motor planning in motor lab. A motor evaluation was given to determine Student's overall gross motor coordination.

⁶ The Administrative Law Judge has read and considered the exhibits submitted, 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.

⁷ Student was previously eligible for special education in her prior school. No evidence was presented that Student's categories of eligibility changed when she entered Respondent School District

1 5. In September 2013, an annual IEP was developed (2013 IEP). The 2013
2 IEP noted that Student had been evaluated on August 27, 2013, for Adaptive PE, which
3 found that Student "had difficulty tracking smoothly with her eyes jumping ahead" and that
4 Student's father reported that Student had "ocular motor spasms (left and right eyes track
5 separately) which interfere with reading." Student was found eligible for Adaptive PE and
6 three annual goals for Adaptive PE were included in the 2013 IEP.

7 6. In February 2014, the IEP Team met to amend the IEP (2013 Amended
8 IEP).

9 7. According to Parent, following the 2013-2014 school year, there was "no
10 discussion about [Student] being retained." But when Parent had Student at home over
11 the summer, Parent observed that Student was not connecting socially, was very
12 immature, and was not fitting in with her peers. Parent also testified that Student's
13 classroom report card indicated she was doing well, while she believed Student's skills
14 were not moving forward like they should. Parent indicated that if she were only
15 concerned with the academics, she would not have asked that Student be retained and
16 would have let her advance with her peers, but the social aspect of Student's development
17 concerned her. Therefore, Parent requested that Student repeat second grade.

18 8. Dr. Cooper resisted Parent's request citing research indicating children
19 should not be retained twice. Parent asserted that, regardless of the research, she knew
20 her child and felt retention was the right thing to do.

21 9. In June 2014, the IEP Team met and eventually agreed to retain Student in
22 second grade. Student was placed in Second Grade Teacher's class.

23 10. An IEP for the 2014-2015 school year was developed on September 11,
24 2014 (2014 IEP). During the IEP meeting, Student's progress toward the goals in the
25 2013 Amended IEP was reviewed. At the time the 2014 IEP was developed, the IEP
26 Team did not determine that ESY services would be appropriate for the summer of 2015.
27 The 2014 IEP provided that Student would use a personal FM system on the school
28 campus "throughout day." The 2014 IEP also provided that 30 minutes per week of
29 audiology services would be provided by the teacher for the hearing impaired to Student
30 and to the classroom teacher regarding the use and maintenance of the personal FM
system.

11. In September or October 2014, Parent received a PWN regarding the 2014 IEP that was developed.

12. At the beginning of the 2014-2015 school year, Student was receiving instruction in the resource room with Special Education Teacher. At some point, Student expressed a desire to remain in the general education classroom full time, so Parent, Second Grade Teacher, and Special Education Teacher decided Student would be in the regular classroom 100 percent of the day. Special Education Teacher stated she would do an addendum to the 2014 IEP to reflect the agreement of the parties, but Parent did not want the 2014 IEP to be amended in case Student went to a new school and/or Student needed the services in the future. Second Grade Teacher reported Student had "many successes in the regular classroom."

13. Second Grade Teacher considered moving into a third grade teaching position so she could continue teaching Student, but ultimately remained teaching second grade.

14. Second Grade Teacher told Initial Third Grade Teacher that she had given Parent her personal cell phone number to enable further communication, but Initial Third Grade Teacher stated she did not give out her personal cell phone number to parents.

15. Student advanced to third grade for the 2015-2016 school year. Student was placed in Initial Third Grade Teacher's room. Prior to the start of the year, Student's IEP Team met and reviewed a document entitled "Keys to [Student's] Success" prepared by Parent as a summary of different accommodations that helped Student during the 2014-2015 school year.

16. The "Keys to [Student's] Success" document included items such as:

- Given access to the room as early as 7:45am for getting her earpiece on and putting her things away

- Seated next to her "work buddy," [T.G.] who assisted her when needed and when the teacher was unavailable

- Allowed to eat lunch with a buddy or two of her choosing each day and ate in the small room next to [Special Education Teacher's] room

- The Earpiece was only used when direct instruction with [Student] is given. It is NOT used when the teacher is working in a different group, when

1 [Student] is not present, teacher walks out of room, etc. otherwise it
2 provides interference and/or the teacher's voice in [Student's] ear, making
3 it that much more difficult to process whatever she is presently doing. When
4 teacher moved away from [Student], the earpiece had to be removed (due
5 to interferences...maybe this can be flushed out further as it seems as
6 though turning off the button should work rather than having to remove the
7 device from her ear).

8 17. On the first day of the 2015-2016 school year, Parent saw Student's desk
9 and said it would be perfect.

10 18. At the beginning of the school year, T.G.'s mother approached Initial Third
11 Grade Teacher and asked that T.G. be moved to a different desk. T.G.'s mother stated
12 that she had made a mistake letting T.G. be a helper for Student because it was stressful
13 to T.G. T.G. was conflicted when Initial Third Grade Teacher asked Student to complete
14 her work independently; T.G. would attempt to keep her work covered while Student
15 would attempt to copy off T.G. Initial Third Grade Teacher also noted that T.G. was
16 rereading instructions to Student and that Student liked to touch T.G.⁸

17 19. On or about September 1, 2015, Respondent School District provided
18 Parent with a draft version of the IEP in anticipation of the annual IEP meeting to be held.

19 20. On Thursday, September 10, 2015, the IEP Team met to develop a new
20 annual IEP (September 10, 2015 IEP). The IEP Meeting was attended by Parent, Dr.
21 Cooper, Special Education Teacher, Ms. Buckley, Initial Third Grade Teacher, and Dr.
22 Spolsky. During the IEP meeting, Initial Third Grade Teacher stated she did not believe
23 that the third grade curriculum was appropriate for Student.

24 21. During the meeting, Parent requested that Student no longer receive pull-
25 out speech services. Ms. Buckley had concerns regarding this request, but ultimately,
26 the IEP Team agreed to discontinue the pull-out speech services.

27 22. The September 10, 2015 IEP included the following provisions and/or
28 changes relevant to this matter:

- 29 • Speech Language Impairment was removed as a category of eligibility.
- 30 • Speech services were removed pursuant to Parent's request.
- Speech goals were removed pursuant to the removal of speech services.

⁸ T.G.'s mother also told Subsequent Third Grade Teacher that T.G. was upset in Initial Third Grade Teacher's class because she had helped Student a lot and Student had copied T.G.'s work in second grade, but Student was not allowed to copy her work in Initial Third Grade Teacher's class.

- Use of the personal FM system was identified as "prn" or "as needed."
- Audiology services of 30 minutes per week would be provided by the teacher for the hearing impaired to Student and to the classroom teacher regarding the use and maintenance of the personal FM system.

23. On Friday, September 11, 2015, Dr. Spolsky sent an email to Parent indicating that day was the first time she had been able to observe Student with Initial Third Grade Teacher during the school year due to absences and scheduling. Parent spoke with Dr. Spolsky regarding her concerns.

24. Parent then contacted Susan Centers, the school principal, regarding the concerns Dr. Spolsky had raised. On the following Monday and Tuesday, Parent observed Student in the classroom and in Motor Lab. Parent spoke to the Motor Lab teacher who denied knowing Student had an IEP, had epilepsy, and experienced seizures.

25. On September 15, 2015, Dr. Cooper emailed Dr. Spolsky to obtain more information regarding Dr. Spolsky's observations that she shared with Parent. Dr. Spolsky reported that when she observed Student in the classroom, the FM system was turned off on the teacher's desk and was not being used. Student was sitting quietly, but was not engaged in the lesson and was not encouraged to participate. Initial Third Grade Teacher told Dr. Spolsky that she was not comfortable passing the FM system around to other students.

26. After the September 15, 2015 observation, Parent removed Student from school and Student did not return until after Thanksgiving. Student was in class only three days after the September 10, 2015 IEP meeting while the September 10, 2015 IEP was in effect.

27. On Friday, September 18, 2015, a meeting was held with Parent, Parent's partner (K.G.), Ms. Centers, Ms. Glennon, Dr. Cooper, Special Education Teacher, Initial Third Grade Teacher, and Dr. Spolsky. Parent and K.G. secretly recorded part of the meeting. During the meeting, Parent and K.G. directed insults at Initial Third Grade Teacher including that she must have had a horrible childhood and that Student's counselor felt Student was being abused based on the conduct in the classroom. During

1 the meeting, Parent requested that Student be moved to a different classroom and that
2 T.G., Student's second grade "work buddy," be moved as well to be with Student.

3 28. Initial Third Grade Teacher testified that she started the year giving Student
4 the same work as other students in the class, but she reduced the level of work Student
5 received in the general education classroom. Initial Third Grade Teacher stated that
6 Student went to the Resource room and the majority of Student's work and tests were
7 done in the Resource room. Initial Third Grade Teacher testified she had used an FM
8 system before Student was in her class and that she used the FM system with Student
9 as described in the "Keys to [Student's] Success" provided by Parent. Initial Third Grade
10 Teacher stated that she used the FM system during direct instruction with Student and
11 that she gave the system to students to pass around the room as Dr. Spolsky indicated
12 was appropriate.

13 29. Specifically to Dr. Spolsky's observations on September 11, 2015, Initial
14 Third Grade Teacher stated that Student returned to the classroom when she was trying
15 to finish up a lesson on dragonflies, so she did not put the FM system on at that time.
16 After that, she was not giving Student direct instruction, so she did not have it on, which
17 Dr. Spolsky said was okay. Initial Third Grade Teacher also stated that Dr. Spolsky did
18 not show her there was pause button on the FM system, but Student showed her that
19 feature.

20 30. On or about September 28, 2015, Parent hired Private Tutor to provide
21 tutoring while Student was out of class. Student had three or four one-hour tutoring
22 sessions per week.

23 31. On or about September 28, 2015, Parent requested that Student be re-
24 evaluated by Respondent School District. Respondent School District then initiated the
25 evaluation process.

26 32. Dr. Cooper conducted multiple assessments including the Wechsler
27 Intelligence Scale for Children V (WISC-V), the Woodcock-Johnson Test for Cognitive
28 Abilities IV (WJIV), the Vineland Adaptive Behavior Scales-2 (VABS), and the Behavioral
29 Assessment System for Children (BASC-2). Dr. Cooper testified that the evaluations
30 were conducted in a quiet room with limited distractions, so Student did not use the FM
system during the evaluations. Dr. Cooper stated she did a couple of the subtests again

1 with the FM system to determine if Student did drastically better with the FM system. Dr.
2 Cooper testified that if Student had done significantly better with the FM system, she
3 would have administered a different evaluation.

4 33. Based on the assessments, Dr. Cooper did not find reason to believe
5 Student had a learning disability. Dr. Cooper indicated that a learning disability could be
6 demonstrated by a discrepancy in Student's ability and Student's achievement, but she
7 found that no such discrepancy existed.

8 34. On or about October 7, 2015, Tanya Polec, OD, FCOVD, gave Student a
9 Functional Neuro-Optometric Evaluation consisting of an examination and analysis of
10 ocular health, structure, refractive status, visual-motor coordination, visual-perceptual
11 skills and dynamic function of the visual system. In a report dated October 28, 2015,
12 Student's distance visual acuity was reported to be 20/25 (right eye) and 20/30 (left eye),
13 and Student's near visual acuity was reported to be 20/20 (right eye) and 20/25 (left eye).
14 Student was found to have binocular dysfunction and pursuit dysfunction.
15 Recommendations in the report included one vision therapy session per week for three
16 months with a reevaluation to follow. The recommendations did not include that Student
17 should be evaluated or receive services at Respondent School District from a teacher for
18 the visually impaired.

19 35. An IEP Team Meeting was held on October 29, 2015, to review the
20 September 10, 2015 IEP and address Parent's concerns. Parent was accompanied by
21 Ms. Ballou and Private Tutor. At the meeting, Private Tutor presented information as to
22 Student's work while she was out of class and indicated Student was working on a second
23 grade curriculum.

24 36. During the rather contentious four hour long IEP meeting, Parent and Ms.
25 Ballou advocated the removal of all modifications, resource minutes, and speech therapy.
26 It was noted that Student did not like having a one on one paraprofessional in the
27 classroom with her because it made her stand out, so Student would rather work alone.
28 However, because Student had done well with Private Tutor one on one, Second Grade
29 Teacher and Initial Third Grade Teacher recommended Student spend more time in
30 resource.

1 37. Ultimately, Respondent School District agreed to try eliminating all special
2 education services for Student with the understanding the issue would be revisited during
3 a multi-disciplinary evaluation team (MET) meeting in approximately two weeks.

4 38. The October 29, 2015 IEP provided that Student would "always" use a
5 personal FM system on the school campus. The October 29, 2015 IEP also provided that
6 30 minutes per week of audiology services would be provided by the teacher for the
7 hearing impaired to Student and to the classroom teacher regarding the use and
8 maintenance of the personal FM system.

9 39. Subsequent Third Grade Teacher indicated she was upset following the
10 October 29, 2015 IEP meeting because she believed Student was being set up for failure
11 in the classroom.

12 40. On or about November 4, 2015, Respondent School District provided
13 Parent a PWN referencing the October 29, 2015 IEP meeting.

14 41. On or about November 11, 2015, Parent emailed a request for a copy of
15 Student's educational record from Respondent School District. On or about November
16 12, 2015, Parent hand-delivered the request to Respondent School District.

17 42. On or about November 19, 2015, a MET meeting was held to address
18 Student's psychoeducational evaluation conducted by Respondent School District.

19 43. The MET report indicated that Student passed hearing and vision
20 screenings performed by Respondent School District. It was also noted that Student was
21 recently diagnosed with binocular dysfunction, was prescribed .5 magnified reading
22 lenses, and was participating in vision therapy outside of school. The MET report
23 concluded that Student's "current difficulties in school are not primarily the result of
24 adverse impact" of any hearing or vision deficits.

25 44. On or about November 20, 2015, Parent hand-delivered a request for
26 psychoeducational, speech language, PT, and OT independent educational evaluations
(IEEs). The District approved Parent's request for IEEs.

27 45. On or about November 29, 2015, Parent allowed Student to return to
28 Respondent School District in Subsequent Third Grade Teacher's class.

29 46. On or about December 15, 2015, Parent entered Subsequent Third Grade
30 Teacher's room unannounced to observe Student in the classroom. Subsequent Third

1 Grade Teacher asked Parent to work on the "Wednesday Folders" to help. Shortly after
2 Parent appeared, Student withdrew and stopped working. Parent spoke to Student and
3 Student started crying. Parent told Subsequent Third Grade Teacher that Student had
4 never been upset when Parent observed her in class before.

5 47. In December 2015, Dr. Spolsky left employment with Respondent School
6 District. Although Respondent School District advertised for a new teacher for the hearing
7 impaired, a replacement could not be found.

8 48. On or about January 5, 2016, Parent sent an email to Subsequent Third
9 Grade Teacher requesting that she be allowed to observe Student in the classroom for
10 30 minutes, twice a week, for six weeks. Subsequent Third Grade Teacher initially
11 misunderstood the request to be twice over the six weeks rather than twelve times over
12 the six weeks. While she was willing to let Parent come into the classroom on occasion
13 to volunteer and observe Student at that time, Subsequent Third Grade Teacher let
14 Parent know that she could not come into the class just to observe Student as it was
15 disruptive to the classroom. Subsequent Third Grade Teacher testified that it was not her
16 practice to let parents observe students in the class.

17 49. On or about January 12, 2016, Ms. DeLabio observed Student in the
18 classroom as part of her IEE. Ms. DeLabio noted that Student often removed and
19 replaced her earpiece and eyeglasses during the observation and the teacher did not
20 always direct her to put them back on. Ms. DeLabio also observed that the room was
21 distracting with things on the wall that took Student's attention away from her work. Ms.
22 DeLabio was also concerned with the number of timed activities in the classroom that did
23 not allow Student time to process the instructions and respond appropriately.

24 50. Ms. DeLabio also administered a number of assessments as part of her IEE
25 including the Test of Nonverbal Intelligence Fourth Edition (TONI-4), Kaufman
26 Assessment Battery for Children Second Edition – Nonverbal Index (NVI); Motor Free
27 Visual Perceptual Test – Third Edition (MVPT-3); Test of Auditory Processing Skills
28 (TAPS-3); Gray Oral Reading Test – Fifth Edition (GORT-5); Key Math3 Diagnostic
29 Assessment; limited subtests from the Kaufman Test of Educational Achievement,
30 Second Edition (KTEA-2); and Behavior Rating Inventory of Executive Function, Second
Edition (BRIEF-2).

1 51. Ms. DeLabio concluded that Student had a specific learning disability, when
2 age norms were applied, in the areas of basic reading, reading comprehension, reading
3 fluency, math problem solving, math calculations, written expression, and listening
4 comprehension. Ms. DeLabio testified that because she had not been working with
5 Student, she used a discrepancy model to determine whether Student had a specific
6 learning disability. Ms. DeLabio acknowledged that the cognitive assessments are age
7 normed while achievement assessments are grade normed, so comparing the two
8 assessments to determine whether a discrepancy exists is problematic when Student had
9 been retained twice and had not been exposed to the same curriculum as her same age
10 peers. Ms. DeLabio asserted that "you have to ask yourself why was that child retained
11 for two years" and that "[t]here must have been some delay and some difficulty with the
12 child achieving."⁹

13 52. On or about January 19, 2016, Respondent School District provided Parent
14 with a draft version of the IEP in anticipation of an IEP meeting to be held on January 21,
15 2016. The draft version of the IEP provided that Student would use the FM system during
16 whole group instruction.

17 53. During the January 21, 2016 IEP meeting, Parent protested developing a
18 new IEP based on her inability to observe Student in the classroom and incomplete
19 independent evaluations. Subsequent Third Grade Teacher reiterated it was not her
20 practice to allow parents to observe students in the classroom.

21 54. The January 21, 2016 IEP meeting did not result in a new IEP being
22 developed.

23 55. On or about January 25, 2016, Parent again requested that she be allowed
24 to observe Student in the classroom. Respondent School District's Superintendent
25 denied Parent's request.

26 56. Amy Thomas, OD, FCOVD, prepared a Teacher Suggestion List dated
27 February 25, 2016, with 12 recommendations that could be implemented to assist Student
28 in the classroom. The recommendations did not include that Student should be evaluated
29 or receive services at Respondent School District from a teacher for the visually impaired.

30 ⁹ As previously noted, Student was retained a second time pursuant to Parent's request. Prior to that request, the IEP Team had not discussed retaining Student.

1 Dr. Thomas provided the Teacher Suggestion List to Parent for Parent to deliver to
2 Respondent School District. Parent indicated she did not receive the Teacher Suggestion
3 List until March 1, 2016, and acknowledged she did not deliver it to Respondent School
4 District.

5 57. On February 29, 2016, an IEP meeting was held. Parent, K.G., Ms. Ballou,
6 and Respondent School District's team members were present with the exception of the
7 Adaptive PE teacher whose presence was excused. Prior to the February 29, 2016 IEP
8 meeting, Respondent School District created a draft IEP for use during the meeting.

9 58. During the IEP meeting, the IEP Team reviewed the independent evaluation
10 reports that had been completed as well as the results of Respondent School District's
11 evaluations.

12 59. Respondent School District team members were concerned that Student
13 was not performing well under the October 29, 2015 IEP. Therefore, the proposed draft
14 IEP included additional resource minutes. While the draft IEP included only 30 minutes
15 of speech and language services per week, Ms. Buckley recommended increasing that
16 to 60 minutes per week, and Parent did not object. Neither Parent nor Ms. Ballou
17 presented any substantial disagreement with any of the recommendations in the draft
18 IEP. At no point during the February 29, 2016 IEP meeting did Parent or Ms. Ballou
19 suggest that the IEP Team consider placement at a private day school for Student.

20 60. At the conclusion of the meeting, Parent and Ms. Ballou presented a typed
21 notice that Parent was withdrawing Student from Respondent School District and was
22 making a unilateral placement in a private day school. Student did not return to school at
23 Respondent School District after the February 29, 2016 IEP meeting.

24 61. At some point following the February 29, 2016 IEP meeting, Respondent
25 School District sent a PWN to Parent regarding the IEP developed at the February 29,
26 2016 IEP meeting. The IEP included with the PWN inadvertently left the speech and
27 language services at only 30 minutes per week rather than the 60 minutes per week that
28 was discussed and agreed to during the meeting.

29 62. The final version of the February 29, 2016 IEP included Present Levels of
30 Academic Achievement and Functional Performance (PLAAFP) for Student. The
PLAAFP address Student's present levels in reading, writing and math and Student's

1 functional performance in social emotional and behavior, communication, and physical
2 development, including occupational therapy notes, physical therapy notes, and Adaptive
3 PE notes.

4 63. On or about March 21, 2016, Parent placed Student at Pathways, a private
5 day school in Mesa, Arizona. The annual tuition at Pathways was \$25,500.00. On or
6 about August 17, 2016, Pathways opened a Tucson location, which Student attended
7 during the 2016-2017 school year.¹⁰

8 64. As to Ms. DeLabio's assessments conducted during the IEE, Dr. Cooper
9 testified that none of the assessments test for cognitive or intellectual ability. Rather, Dr.
10 Cooper indicated that Ms. DeLabio's assessments were "measures of nonverbal ability,
11 which would be just a small slice of a part of a cognitive ability." Dr. Cooper also indicated
12 the following specific concerns regarding Ms. DeLabio's assessments:

13 a. The TONI-4 was a short test that measures one dimension of
14 cognitive ability and is a "screening" for "a low stakes assessment" but would
15 not be used for placement or a "high stakes decision."

16 b. The norms for the KABC are "really old" and are not going to be
17 updated, so the assessment is "becoming obsolete."

18 c. The TAPS would typically be done by a speech and language
19 pathologist or audiologist.

20 65. Dr. Cooper also disagreed with Ms. DeLabio's conclusion that Student had
21 a specific learning disability. Dr. Cooper testified that a specific learning disability would
22 present in the area of achievement only, whereas Student had deficits in multiple areas
23 of development, including cognitive, speech and language, fine and gross motor, adaptive
24 and social-emotional. Further, Dr. Cooper stated that a "hallmark" of a learning disability
25 in reading is low phonological processing and rapid naming skills,. However, Student had
26 comparatively higher scores in phonological processing, which would be the "exact
27 opposite profile" of what you would expect with a student with a learning disability in
28 reading.

29
30 ¹⁰ Parent assisted in setting up a GoFundMe.com campaign to enable Pathways to open the Tucson
location.

66. At the hearing, Ms. DeLabio testified extensively as to her concerns with the January 29, 2016 IEP and why she did not feel the IEP was appropriate for Student. Ms. DeLabio's concerns could be summed up to fall into the following areas:

- a. Some goals were vague and may not be understood by someone else reviewing the IEP.
- b. Some goals were not measurable because they were vague.
- c. Some goals were not supported by information in the present levels.
- d. Some goals lacked baseline data.¹¹

CONCLUSIONS OF LAW

1. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.¹² The standard of proof is "preponderance of the evidence," meaning evidence showing that a particular fact is "more probable than not."¹³ Therefore, Petitioners bear the burden of proving their claims and complaints by a preponderance of evidence.

2. This tribunal's determination of whether or not Student received a FAPE must be based on substantive grounds.¹⁴ If a procedural violation is alleged and found, it must be determined whether the procedural violation either (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefit.¹⁵ If one of the three impediments listed has occurred, the child has been denied a FAPE due to the procedural violation.

FAPE

3. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a FAPE that meets their individual needs.¹⁶ These needs include

¹¹ It was noted by the Administrative Law Judge during the hearing that some of the goals in Student's IEP from Pathways also lacked baseline data. Ms. DeLabio asserted that there was a third version of Student's IEP not offered at the hearing that included the baseline data.

¹² *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

¹³ *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, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

¹⁴ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

¹⁵ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

¹⁶ 20 U.S.C. § 1400(d); 34 C.F.R. § 300.1.

1 academic, social, health, emotional, communicative, physical, and vocational needs.¹⁷
2 To do this, school districts must identify and evaluate all children within their geographical
3 boundaries who may be in need of special education and services. The IDEA sets forth
4 requirements for the identification, assessment and placement of students who need
5 special education, and seeks to ensure that they receive a free appropriate public
6 education. A school offers a FAPE by offering and implementing an IEP "reasonably
7 calculated to enable [a student] to make progress appropriate in light of [the student's]
8 circumstances."¹⁸ FAPE does not require that each child's potential be maximized.¹⁹ A
9 child receives a FAPE if a program of instruction "(1) addresses his unique needs, (2)
10 provides adequate support services so he can take advantage of the educational
11 opportunities and (3) is in accord with an individualized educational program."²⁰

12 **Issue 1: Failure to evaluate in all suspected areas of disability**

13 4. Under the IDEA, local educational agencies (LEAs) must ensure that
14 students are "assessed in all areas related to the suspected disability including, if
15 appropriate, health, vision, hearing, social and emotional status, general intelligence,
16 academic performance, communicative status, and motor abilities."²¹

17 5. Parent asserted that Respondent School District failed to evaluate Student
18 in the areas of visual impairment, specific learning disability, and hearing impairment and
19 that such a failure deprived Student of a FAPE.

20 Visual Impairment

21 6. The IDEA defines "visual impairment" as "an impairment in vision that, even
22 with correction, adversely affects a child's educational performance."²²

23 7. Student passed the vision screening by Respondent School District and
24 was prescribed .5 magnified reading lenses by an outside provider.
25

26 ¹⁷ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983
27 U.S.C.A.N. 2088, 2106).

28 ¹⁸ *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ (2017).

29 ¹⁹ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

30 ²⁰ *Park v. Anahelm Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006) (citing *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995)).

²¹ 34 C.F.R. § 300.304(c)(4).

²² 34 C.F.R. § 300.8(c)(13).

1 8. No evidence was submitted to establish that Student had a visual
2 impairment as defined by the IDEA. Rather, the evidence established that Student had
3 binocular dysfunction and pursuit dysfunction. Respondent School District categorized
4 these issues as motor planning issues to be addressed in Adaptive PE, and nothing in
5 evidence, including the reports from Dr. Polec or Dr. Thomas, refuted that categorization.

6 9. Thus, Petitioners failed to establish that Respondent School District
7 improperly failed to evaluate Student for visual impairments as this was not an area of
8 suspected disability.

9 Specific Learning Disability

10 10. Both Dr. Cooper and Ms. DeLabio testified that the process for evaluating
11 a student for a specific learning disability is to compare ability assessments and
12 achievement assessments.

13 11. The uncontroverted evidence established that Respondent School District
14 conducted ability assessments and achievement assessments of Student. Further, Dr.
15 Cooper testified that she compared those assessments to determine if a specific learning
16 disability existed.

17 12. Thus, Petitioners failed to establish that Respondent School District failed
18 to evaluate Student for a specific learning disability in that Respondent School District did
19 indeed perform such an evaluation.

20 Hearing Impairment

21 13. Petitioners did not present any evidence to indicate Student had a hearing
22 impairment or that Respondent School District should have suspected Student had a
23 hearing impairment. Rather, Dr. Spolsky specifically testified that Student was not
24 hearing impaired.

25 14. Thus, Petitioners failed to establish that Respondent School District
26 improperly failed to evaluate Student for hearing impairment as this was not an area of
27 suspected disability.

28 **Issue 2: Failure to make Student eligible in the appropriate categories**

29 15. Parent asserted that Respondent School District failed to make Student
30 eligible for special education services in the areas of visual impairment, specific learning
disability, and hearing impairment and that such a failure deprived Student of a FAPE.

Visual Impairment and Hearing Impairment

16. As noted above, Petitioners did not present any evidence establishing Student had a visual impairment or a hearing impairment. Thus, Petitioners failed to establish that Respondent School District improperly failed to find Student eligible for special education services in those areas.

Specific Learning Disability

17. The weight of the credible evidence established that the assessments performed by Respondent School District were appropriate and Dr. Cooper's interpretation of those assessments finding Student did not have a specific learning disability was well supported.

18. While Ms. DeLabio concluded that Student had a specific learning disability in a number of areas, Dr. Cooper's criticisms of Ms. DeLabio's report were well taken by the Administrative Law Judge.

19. Thus, Petitioners failed to establish that Respondent School District improperly failed to find Student was eligible for special education services in the area of specific learning disability.

20. Assuming, *arguendo*, that Student should have been found eligible for special education services in the area of specific learning disability, Petitioners did not present any evidence as to additional or different services, accommodations, or modifications that should have been included in Student's IEPs as a result of such category of eligibility.

21. Therefore, even if Student should have been found eligible for special education services in the area of specific learning disability, Petitioners did not establish any denial of FAPE as a result.

Issue 3: Failure to create appropriate IEPs

22. Once a child is determined eligible for special education services, a team composed of the child's parents, teachers, and others formulate an IEP that, generally, sets forth the child's current levels of educational performance and sets annual goals that the IEP Team believes will enable the child to make progress in the general education

1 curriculum.²³ The IEP tells how the child will be educated, especially with regard to the
2 child's needs that result from the child's disability, and what services will be provided to
3 aid the child. However, nothing in the regulations "shall be construed to require . . . [t]hat
4 additional information be included in a child's IEP beyond what is explicitly required in
5 section 614 of the [IDEA]."²⁴

6 23. The child's parents have a right to participate in the formulation of an IEP.²⁵
7 The IEP Team must consider the strengths of the child, concerns of the parents,
8 evaluation results, and the academic, developmental, and functional needs of the child.²⁶
9 To foster full parent participation, in addition to being a required member of the team
10 making educational decisions about the child, school districts are required to give parents
11 written notice when proposing any changes to the IEP,²⁷ and are required to give parents,
12 at least once a year, a copy of the parents' "procedural safeguards," informing them of
13 their rights as parents of a child with a disability.²⁸

14 24. The IEP Team must consider the concerns of a child's parents when
15 developing an IEP.²⁹ In fact, the IDEA requires that parents be members of any group
16 that makes decisions about the educational placement of a child.³⁰

17 25. Parent asserted that Respondent School District failed to create appropriate
18 IEPs for Student with respect to services, goals, service provider, transitions, and staff
19 training.³¹

20 2014 IEP

21 26. Petitioners did not raise any specific allegations with respect to the
22 appropriateness of the 2014 IEP.

23 September 10, 2015 IEP

24 ²³ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

25 ²⁴ 34 C.F.R. § 300.320(d).

26 ²⁵ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

27 ²⁶ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

28 ²⁷ 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

29 ²⁸ 20 U.S.C. § 1415(d); 34 C.F.R. § 300.503. Safeguards may also be posted on the Internet.
30 20 U.S.C. § 1415(d)(B).

²⁹ 20 U.S.C. § 1414(d)(3)(A)(ii); 34 C.F.R. §§ 300.324(a)(1)(ii).

³⁰ 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c)(1).

³¹ While Petitioners raised additional arguments under the heading of Failure to Create Appropriate IEPs in their closing brief, including a lack of specific curriculum, those arguments were not identified in the restatement of the issues following the prehearing conference and, therefore, will not be considered here.

1 27. The September 10, 2015 IEP removed speech language services at
2 Parent's request. Because Student was not going to receive any speech language
3 services under the September 10, 2015 IEP, no speech language goals were included.
4 The September 10, 2015 IEP also removed Student's eligibility for special education
5 services under the category of speech language impairment. Petitioners asserted these
6 changes constituted a denial of FAPE.

7 28. As to the removal of speech language impairment as a category of eligibility,
8 Dr. Cooper testified that the removal of the category of eligibility was an inadvertent
9 drafting error that was corrected in the October 29, 2015 IEP. While this is credible, it is
10 also a harmless error in that Student was not deprived of any services, accommodations,
11 or modifications as a result of the omission.

12 29. As to the removal of speech language services, the removal was the result
13 of Parent's rather adamant request that all speech therapy be terminated. While
14 Petitioners argued that it was not Parent's intention that Student not work on speech
15 language goals in the general education classroom, Petitioners did not present any
16 evidence as to what types of speech language goals could have been appropriately
17 implemented in the general education classroom by the general education teacher.
18 Further, Respondent School District agreed to Parent's request only with the
19 understanding that the issue would be revisited during the MET meeting that was to take
20 place approximately two weeks later.

21 30. It is also noted, the September 10, 2015 IEP was created on a Thursday.
22 Assuming it was implemented on Friday, September 11, 2015, Student would have been
23 in class only three days before Parent removed her after her observation on Tuesday,
24 September 15, 2015, until after Thanksgiving. Thus, at most, Student was in class only
25 three days while the September 10, 2015 IEP was in effect. A denial of FAPE cannot be
26 found under such circumstances.

27 October 29, 2015 IEP

28 31. The October 29, 2015 IEP removed all modifications, resource minutes, and
29 speech therapy, again at Parent's request.³²

30 ³² It is noted by the Administrative Law Judge that the October 29, 2015 IEP could be construed to be a
refusal of special education services under the IDEA in that Student was not receiving any modifications or

1 32. Respondent School District staff testified that at that point, after a four hour
2 IEP contentious meeting and with Student out of school for approximately one and a half
3 months, they wanted to get Student back in the classroom, so they were willing to try
4 Parent's request.

5 33. In Petitioners' closing brief, the singular issue raised specific to the October
6 29, 2015 IEP was an accommodation as to where Student would eat lunch, and asserted
7 the accommodation was not implemented, not that it was inappropriate.

8 34. Thus, Petitioners failed to establish that the October 29, 2015 IEP was not
9 appropriate and constituted a denial of FAPE.

10 February 29, 2016 IEP

11 35. The majority of Petitioners' arguments as to the failure to draft an
12 appropriate IEP center around the February 29, 2016 IEP.

13 36. First, Petitioners asserted that the goals in February 29, 2016 IEP were
14 vague and may not be understood by someone else reviewing the IEP. As evidence of
15 this allegation, Petitioners raised concerns with a goal giving Student a "personally
16 meaningful topic" as a writing prompt. Ms. DeLabio indicated that because a "personally
17 meaningful topic" would be different for everyone, it was not a well-written goal and should
18 have been more specific. Similarly, Ms. DeLabio had concerns with an Adaptive PE goal
19 that referenced "balance puzzles."

20 37. While there may be some phrases in the goals that are somewhat vague,
21 that is not to say the goals could not be implemented as intended. It may be presumed
22 that a staff member working with Student would be able to identify a "personally
23 meaningful topic" for her. Similarly, "balance puzzles" would be understood by an
24 Adaptive PE teacher.

25 38. Petitioners also asserted that some goals were not measurable because
26 they were vague. Ms. DeLabio pointed to a goal that indicated Student would increase
27 word reading fluency as measured by monthly one minute oral reading timings "on 3rd
28 grade passages." Ms. DeLabio indicated this goal should have clearly identified the
29 source of the 3rd grade passages being used.

30 specialized instruction. Rather, the remaining therapies and accommodations could be considered a 504
Plan under Section 504 of the Rehabilitation Act.

1 39. Ms. DeLabio's criticism is not well taken. It is noted that Ms. DeLabio first
2 indicated this was a measurable goal and only changed her answer when specifically
3 asked about the source of the passages by Petitioner's counsel. Petitioners presented
4 no authority that requires an appropriate goal to answer every possible question that
5 someone reading it may have.

6 40. Petitioners argued that some goals did not have corresponding information
7 in the present levels to support the appropriateness of the goal. While the PLAAFP may
8 give some insight into areas that need to be addressed for a student, Petitioners
9 presented no authority indicating every goal must be directly tied to a statement in the
10 PLAAFP.

11 41. Petitioners asserted that some goals lacked baseline data, which rendered
12 the goals inappropriate. While it is possible that a goal created without a baseline could
13 be inappropriate for a particular student, the IEP is not a static document. Rather, after
14 some time of implementation, it may be determined that a goal is too easy or too difficult
15 for the student and the IEP Team can reconvene to develop a new goal commensurate
16 with the student's ability.³³

17 42. Petitioners argued the February 29, 2016 IEP was not appropriate because
18 it did not include specific curriculum in the areas of reading or writing. However, nothing
19 in the IDEA requires an IEP to specify the curriculum to be used with a student. As
20 previously noted, nothing in the regulations can be construed to required additional
21 information that is not explicitly required in the IDEA.

22 43. Petitioners maintained that Respondent School District failed to consider
23 the IEEs in developing the February 29, 2016 IEP. Petitioners pointed to different
24 individuals' comments during the meeting indicating they had not fully read a particular
25 IEE.

26 44. Dr. Cooper was present at the IEP meeting as the individual to interpret
27 instructional implications. As such, it would be her role to interpret the IEEs. Further, the
28 Evaluation Information and PLAAFP portions of the February 29, 2016 IEP reference the
29 IEEs in the relevant areas. The IEEs were discussed at the IEP meeting, and some of

30 ³³ Petitioner repeatedly referred to the February 29, 2016 IEP as Respondent School District's "final offer"
of FAPE without recognizing that the IEP is always subject to amendment as appropriate.

1 the goals were drawn from the IEEs. While Petitioner argued that the members of the
2 IEP Team are required to be familiar with all of the IEEs, and that would be preferable,
3 nothing in the IDEA requires such a conclusion.

4 45. To the extent Petitioners questioned the provision of speech therapy in the
5 February 29, 2016 IEP, the uncontested evidence at the hearing, including a transcript of
6 the IEP meeting, established that the IEP Team agreed Student should receive 60
7 minutes of speech therapy a week. The 30 minutes a week left in the final version was
8 an oversight and would have been corrected had Parent pointed out the error.³⁴

9 46. Petitioners also identified the accommodation in the February 29, 2016 IEP
10 providing that Student would be allowed to use magnifying strips as inappropriate. Dr.
11 Thomas testified at hearing that use of magnifying strips would not help Student and
12 could, in fact, be harmful to Student. However, Dr. Thomas's report was not provided to
13 the IEP Team for review and the team had no way to know Dr. Thomas had prepared
14 recommendations relating to Student. Furthermore, this is also an issue that, had Parent
15 notified the IEP Team that the magnifying strip was not appropriate for Student, could
16 have been changed.

17 **Issue 4: Failure to provide sufficient PWNs**

18 47. The IDEA process for making changes to an IEP requires a school district
19 to give parents written notice within a reasonable time before taking the proposed
20 action.³⁵ Pursuant to 34 C.F.R. § 300.503(b), the PWN must contain the following:

- 21 (1) A description of the action proposed or refused by the agency;
- 22 (2) An explanation of why the agency proposes to take the action;
- 23 (3) A description of each evaluation procedure, assessment, record, or
24 report the agency used as a basis for the proposed or refused action;
- 25 (4) A statement that the parents of a child with a disability have protection
26 under the procedural safeguards of this part and, if this notice is not an initial
27 referral for evaluation, the means by which a copy of a description of the
28 procedural safeguards can be obtained;
- 29 (5) Sources for parents to contact to obtain assistance in understanding the
30 provisions of this part;
- 31 (6) A description of other options that the IEP Team considered and the
32 reasons why those options were rejected; and

³⁴ At the time Parent presented the notice of unilateral placement, Parent did not have the version of the February 29, 2016 IEP and knew only that Respondent School District agreed during the meeting that 60 minutes of speech therapy per week would be provided.

³⁵ 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).

1 (7) A description of other factors that are relevant to the agency's proposal
2 or refusal.

3 48. Parent alleged that Respondent School District failed to issue PWNs that
4 provided reasons for the decisions reached.

5 49. It should first be noted that a PWN is not intended to be a transcript of the
6 IEP Team meeting setting forth every discussion that was had during the meeting.

7 50. Petitioner asserted that the PWNs failed to address the change in
8 terminology referencing the use of the FM system.

9 51. As previously noted, the use of the FM system went through different
10 descriptors including "always," "throughout the day," "prn" or "as needed," and during
11 "whole group instruction."

12 52. Petitioners argued that each time the word describing the frequency of the
13 use of the FM system changed, a specific statement in the PWN should have noted the
14 change. Petitioners' position is both practically impossible and realistically unnecessary.

15 53. First, taken to its logical conclusion, Petitioners position would require a
16 notification of every change in wording made from one IEP to the next. Such a conclusion
17 is not practical.

18 54. Further, the change in the wording from one IEP to the next did not alter the
19 use of the FM system. It is noted that Petitioners never set forth a position as to which
20 descriptor was appropriate for Student's use of the FM system. At times, it was indicated
21 Student should always use the FM system, but then it was acknowledged that the teacher
22 should not have the system on when giving instruction to a group that did not include
23 Student. As evidenced by Student's "Keys for Success" drafted by Parent, no one
24 believed Student should always use the FM system. Similarly, the difference between
25 "throughout the day" and "prn" is negligible. If Student needed the FM system throughout
26 the day, the two phrases describe the same frequency of use.

27 55. It is noted that the February 29, 2016 IEP limited Student's use of the FM
28 system to "whole group instruction" on the school campus. While this may be more limited
29 than "as needed" or "throughout the day", it still reflects a significant use of the FM system
30 and was consistent with Parent's statements in the "Keys to Success."

56. Petitioners failed to establish that the PWNs issued by Respondent School District were not sufficient under the IDEA.

Issue 5: Failure to implement IEPs

57. Parent alleged that Respondent School District failed to implement substantive portions of Student's IEPs including, but not limited to, specialized instruction, speech and language therapy, time in the general education classroom, audiology services, required accommodations, supplementary aides and services, work towards goals, progress reports, and staff training.

Specialized Instruction

58. Student received specialized instruction during her time in the resource room. While there was a period of time that Student did not go to the resource room at Parent's request, such a failure to implement the IEP cannot be held against Respondent School District when the failure was due specifically to Parent's request and Parent asked Special Education Teacher not to change the IEP to reflect the change in instruction.

Speech and Language Therapy

59. In the 2014 IEP, Student was to receive 60 minutes of speech and language therapy per week with the provider listed as "SLP/SLT/SLP-A." Respondent School District acknowledged that for approximately four months, Ms. Buckley's assistant, "a highly qualified paraprofessional" provided 30 minutes per week of push-in services while Ms. Buckley provided 30 minutes per week of pull-out services.

60. In that time, Student did not like having push-in services because it drew attention to her. Therefore, the practice was terminated and Ms. Buckley provided 60 minutes per week in pull-out services for the remainder of the IEP.

61. The failure to have an SLP, SLT, or SLP-A provide half of the service minutes for a period of four months constitutes a failure to implement the 2014 IEP as written and is a violation of the IDEA. However, it does not constitute a failure to provide a FAPE to Student under the circumstances.

Time in the General Education Classroom

62. Petitioners did not present any evidence relating to this topic other than Student spending more time in the general education classroom during the 2014-2015 school year, which was at Parent's request.

1 63. Thus, Petitioner's did not establish a failure to implement the IEPs in this
2 regard.

3 Audiology Service

4 64. Petitioners asserted that after Ms. Spolsky left in December 2015, Student
5 was without the audiology services identified in the IEP. The October 29, 2015 IEP
6 provided that Student and the general education teacher would receive 30 minutes per
7 week of support "in the use/maintenance" of the personal FM System from the teacher
8 for the hearing impaired.

9 65. The evidence established that after December 2015 through Student's
10 removal from Respondent School District on February 29, 2016, a teacher of the hearing
11 impaired was not available, so Special Education Teacher monitored the FM system.

12 66. Subsequent Third Grade Teacher and all other staff members working with
13 Student had been trained on the use of the FM system and Student was known to
14 advocate for herself as to its use.

15 67. Petitioners failed to establish how such a failure to implement the IEP
16 caused a denial of FAPE to Student. No evidence was presented as to any harm suffered
17 by Student resulting from the lack of the consultative services.

18 Required Accommodations

19 68. Petitioners pointed to the October 29, 2015 IEP in which an accommodation
20 for Student was changed from "Lunch with a buddy in a quiet area with paraprofessional
21 support" that was in the September 10, 2015 IEP to "Lunch with a buddy at picnic table
22 or classroom with paraprofessional support."

23 69. Petitioners asserted that prior to the October 29, 2015 IEP, Parent learned
24 that Student was eating lunch in a "closet" and the change was made in that IEP to
25 prevent Student from eating lunch in the "closet" going forward. Petitioners argued that
26 "[e]ven after everyone agreed that [Student] should not be eating in closet [sic] and the
27 IEP was amended stating as such, [Student] was still eating in a closet."

28 70. During the hearing, the "closet" in question was described as an area
29 approximately 8 feet by 25 feet that had been used as a storage closet in the past.
30 However, when Special Education Teacher came into the room, she made it into a
workspace with tables and chairs, and "the kids love to work back there because it's just

1 kind of cozy." Special Education Teacher indicated that Student and two or three of her
2 friends would shut the door, turn on music, and have fun eating lunch with the
3 paraprofessional. Special Education Teacher stated that even after Student left, her
4 friends would come ask if they could eat lunch in the "closet."

5 71. As described, the "closet" could be considered as eating lunch in the
6 classroom with paraprofessional support.

7 72. Thus, Petitioners failed to establish that Respondent School District failed
8 to implement the accommodations set forth in the IEPs.

9 Supplementary Aides and Services

10 73. Petitioners were concerned with the failure to use or the inconsistent use of
11 the FM system based on the observation of Dr. Spolsky and Parent.

12 74. Initial Third Grade Teacher and Subsequent Third Grade Teacher testified
13 that they prompted Student to use the FM system. And it was noted that Student would
14 advocate for herself on the use of the FM system.

15 75. During Dr. Spolsky's observation, she first noted that when Student returned
16 to the classroom, Initial Third Grade Teacher did not immediately put on the FM system.
17 Initial Third Grade Teacher testified she was finishing up a lesson with the class when
18 Student returned and then she engaged in small group instruction with groups that did
19 not include Student. In that case, the failure to use the FM system was appropriate
20 because direct instruction was not being provided to Student.

21 76. Dr. Spolsky also noted that the FM system was not being passed around to
22 other students during a reading activity. Initial Third Grade Teacher testified she did not
23 think it was appropriate to let other students use the system, but after Dr. Spolsky told her
24 it was acceptable, she started letting other students use the FM system when the students
25 were reading aloud in class.

26 77. Ms. Spolsky also indicated that the Motor Lab teacher did not appear to
27 have knowledge of the FM system or how it was to be used.

28 78. Parent also testified that during her observation of Student on September
29 14, 2015, she saw Student's desk was angled away from the whiteboard and that no
30 accommodations were being made for Student in the classroom. It also appeared that

1 the FM system had been dropped during Motor Lab class that day and was not functioning
2 in the afternoon.

3 79. Initial Third Grade Teacher and Subsequent Third Grade Teacher both
4 testified that they used the FM system as prescribed in the IEPs.

5 80. The weight of the credible evidence established that the FM system was
6 used appropriately by Respondent School District staff. While there may have been times
7 that the FM system was not in use temporarily because of mechanical issues or the
8 content of the class, such temporary failures do not constitute a wholesale failure to
9 implement the supplementary aids and services.

10 81. Petitioners failed to establish by a preponderance of the evidence that
11 Respondent School District failed to implement the supplementary aids and services.

12 Work Towards Goals

13 82. Petitioners did not present any evidence that Respondent School District
14 did not work on the goals outlined in the IEPs as required.

15 83. While Student may not have always made progress on her goals, such
16 progress is not guaranteed under the IDEA.

17 84. Thus, Petitioners failed to establish Respondent School District did not work
18 on Student's goals.

19 Progress Reports

20 85. Petitioners argued that Respondent School District failed to properly
21 document Student's progress towards her goals. In Petitioners' arguments, they cite to
22 the failure of Respondent School District to provide Parent with Student's work product,
23 documents, or data.

24 86. The IDEA requires that progress reports be provided regarding a student's
25 performance on goals in the IEP. Nothing in the IDEA requires that an LEA must provide
26 the underlying documentation supporting the progress reports.

27 87. It was noted that one progress report on a speech and language goal was
28 omitted just before Parent requested that Student be removed from speech and
29 languages services. The lack of a progress report in that situation does not constitute a
30 denial of FAPE.

1 88. Petitioners failed to establish that Respondent School District failed to
2 provide progress reports as required by the IEPs such that a denial of FAPE occurred.

3 Staff Training

4 89. Parent asserted that Respondent School District failed to comply with the
5 provision in the September 10, 2015 IEP that provided "A meeting is to be held before the
6 first day of school for students for all staff who will be working with [Student] to be trained
7 on the use of her FM system. [Student's] parents and all team members are to be
8 present."

9 90. Petitioners pointed out that a brief training session was held with Initial Third
10 Grade Teacher on August 4, 2015, but a full training session with all the staff was not held
11 until November 4, 2015.

12 91. While these facts are undisputed, it is unclear how this constitutes a failure
13 of Respondent School District to implement the September 10, 2015 IEP. Petitioners
14 appear to argue that a full training session should have been held with all staff who would
15 be working with Student in August 2015 before the 2015-2016 school year began.
16 However, the IEP provision requiring such a training session was not adopted until
17 September 10, 2015, more than a month after the 2015-2016 school year began. There
18 was no provision in the 2014 IEP for such a training session before the first day of class.

19 92. Further, the training that took place on November 4, 2015, was with all staff
20 that would be working with Student and took place after Student was removed from class
21 on September 15, 2015, and before Student returned after Thanksgiving.

22 93. Thus, Petitioners failed to establish that Respondent School District failed
23 to implement the IEP as to staff training.

24 **Issue 6: Denial of parental participation**

25 94. Parental participation "in the IEP process is an integral part of the IDEA."³⁶

26 95. Parent alleged that Respondent School District denied Parent the ability to
27 participate in the creation of Student's IEPs, primarily through its refusal to allow Parent
28 to observe Student in the classroom.
29
30

³⁶ *K.D. v. Dept. of Educ., State of Hawaii*, 665 F.3d 1110, 1123 (9th Cir. 2011).

1 96. Parent asserted that because she had not been allowed to observe Student
2 in the third grade classroom, she did not have adequate information to participate in the
3 February 29, 2016 IEP meeting.

4 97. Parent did not point to any provision of the IDEA that requires an LEA to
5 allow a parent to observe a student in the classroom.

6 98. With respect to this issue, the Office of Special Education Programs (OSEP)
7 has stated as follows:

8 While the IDEA expects parents of children with disabilities to have an
9 expanded role in the evaluation and educational placement of their children
10 and be participants, along with school personnel, in developing, reviewing,
11 and revising the IEPs for their children, neither the statute nor the
12 regulations implementing the IDEA provide a general entitlement for
13 parents of children with disabilities, or their professional representatives, to
14 observe their children in any current classroom or proposed educational
15 placement.³⁷

16 99. Petitioners did not cite any legal authority for their claim that classroom
17 observations by parents are necessary to allow parents to participate meaningfully in the
18 IEP process. "In the absence of any authority to the contrary, the IDEA does not
19 guarantee parents the right to observe on request."³⁸

20 100. Parent also indicated Respondent School District's failure to provide her
21 with the data supporting the progress reports as a basis of denying her meaningful
22 participation in the IEP process. As previously addressed, Parent was not entitled under
23 the IDEA to receive the data; thus the failure to provide it cannot be said to deny Parent
24 an opportunity to meaningfully participate in the IEP process.

25 101. For these reasons, Petitioners failed to meet their burden to establish that
26 Parent was denied meaningful participation in the IEP process.

27 **Issue 7: Predetermination**

28 102. The IDEA requires that parents be allowed "to participate in meetings with
29 respect to the identification, evaluation, and educational placement of the child."³⁹
30 However, "preparatory activities that public agency personnel engage in to develop a

³⁷ Letter to Mamas, 42 IDELR 10 (OSEP 2004).

³⁸ *T.M. v. Dist. of Columbia*, 75 F.Supp.3d 233, 243 (D.C. 2014)

³⁹ 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(c)(1).

1 proposal or response to a parent proposal that will be discussed at a later [IEP] meeting"
2 do not constitute an IEP meeting.⁴⁰ "[S]chool officials must come to the IEP table with an
3 open mind. But this does not mean they should come to the IEP table with a blank
4 mind."⁴¹

5 103. Parent alleged that Respondent School District predetermined Student's
6 placement and services prior to the creation of the IEPs.

7 104. In the Complaint, Petitioners consistently referred to different draft versions
8 of the IEPs provided to Parent in anticipation of IEP meetings as "a predetermined IEP"
9 having determined what placement and services Student would have for the upcoming
10 year.

11 105. In their closing brief, Petitioners identified only a single statement made by
12 the OT in the February 29, 2016 IEP meeting as evidence of predetermination. In that
13 meeting, the OT mentioned that Student only had 30 minutes a week for Occupational
14 Therapy. In response, Ms. Ballou said, "Then up it," to which the OT replied, "Can't do
15 that." While Ms. Ballou asked, "Why can't you?" her question was not answered, and the
16 discussion moved to vision therapy issues. Petitioners characterized this as the
17 "definition of predetermination."

18 106. It is disingenuous to assert that one statement by the OT during the course
19 of a complete IEP meeting, the transcript of which is 167 pages, can be considered
20 evidence that Respondent School District predetermined Student's placement and
21 services prior to the February 29, 2016 IEP meeting.

22 107. Similarly, the provision of draft IEPs prior to IEP meetings cannot be
23 considered evidence of predetermination. To accept such a position would require that
24 the IEP be drafted in its totality during the IEP meeting.

25 108. Petitioners failed to sustain their burden of proof that Respondent School
26 District improperly predetermined Student's IEPs.

27 **Issue 8: Required attendees at the IEP meetings**

28 109. The IDEA requires that the IEP Team for each child with a disability must
29 include, at a minimum, the following people: the parents of the child, at least one general

30 ⁴⁰ 34 C.F.R. § 501(b)(3).

⁴¹ *T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 253 (2d Cir. 2009).

1 education teacher, at least one special education teacher, a representative of the public
2 agency, and an individual who can interpret the evaluation results. 34 C.F.R. §
3 300.321(a).

4 110. Parent alleged that Respondent School District convened IEP meetings
5 without the required members present. In the closing brief, Parent specifically raises the
6 lack of a teacher for the hearing impaired and the assistive technology consultant at the
7 February 29, 2016 IEP meeting.

8 111. While a teacher for the hearing impaired and the assistive technology
9 consultant could have been included in the February 29, 2016 IEP meeting, nothing in
10 the IDEA required the attendance of those individuals.

11 112. Thus, Parent failed to establish that the February 29, 2016 IEP meeting was
12 not properly constituted pursuant to the IDEA.

13 **Issue 9: Education Records**

14 113. Education records under the IDEA are the same as education records under
15 the Family Educational Rights and Privacy Act of 1974 (FERPA).⁴² Under FERPA,
16 education records "contain information directly related to a student" and "are *maintained*
17 by an educational agency or institution or by a person acting for such agency or
18 institution."⁴³ "The word 'maintain' suggests FERPA records will be kept in a filing cabinet
19 in a records room at the school or on a permanent secure database, perhaps even after
20 the student is no longer enrolled."⁴⁴

21 114. The IDEA provides that an LEA "must permit parents to inspect and review
22 any education records relating to their children that are collected, maintained, or used by
23 the agency under this part."⁴⁵

24 115. Exempted from the definition of "education records" are records that are
25 kept in the sole possession of the maker of the record and are not accessible or revealed
26 to any other person except a temporary substitute for the maker of the record.⁴⁶

27
28 ⁴² 34 C.F.R. § 300.611(b).

29 ⁴³ 20 U.S.C. § 1232(g)(a)(4)(i)-(ii) (emphasis added).

30 ⁴⁴ *Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426, 434 (2002).

⁴⁵ 34 C.F.R. § 300.613(a).

⁴⁶ 34 C.F.R. § 99.3(b)(1).

1 116. Parent alleged that Respondent School District failed to provide Parent with
2 a complete copy of Student's education records as requested. Specifically, Parent
3 focused on "data" and an email that was presented at the hearing and admitted as
4 Petitioners' Exhibit A22.

5 117. As to the "data" requested, Special Education Teacher indicated she had
6 progress monitoring files she maintained in her office and she forgot about a file that was
7 in a different box. Special Education Teacher was in sole possession of these documents
8 and they were not "maintained" by Respondent School District. Thus, the "data"
9 referenced cannot be considered to be education records under the IDEA.

10 118. As to the emails, no evidence was presented to indicate that Respondent
11 School District "maintains" emails as part of a student's education record. The evidence
12 presented indicated that because some combination of Student's full name, Parent's full
13 name, or Student's and Parent's first names was not used in the email, it was not located
14 during a search of Respondent School District's server in response to Parent's records
15 request.⁴⁷ The very fact that the email was not immediately identifiable as relating to
16 Student leads one to the conclusion that the email was not an "education record" under
17 FERPA, and thereby, the IDEA.

18 119. Accordingly, Petitioners failed to establish that Respondent School District
19 did not allow Parent to inspect and review any education records relating to Student in
20 violation of the IDEA.

21 **Issue 10: Least Restrictive Environment (LRE)**

22 120. The IDEA does not provide an absolute right to a particular placement or
23 location as a child's LRE. Each proposed or alternative placement is simply required to
24 have been "considered" by the IEP Team with regard to potential harmful effect on the
25 student or potential harmful impact on the quality of the services that the child needs.⁴⁸
26 Therefore, LRE and placement are required to be determined only after analyzing the
27 student's unique needs (and the nature and severity of disabilities) against the federal
28 mandate to educate disabled children "to the maximum extent appropriate" with his or her

29 ⁴⁷ It was unclear from the hearing record if the emails submitted in Petitioners' Exhibit A20 were produced
30 by Respondent School District in response to Petitioners' education records request under IDEA or a public
records request under A.R.S. § 39-121 through A.R.S. § 39-161.

⁴⁸ See 34 C.F.R. § 300.116(d).

1 nondisabled peers. The IDEA preference for students' placement in the general
2 education classroom is also not an absolute.⁴⁹ The Administrative Law Judge
3 acknowledges that the IDEA creates tension between provisions that require education
4 to the maximum extent appropriate with nondisabled students and those that require
5 meeting all the student's unique needs.

6 121. The IDEA requires that every LEA "must ensure that a continuum of
7 alternative placements is available to meet the needs of children with disabilities for
8 special education and related services" including "regular classes, special classes,
9 special schools, home instruction, and instruction in hospitals and institutions." 34 C.F.R.
10 § 300.115(a)-(b)(1).

11 122. Parent alleged that Respondent School District failed to place Student in
12 the appropriate LRE, a private day school.⁵⁰ This is a distinct issue from the question of
13 whether Pathways was appropriate as a unilateral placement.

14 123. Petitioners did not directly argue why the appropriate LRE for Student was
15 a private day school as opposed to either the general education classroom with
16 appropriate aids and services or a resource room. Rather, Petitioners focused their
17 argument on how Pathways was appropriate as a unilateral placement.

18 124. The Ninth Circuit established a four-part test regarding consideration of a
19 proposed educational placement in *Sacramento City School District v. Rachel H.*, 14 F.3d
20 1398 (1994). The four factors are: (a) a comparison of the educational benefits available
21 in the regular classroom, supplemented with appropriate aids and services, to the
22 educational benefits of the special education classroom; (b) the nonacademic benefits to
23 the disabled child of interaction with nondisabled children; (c) the effect of the presence
24 of the disabled child on the teacher and other children in the regular classroom; and (d)

25
26
27 ⁴⁹ See 34 C.F.R. §§ 300.114(a)(1) and (2). A school may, and should, remove a child from the regular
28 educational environment if the nature and severity of the child's disability is such that, even with
29 supplemental aids and services, the education of the disabled child cannot be satisfactorily achieved. See
30 34 C.F.R. §§ 300.114(a)(2)(ii) and 300.116(d).

⁵⁰ It is noted that during the prehearing conference in this matter, counsel for Petitioners asserted that
Student could have been maintained in the general education classroom with the proper supplementary
aids and supports, but that because those had not been provided, the private day school was the
appropriate LRE.

1 the costs of supplemental aids and services necessary to mainstream the disabled child
2 in a regular classroom setting.

3 125. An analysis of the four factors indicates the following:

4 a. As to the first factor, Student has shown progress at Pathways since
5 being removed from Respondent School District. Such progress is
6 expected as a student is more likely to show progress in a more restrictive
7 environment, i.e. students will likely make greater progress in a one-on-one
8 setting with a special education teacher than in a general education
9 classroom with supplemental aids and services.

10 b. Student made friends with general education peers at Respondent
11 School District. She had general education friends that liked to eat lunch
12 with her. At Pathways, Student would have no interaction with nondisabled
13 peers.

14 c. No evidence was presented that Student had a negative impact on other
15 children or the teacher in the general education classroom.

16 d. No evidence was presented as to the cost of supplemental aids and
17 services necessary to mainstream Student in the general education
18 classroom. However, it may be presumed that the cost was less than the
19 \$25,500.00 per year tuition at Pathways.

20 126. At no point did the IEP Team consider moving Student to a self-contained
21 classroom, much less a private day school. Parent did not express at any point that she
22 believed Student was unable to make meaningful progress in the general education
23 classroom with supplementary aids and services and needed to be moved along the
24 continuum of placements.

25 127. Petitioners did not establish by a preponderance of the evidence that
26 Student's LRE was a private day school.

27 **Issue 11: ESY**
28
29
30

1 128. ESY services are special education and related services that are provided
2 to a child with a disability beyond the normal school year of the public agency in
3 accordance with the student's IEP and at no cost to the parents of the student.⁵¹

4 129. Arizona law provides, in pertinent part, as follows:

5 A. Each school district shall make extended school year services available
6 to all pupils with disabilities for whom such services are necessary.
7 Extended school year services are necessary if either of the following
8 applies:

9 1. The benefits that the pupil gained during the regular school year would
10 be significantly jeopardized if the pupil is not provided educational
11 services.

12 2. The pupil would experience severe or substantial regression if the pupil
is not provided educational services during recesses or the summer
months and the regression would result in substantial skill loss of a degree
and duration that would seriously impede the pupil's progress toward
educational goals.

13 A.R.S. § 15-881.

14 130. Parent alleged that Respondent School District improperly denied ESY
15 services to Student in the summer of 2015.

16 131. Petitioners presented the testimony of Ms. Carahaly who testified that due
17 to the severity of Student's disability, she would have regression over extended periods
18 of time, which would make Student an excellent candidate for ESY. Ms. DeLabio also
19 indicated consistency and frequency of therapy was important for Student.

20 132. It must be noted that during the 2014-2015 school year, Parent requested
21 that Student stop going to the resource room for specialized instruction. It is difficult to
22 conclude that a student capable of being in the general education classroom without
23 specialized instruction was in need of ESY services.

24 133. Student was receiving speech services during the 2014-2015 school year;
25 however, those services were terminated during the 2015-2016 school year, again at
26 Parent's request. Thus, Parent is urging this tribunal to conclude that Student was in
27 need of ESY services for speech during the summer of 2015, but approximately a month
28 later, Student was not in need of speech services at all. This tribunal refuses to make
29 such a finding.

30 ⁵¹ 34 C.F.R. § 300.106.

1 134. Petitioners failed to establish by a preponderance of the evidence that
2 Student was improperly denied ESY services during the summer of 2015.

3 **Conclusion**

4 135. Petitioners established by a preponderance of the evidence that, while
5 Respondent School District provided all of the speech and language services under the
6 2014 IEP, eight hours of those services were not provided by an SLP, an SLT, or an SLP-
7 A in accordance with the 2014 IEP.

8 136. To remedy this *de minimus* failure to implement the 2014 IEP, Respondent
9 School District must make available eight hours of compensatory speech and language
10 therapy.

11 137. Petitioners failed to establish any other violation of the IDEA or a denial of
12 FAPE by Respondent School District.

13 138. Under the IDEA, parents are entitled to reimbursement for the costs of a
14 private placement or services they had secured for their child when the school district
15 failed to provide a FAPE and the private placement or services secured are proper under
16 the IDEA and are reasonably calculated to provide educational benefit to the child. 20
17 U.S.C. § 1412(a)(10)(C).

18 139. As described above, Respondent School District did not fail to provide
19 Student a FAPE; therefore, Petitioners are not entitled to reimbursement for Student's
20 unilateral private placement at Pathways.

21 **ORDER**

22 Based on the findings and conclusions above, IT IS HEREBY ORDERED that that
23 the relief requested in the due process complaint is **granted** as set forth above. All other
24 relief requested in the due process complaint is **denied**. Respondent School District must
25 make available eight hours of compensatory speech and language therapy.

26 Done this day, July 27, 2017.

27 /s/ Tammy L. Eigenheer
28 Administrative Law Judge

29 **RIGHT TO SEEK JUDICIAL REVIEW**

30 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3),

1 this Decision and Order is the final decision at the
2 administrative level. Furthermore, any party aggrieved by the
3 findings and decisions made herein has the right to bring a
4 civil action, with respect to the complaint presented, in any
5 State court of competent jurisdiction or in a district court of the
6 United States. Pursuant to Arizona Administrative Code § R7-
2-405(H)(8), any party may appeal the decision to a court of
competent jurisdiction within thirty-five (35) days of receipt of
the decision.

7
8 Transmitted electronically to:

9 Robert T. Mills
10 Mills + Woods Law PLLC
11 5055 N. 12th St., Ste. 101
Phoenix, AZ 85014

12 Denise M. Bainton, Esq.
13 Deconcini, McDonald, Yetwin & Lacy, PC
14 2525 E. Broadway Boulevard, Suite 200
Tucson, Arizona 85716-5300
15 dbainton@dmyl.com

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

20 By Felicia Del Sol
21
22
23
24
25
26
27
28
29
30