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**STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

█████, a Student, by and through Parent
█████
Petitioners,
v.
HIGLEY Unified School District,
Respondent.

**No. 15C-DP-018-ADE
ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: Hearing sessions were convened and/or conducted on the following dates: October 21, 2015;¹ October 22, 2015;² November 19, 2015;³ April 20, 2016;⁴ April 21, 2016; April 22, 2016; September 8, 2016; February 14, 2017; February 15, 2017; and, April 24, 2017⁵ followed by extended post-hearing legal memoranda submission and extended review.

APPEARANCES: Parent ██████ ("Parent") represented Student ██████ ("Student").⁶ Erin H. Walz, Esq. and Heather R. Pierson, Esq. represented Respondent Higley Unified School District ("Higley" or "HUSD"); counsel was accompanied by Diane Bruening, Executive Director of Special Education for Respondent.

WITNESSES:⁷

- Parent ("**Parent**");
- Shauna Miller, Assistant Special Education Director (Ms. Miller);
- Mark Decker, Vendor for Homebound Math instruction (Mr. Decker);
- Roshani Dubel, **Math Teacher**;
- Brooks Scofield; **Social Studies Teacher**;

¹ Parent failed to arrive for hearing on October 21, 2015, having filed a last-minute request for a continuance providing a medical document releasing her to return to work on October 22, 2015. As the hearing was set for a second day on October 22, 2015, the Tribunal determined to reconvene on October 22, 2015.

² Parent again failed to arrive for hearing on October 22, 2015, having again filed a last-minute request for a continuance and providing a medical document now releasing her to return to work on October 23, 2015.

³ On this date, the Tribunal heard oral argument regarding the October 22, 2015 motion to continue; the matter was subsequently rescheduled for 2 days in January 2016, which hearing sessions were later continued on Parent's request.

⁴ The hearing session was delayed awaiting Parent's arrival.

⁵ On this date, Parent failed to arrive for the hearing session and, despite being given an opportunity to fully support the alleged car trouble scenario, she failed to do so; as a result, the hearing sessions were concluded to be followed with post-hearing legal written argument, as had previously been requested and discussed.

⁶ Parent had been representing Student in this matter. On December 5, 2014, Parent advised the Tribunal that she had obtained legal counsel, and legal counsel filed a notice of appearance and proceeded to represent Petitioners. However, on February 23, 2015, Parent notified the Tribunal that Petitioners were no longer represented.

⁷ Throughout the body of this Decision, proper names of Student, Parents, and Student's teachers are not used in order to protect the confidentiality of Student and to promote ease of redaction. Where necessary, pseudonyms (designated here in bold typeface) will be used instead. Pseudonyms are not used for administrators, service providers, evaluators, and other professionals.

- Meganne Young, **Case Manager**;
- Bruce Bowles, Vendor for Homebound Social Studies instruction (Mr. Bowles);
- Kata Logan, **Biology Teacher**;
- Trina Heppard, Vendor for Homebound Biology instruction (Ms. Heppard);
- Tara Andrade, **English Teacher**;
- Jess Root, **Spanish Teacher**;
- Terri Wattawa, Principal (Dr. Wattawa);
- Michael Thomason, Superintendent (Mr. Thomason);
- Diane Bruening, Special Education Director (Dr. Bruening).

HEARING RECORD: Certified Court Reporters Kate E. Roundy and Sheryl L. Henke, recorded the proceedings as the official record of the hearing.⁸

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

Parent brings this due process action on behalf of Student, claiming that HUSD violated the Individuals with Disabilities Education Act ("IDEA"), alleging procedural and substantive errors. The law governing these proceedings is the IDEA found at 20 United States Code ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),⁹ and its implementing regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes ("A.R.S.") §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code ("A.A.C.") R7-2-401 through R7-2-406.

PROCEDURAL HISTORY

Petitioners' Complaint was filed on October 28, 2014; however, Petitioners filed a modification of the Complaint on November 11, 2014, which was determined to be an amendment of the Complaint as of the December 5, 2014 pre-hearing conference. The matter was initially set for hearing but then removed from the calendar due to the parties' efforts to resolve the matter without going to due process hearing. Those efforts were

⁸ The parties stipulated that the court reporter's transcript would be the official record of the proceedings. However, by statute, the Tribunal is required to make an audio recording. The parties received portions of the transcript as the hearing progressed for their use in case presentation and argument preparation. However, the Tribunal received the entire transcript after the final hearing session. The Tribunal does not begin its review process with the use of a transcript until the hearing sessions are complete and the post-hearing submissions are complete for the reason that parties often stipulate, concede, and/or withdraw issues that, therefore, would not be considered or addressed in a final decision.

⁹ 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 unsuccessful. After subsequently obtaining legal counsel and later firing legal counsel,
2 Parent again proceeded with self-representation. Following at least five continuances on
3 Parent's request and one continuance on Respondent's request, the matter first
4 convened for hearing on October 21, 2015; however, the matter was further delayed due
5 to stated medical issues. Thereafter the process for this case suffered multiple
6 continuances and delays in scheduling hearing sessions primarily awaiting Parent's
7 available dates.

8 Meanwhile, starting on October 22, 2015, Parent continued to file additional due
9 process complaint notices during the time the instant case was proceeding:

10 (a) On October 22, 2015, Parent filed a due process complaint notice that
11 became Case No. 16C-DP-015-ADE to extend the period of the instant case from October
12 14, 2014 to August 15, 2015. However, this case was later vacated on Parent's request
13 to withdraw the complaint; and,

14 (b) On December 28, 2015, Parent filed a due process complaint notice that
15 became Case No. 16C-DP-027-ADE regarding the District's prior written notice to remove
16 Student from an IEP and implement a 504 Plan. Parent's efforts to consolidate that
17 complaint with the instant case were rejected, and she amended that complaint days
18 before a scheduled pre-hearing conference. Finally, when the hearing was set again,
19 Parent failed to proceed in the matter. Parent not only failed to make disclosure and then
20 requested a continuance the day following the disclosure date but she also failed to
21 appear for the scheduled hearing despite the continuance request having been denied.
22 Case No. 16C-DP-027-ADE was subsequently dismissed due to Parent's failure to show
23 cause why her untimely continuance request should be granted.

24 In the instant case, the hearing sessions were followed by post-hearing legal
25 argument as had been requested by Parent and discussed at the close of the hearing
26 sessions.¹⁰ The due process timeline is typically recalculated by the Administrative Law
27 Judge after a multiple-day due process hearing, taking into account any further
28 proceedings such as post-hearing legal memoranda as closing argument. Based on

29

¹⁰ Each recalendaring within the hearing process, each additional day of hearing sessions, and each
30 extension of the matter caused the hearing record review time to be adjusted, increased and recalendared
due to the Tribunal's existing calendar.

1 Petitioners' request for a written record, the request post-hearing written legal
2 memorandum submission, and the parties' subsequently-submitted written arguments to
3 the tribunal, there is no calculated 45th day.

4 ***Evidence and Issues at Hearing***

5 The parties presented testimony, Exhibits, and some argument at formal
6 evidentiary hearing sessions convened on nine days.

7 ***Exhibits***

8 The parties provided pre-marked proposed Exhibits, which they had not compared
9 for any duplicative Exhibits. After several hearing sessions, the parties stipulated to the
10 Exhibits; some adjustments were made to Petitioners' Exhibits during the hearing.
11 Petitioners had pre-marked Exhibits G1 through G120.¹¹ Respondent had pre-marked
12 Exhibits A through M, N1 through N20, O through T, and S1 through S38.

13 ***Issues for Hearing***

14 Based on review of the Amended Complaint, the Administrative Law Judge
15 determined in an ORDER dated March 17, 2015 that the Amended Complaint raised the
16 following issues for due process hearing:¹²

17 (1)(a) Respondent is alleged to have failed to provide FAPE to Student when it
18 failed to provide notes and outlines to Student the day after he was absent, as specified
19 in Student's IEP;¹³

20 (1)(b) Respondent is alleged to have failed to provide FAPE to Student, on
21 homebound status, when it failed to provide back-up tutoring services in the absence of
22 Ms. Miller, as specified in Student's IEP;

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25 ¹¹ However, there were no documents marked as G15, G16, G17, or G18. During the hearing, some
26 duplicative or unnumbered documents were numbered as Exhibits 121, 122 and 123. Petitioners'
27 documents were basically arranged in a chronological manner with a few exceptions. Despite the Tribunal
28 ORDER indicating that an exhibit list was required, Petitioner failed to provide an exhibit list; post-hearing,
29 the Tribunal created one and noted several duplicative exhibits and several documents that likely were
30 intended to have been marked as separate exhibits.

¹² The Amended Complaint contains multiple argument statements related to the issues presented. No
issues were resolved prior to the hearing.

¹³ Respondent's Exhibit A contains daily attendance records for academic year 2013-2014, and
Respondent's Exhibit B contains daily attendance records for academic year 2014-2015. Parent indicated
during the hearing that she had not compiled a list of Student's absences.

1 (1)(c) Respondent is alleged to have failed to provide FAPE to Student when it
2 failed to provide make-up tutoring for the regular tutoring hours missed, as specified in
3 Student's IEP;

4 (1)(d) Respondent is alleged to have failed to provide FAPE to Student when it
5 failed to provide adequate tutoring hours, *i.e.*, the allocated time period of four tutor hours
6 did not allow sufficient time for the tutor to review all the concepts from Student's classes
7 missed due to absences;

8 (1)(e) Respondent is alleged to have failed to provide FAPE to Student by not
9 providing alternative assignments so that Student may receive "points," and not be
10 penalized for not completing work by original due date, as specified in Student's IEP;

11 (1)(f) Respondent is alleged to have failed to provide FAPE to Student by teachers
12 failing to provide assignments to Student on his request, as specified in Student's IEP;

13 (2) Whether Respondent's proposal to "withdraw" Student from his current
14 classes in order for Student to "start over" in an online educational program E2020 fails
15 to provide FAPE to Student because it is not the least restrictive environment ("LRE");

16 (3) The allegations stated herein are duplicative of Issue 1(b) and Issue 1(c);

17 (4) Respondent is alleged to have failed to provide FAPE to Student by
18 Respondent not providing "direct, in person instruction and/or notes with instructional
19 information . . . rather than outlines" to Student;¹⁴

20 (5) Respondent is alleged to have "altered" Student's IEP without holding an
21 IEP meeting and without parental agreement;

22 (6) The allegations stated herein are duplicative of Issue 1(e); and,

23 (7) The statements herein relate to Parent's requests for modified work for
24 Student "in order to catch up."¹⁵

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29 ¹⁴ Multiple statements within this designated number in the Amended Complaint are additional arguments
related to Issue 1(a) and (e).

30 ¹⁵ The Administrative Law Judge determined these statements within the Amended Complaint to be
tangential to Issue 4.

1 With regard to these culled issues, the March 17, 2015 ORDER directed Parent to
2 clarify the issues as to the pertinent IEP by April 2, 2015. However, Parent failed to do
3 so at any time.¹⁶

4 Because Parent failed to clarify which of any of Student's IEPs within the 2-year
5 limitation period were the subject of the alleged problems, as the hearing sessions were
6 about to begin, the Administrative Law Judge determined that the pertinent IEPs and/or
7 Addendums were those developed between February 2014 and October 2014 prior to the
8 filing of the Complaint.¹⁷ The IEPs and Addendums developed during that time period
9 were (a) IEP dated February 21, 2014; (b) Addendum dated March 28, 2014; (c)
10 Addendum dated May 12, 2014; (d) Addendum dated July 28, 2014; and (e) Addendum
11 dated October 14, 2014.

12 ***Requested Remedies***

13 As remedies, Parent requested:

- 14 1. Respondent should provide direct instructional homebound tutoring at least
15 3.5 hours per day, five days a week at a time that is best for Student and when an adult
16 is present.
- 17 2. Respondent should increase tutoring hours per week if needed.
- 18 3. Respondent should provide Student with detailed notes of all information
19 given to his peers for each class.
- 20 4. Respondent should provide a plan for Student to complete his current
21 classes rather than take online schooling.
- 22 5. Respondent should provide study guides for each quiz because Student
23 missed class instruction.
- 24 6. Respondent should pay for therapy with Dr. Texidor.
- 25 7. Respondent's employees and Respondent should be "fined" for
26 intentionally withholding FAPE, "violating" the IEP, and violating Student's civil rights.

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28 ¹⁶ Additionally, Parent failed to clarify any date of an alleged proposal to "withdraw" Student from his current
29 placement or a PWN therefor, or any date of an "alteration" of Student's IEP or the "alteration" itself.

30 ¹⁷ The most important factor in making this time-frame determination was the fact that Parent had previously
filed a due process complaint (which became Case No. 14C-DP-049-ADE) that essentially would have dealt
with a prior time frame.

1 8. The Arizona Department of Education (ADE) should provide "oversight" to
2 instruct Student's teachers and administrative personnel about IDEA and IEP
3 requirements.

4 9. The ADE should evaluate whether Respondent can operate independently
5 or be annexed by Gilbert Public School District.

6 10. Respondent and ADE should investigate Dr. Wattawa, the principal, for
7 failing to meet with Parent to discuss the teachers' actions in failing to provide missed
8 instructional information to Student.

9 In due process matters, remedies are only considered regarding proven IDEA
10 violations and all remedies must be related to a resolution of a proven IDEA violation.

11
12 The Administrative Law Judge has considered the entire hearing record including
13 the testimony and the admitted Exhibits,¹⁸ and now makes the following Findings of Fact,
14 Conclusions of Law, and Decision finding that Petitioners have failed to demonstrate that
15 HUSD violated the IDEA through the allegations set forth in the Amended Complaint.

16 **FINDINGS OF FACT**

17 1. The claims in the instant matter are based on alleged actions and alleged
18 inactions that occurred regarding the February 21, 2014 IEP and its Addendums up to
19 and including October 14, 2014. The factual findings, including the backdrop of the
20 matter, are based on the entire hearing record; however, the determinations herein are
21 focused primarily on the period after March 28, 2014, beginning with that first Addendum
22 to the February 21, 2014 IEP.¹⁹

23 ***Prior Periods/Background***²⁰

24 2. Student has complex medical conditions that have been diagnosed over a
25 period of time and which were taken into account to the extent information was provided

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27 ¹⁸ The Administrative Law Judge has read and considered each page of each admitted Exhibit, even if not
28 mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every
29 witness, even if the witness is not specifically mentioned in this Decision. The review of the hearing record
30 in relation to the only appropriate due process complaint notice, the documentation, the testimony, and the
relevant issues in this Amended Complaint took an extraordinary amount of time; the parties were
understanding and patient in regard to the Tribunal review.

¹⁹ Neither party provided a copy of the February 21, 2014 IEP to the hearing record.

²⁰ Information was culled from the hearing record.

1 to Respondent by Parent. In addition to the long-known hearing impairment issues,
2 Student suffers from chronic migraines and, in 2012, chronic intermittent ear pain (which
3 may contribute to the migraines).²¹

4 3. Student experienced a chemical brain injury in May 2013 following an
5 accidental hospital dosage of a medication in excess of the prescribed amount. As a
6 result, his treating physician placed Student on "brain rest" until May 31, 2013.²² The
7 doctor noted:

8 Brain rest means no reading, use of electronic devices, attending school or
9 completing school work or tests, or strenuous activity. After May 31, 2013,
10 patient must be cleared by PCP to gradually resume normal activities as
11 tolerated.

12 4. In June 2013, a treating physician indicated Student's diagnosis of
13 "[m]igraine, unspecified, with intractable migraine."²³ He further noted:

14 Currently he is on a Controller Program which is effective and his Migraine
15 Headache rate has significantly declined. In the Fall, he will start the Eighth
16 Grade and it is my professional opinion that he is ready and able to attend
17 class like any other student. The issues pertaining to his most recent
18 hospitalization have completely resolved and are of absolutely no clinical
19 significance now. *Note also that prolonged periods in front of a computer
20 screen are not a good idea because of the possibility that that exposure
21 would have an unfavorable effect on his Migraine Headache rate.*

22 Emphasis added.

23 5. In May 2014, Student was in the hospital and received a diagnosis of
24 Migraine, Chiari malformation.²⁴ The instructions noted the following:

25 Please return if persistent headache that you are unable to control at home
26 or any other concerns. Encourage plenty of fluids and rest throughout the
27 day. Limit screen time to allow for rest.

28 ²¹ Exhibit N2.

29 ²² Exhibit N4.

30 ²³ Exhibit N6.

²⁴ Exhibit G12. At hearing, Dr. Alberto Texidor indicated that, in his experience, there was not a need to limit screen time, but simply a need for a person with a Chiari malformation to rest; he indicated that the issue that arises with screen use is how fast the information on the screen comes at the person rather than the screen use itself over time. Transcript (TR) Volume (Vol) 2 at 349.

1 6. Student had previously been determined eligible for special education
2 under the categories of hearing impairment ("HI") and other health impaired ("OHI").²⁵
3 Student's level of service was the least restrictive, "A," meaning inside the general
4 classroom 80% or more of the day.²⁶

5 7. During the academic year 2013-2014 (*i.e.*, 8th Grade), an aide was assigned
6 to collect Student's work information from teachers when Student had been absent the
7 prior day.²⁷ Ms. Miller indicated that this practice began once Respondent was informed
8 that Student did not have internet access, or a printer, at home and was unable to access
9 teacher's websites online to see the work information.²⁸ The work information was
10 collected by the aide for Student and was placed in a folder at the school's front office for
11 Student or a family member to pick up.²⁹ The work was picked up fairly regularly by
12 Student, by Parent, by Student's grandmother, or by Les Whisner.³⁰ However,
13 Respondent's log indicates that the work information from January 28, 2014, through
14 February 18, 2014, was not picked up until February 19, 2014, by Parent; some dates do
15 not have any notation that the work information was ever picked up.

16 8. On February 11, 2014, Parent emailed counsel for Respondent with multiple
17 complaints regarding Student obtaining school information according to his IEP.³¹ Parent
18 noted that Student was not being given "an outline" for each day and class missed due to
19 illness; additionally, she noted that he was not being given notes and handouts for the
20 missed classes but is only getting "information that can be printed out from the class
21 websites." In that regard, Parent noted that some of the teachers were not putting the
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23 ²⁵ During the relevant period, Student's eligibility categories have not changed.

24 ²⁶ At hearing, Case Manager indicated that she did not recall providing supports for Student at a specific
25 location but acknowledged that there are times when a student receiving special education and related
26 services may come out of a general education classroom setting to review concepts or receive some
27 instruction with a special education teacher. TR Vol) 2 at 478.

28 ²⁷ Ms. Miller testimony. TR Vol 1 at 35 and 153. Sometimes the work was collected by Case Manager. TR
29 Vol 2 at 501-02 and 504-05.

30 ²⁸ *Id.*; see also TR Vol 1 at 64-65 and 133-34. This practice appears to have begun in November of 2013.
See also TR Vol 1 at 186.

²⁹ Exhibit M at HUSD0616 is a log of the work information being picked up from November of 2013 through
March of 2014. Ms. Miller noted that she maintained a daily log of what was collected and that she copied
everything that was collected for Student. TR Vol 1 at 99-101 and 133-34.

³⁰ In October 2014, Parent requested he be removed as an authorized person. Exhibit D.

³¹ Exhibit G14. Although this date is prior to the February 21, 2014 IEP, the information is included herein
to demonstrate the continuous nature of Parent's complaints in this regard.

1 information on the websites and only go back weeks later to add information once Parent
2 complains about this;³² she did note that the school did not have the internet for several
3 weeks and that was another reason Student had not been able to obtain notes or
4 homework. Parent noted that no one was “monitoring” either the aide or the work that
5 Student was being given. Parent stated that she has been complaining since the first day
6 and that their emails about these needs were being ignored by Respondent.

7 9. Within her email, Parent embedded an email dated January 30, 2014,
8 purportedly from Student to Ms. Miller, with his complaints about “not getting the work
9 that I need . . . that I missed.” Student stated that the aide “prints off the work that I
10 already have” and that “I seldom get the notes that I require.” However, Student specified
11 that Ms. Connor, Ms. Gamboa, and Mr. Egnew were providing information and/or notes
12 every day “since day one.”³³ Student stated that Mathnasium did not work for him in a
13 1:1 manner because “they are always crowded.”

14 10. At the IEP meeting on March 28, 2014, two goals were added to Student's
15 IEP.³⁴ One goal was developed for Student to independently ask for help when he did
16 not understand something at 80% of the opportunities to do so; his baseline was that
17 Student did not ask for help without being asked first.³⁵ A second goal was developed
18 for Student to independently turn in his completed assignments 80% of the time without
19 being asked first; his baseline was that Student was not turning in assignments without
20 being prompted.³⁶ Special education minutes for Math (in order to focus on concepts
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22 ³² Parent noted that she “keeps a copy of all information provided, along with printed information from those
23 specific teacher's pages and dates of the missing information as proof.” Exhibit G14. It must be noted that
24 no such detailed information was presented to the hearing record to demonstrate any specific day of
25 absence, the information received or available regarding that day, or a request for information for that
26 missed day.

27 ³³ Based on the date of January 30, 2014, one must presume that is an indication from Student that these
28 three teachers provided information since the beginning of the academic year; the hearing record does not
29 indicate these teachers' subject matters.

30 ³⁴ Exhibits J and I; also Exhibit G13. Prior to this, Student's sole IEP goal was to increase self-advocacy
skill by reaching out to the HI teacher specifying the current functional status, and any problem, with the
FM systems in his classrooms at the level of 15 minutes per month; the baseline at March 2014 was that
he had no existing concerns and had only reached out one time to the HI teacher.

³⁵ This social emotional goal was developed to allow Student to demonstrate constructive problem-solving
skills.

³⁶ This transition skill was developed to allow Student to demonstrate improved daily living skills for
independent living.

1 Student missed due to medical illness absences) was set at 250 minutes per month.³⁷
2 Additionally, Respondent scheduled related services of 10 minutes per day for
3 organizational skill work.³⁸

4 11. Student's March 28, 2014 IEP Addendum contained multiple
5 accommodations.³⁹ The IEP describes an "accommodation" as follows:

6 Accommodations do not change how much of the curriculum the student is
7 expected to learn. It only changes how students access and express
8 knowledge on a daily basis. Accommodations are changes in how a student
9 accesses information and demonstrates learning. Accommodations do not
10 substantially change the instructional level, content, or performance criteria.
11 The changes are made in order to provide a student with equal access to
12 learning and equal opportunity to show what he or she knows and can do.
13 Students with disabilities who qualify in one academic area are eligible for
14 accommodations in other areas to the extent that their disability would affect
15 performance in those areas.

16 12. Regarding the issues in this Complaint, the accommodations in the March
17 28, 2014 Addendum included:

- 18 a. providing Student with "writing/text book assignment" in the place of
19 laboratory activities he missed if ill;
20 b. when he had been absent due to chronic illnesses, Student would be
21 permitted to arrange to take tests and quizzes at a later time if he felt
22 unprepared to take the test;
23 c. *at the teachers' discretion*, Student could be given alternative
24 assignments "as needed due to an absence;" (emphasis added).
25 d. when Student is absent, "teachers will send . . . to the office by the next
26 school day *when they are not available on their teacher web page*: a copy

27 ³⁷ Exhibit C at HUSD0535 (indicates the 250 minutes per month for organizing, re-teaching concepts, and
28 to review concepts); also Exhibit J at HUSD0602 (stating 10 minutes per day specific to organizing). Parent
29 was adamant that Student not to be pulled out of general education and was not to be given this instruction
30 in the special education classroom; as a result, his IEP indicated that he would receive the Math services
with non-disabled students. Exhibit J at HUSD0602.

³⁸ It appears the 10 minutes per day were included in the 250 special instruction minutes per month, which
was said to be both organizing and teaching and re-teaching concepts.

³⁹ Exhibit J. The accommodations regarding Student's hearing impairment are not at issue. At hearing, Dr.
Alberto Texidor noted that these accommodations were "reasonable," based on the MET data that was
available to the IEP team; he opined that the MET report's Evaluation Summary contained some "very good
components of a psychoeducational evaluation." TR Vol 2 at 376-77.

1 of the notes (if applicable), any homework, and a brief outline of the lecture
2 and/or any important information discussed in class;" (emphasis added).

3 e. Student would not be penalized for any missing work not completed by
4 the original due date due to his illness absence;

5 f. Respondent would provide an extra set of textbooks for use at home for
6 courses that used a textbook; and

7 g. the e2020 program would be available to use "when [Student] or parent
8 feels he needs *extra curriculum instruction* in the case that [Student] has
9 been absent 9 or more class sessions in core classes . . . (Social Studies,
10 Science, Math, Language Arts)." However, this availability was specifically
11 clarified with the proviso that the "*first supports for any absences due to*
12 *illness or chronic illness are after school tutoring available for students at*
13 *CMS and working with his teachers for tutoring when needed.*"⁴⁰

14 13. The PWN for the March 28, 2014 meeting indicated that Respondent had
15 proposed to provide two periods of home instruction per day or to reduce Student's school
16 day; Parent did not agree to either homebound instruction or a reduced school day.⁴¹
17 Respondent requested permission to conduct academic achievement testing but Parent
18 declined to give permission concerned that Student would not do well due to his absences
19 and indicating that she "would like to read the document before signing."

20 14. Student's May 12, 2014 IEP Addendum contained multiple
21 accommodations.⁴² Regarding the issues in this Complaint, the accommodations in this
22 Addendum included those stated above that were offered on the March 28, 2014 IEP and
23 the following new accommodations:

24 a. for the remainder of the school year, Respondent's resource teacher
25 would create a weekly excel spreadsheet with the work and assignments
26 Student is expected to or required to complete for that week;

28 ⁴⁰ Emphasis added here. At this juncture, Student was not on homebound status, and was expected to
29 attend school unless absent due to illness. The March 28, 2014 IEP Addendum demonstrates the offer of
30 availability of tutors in after-school setting or as arranged with his teachers.

⁴¹ Exhibit I.

⁴² Exhibit H and G.

1 b. for the remainder of the school year, Respondent's resource teacher
2 would review any concepts with Student from classes he missed due to
3 absences;

4 c. for the remainder of the school year, Respondent's resource teacher
5 would organize the classwork, to the extent possible, so that Student could
6 work on items requiring more intense instruction while at school and so that
7 he can work on relatively simple items as homework; and,

8 d. if Student was in class for instruction on the topic, he would be expected
9 to take quizzes or tests, but if he was absent due to chronic illness, Student
10 would be permitted to arrange a time to take quizzes later if he felt
11 unprepared.

12 15. As an additional accommodation, Respondent proposed to provide eight
13 hours of tutoring per week on core curriculum *in the summer* for the purpose of addressing
14 missed concepts and skills⁴³ (due to Student's absences), depending on Student's health
15 and availability, but specified that any tutoring time missed would not be made up.
16 Additionally, Respondent proposed to provide up to four hours per week on core content
17 and missed work/homework *during the 2014-2015 school year* depending on Student's
18 health and availability; however, Respondent again specified that tutoring time missed
19 would not be made up. In the event the designated tutor was not available, Respondent
20 would have back-up personnel. The tutoring would take place at Student's home if there
21 was another adult present at that time or at a District location or another mutually agreed
22 location.⁴⁴

23 16. The PWN dated May 14, 2014 specified that the offered agreement to
24 provide tutoring in the summer and in 2014-2015 was "to fully and finally resolve Parent's
25 Due Process Complaint, filed on March 26, 2014."⁴⁵ That Due Process Complaint was

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27 ⁴³ TR Vol 1 at 138-39.

28 ⁴⁴ The PWN indicated that not providing any tutoring was rejected because Respondent believed that
29 Student could benefit from tutoring to solidify any missed concepts and to assist him to "stay caught up" in
30 his classes. Exhibit G. Respondent specified that the reason tutoring hours would not accumulate if missed
was that if Student was too ill to attend classes the compounding of tutoring and his regular work when he
was well would cause him to be overworked. The PWN further indicated that, if the parties mutually agreed
that the tutoring during 2014-2015 not sufficient, they could agree to modify the tutoring arrangement.

⁴⁵ Exhibit G.

1 dated March 26, 2014 but was not filed to the Arizona Department of Education until April
2 7, 2014. It was forwarded to the Tribunal and set for hearing for May 28, 2014, and
3 became Case No. 14C-DP-049-ADE.⁴⁶

4 17. In the PWN, Respondent further noted that another IEP meeting would
5 convene on or shortly after July 29, 2014, for the purpose of revising Student's IEP for
6 high school.⁴⁷ The PWN indicated that Parent agreed that she would meet with
7 Respondent's Special Education Director to attempt to resolve concerns prior to filing a
8 Due Process Complaint and, if they could not resolve it, then Parent could proceed with
9 a Due Process Complaint. Finally, the PWN indicated that Parent "agreed to not file
10 another Due Process Complaint concerning the same issues from her Due Process
11 Complaint filed on or around March 28, 2014."⁴⁸

12 18. As of the last day of the 2013-2014 academic year, Student's attendance
13 records for the 180 school days demonstrated that Student missed 100 periods of
14 Physics, 93 periods of Math, 90 periods of Accelerated English, 80 periods of Spanish,
15 90 periods of Social Studies, and 90 periods of Student Publications.⁴⁹ The absences
16 averaged 51% of the class periods in the 2013-014 academic year. However, despite
17 these absences, Student received the following final grades for the 2013-2014 academic
18 year: Conceptual Physics, B; 8th Grade Math, B; Accelerated Language Arts, A; Spanish
19 I, A; Social Studies, A; and Student Publications, A.⁵⁰

20 19. Respondent provided tutoring during the summer of 2014. Ms. Miller
21 provided schedules for tutoring times and requested Parent's confirmations.⁵¹

24 ⁴⁶ That case was later dismissed primarily because Parent had indicated that a hearing would not be
25 necessary as only "minor" details were remaining in order to resolve that complaint, because Parent failed
26 to make any disclosure for the scheduled hearing, and because the May 2014 IEP was not in existence at
the time that Due Process Complaint was filed in March 2014. Related, see Exhibit G34 with Respondent's
revisions and request to finalize the IEP.

27 ⁴⁷ Exhibit G at HUSD 0569.

28 ⁴⁸ Some of the issues therein were (a) notes and outlines not being provided; (b) concerns with e2020; (c)
make-up instruction due to his illness and hospitalization absences; and (d) having a 1:1 direct instruction
for missed instruction. These are the primary issues in the instant Complaint.

29 ⁴⁹ Exhibit F at HUSD0558.

30 ⁵⁰ Exhibit C at HUSD0537.

⁵¹ Exhibits G30 and G35. Neither party provided a schedule of the tutoring sessions that were conducted,
cancelled or rescheduled.

1 20. Student's July 25, 2014 IEP Addendum contained many accommodations
2 for implementation in the 2014-2015 academic year.⁵² Regarding the issues in this
3 Complaint, the existing accommodations were combined as follows:

4 Teachers will provide tutor with any work that [Student] misses while absent.
5 Tutor will review any concepts from [Student's] classes that he has missed
6 due to absences. Teachers will provide [Student] with any assignments that
7 he requests. Alternative assignments will be given as needed due to an
8 absence, at teachers' discretion. [Student] will not be penalized on missing
9 work not completed by the original due date due to illness. Allow more time
10 to complete hand written assignments and/or accept written assignments,
11 completed at home, in typed form. Provide [Student] with writing/textbook
12 assignments in place of lab type activities missed due to being ill. When
13 Student is absent, the teachers will send the following items to the office by
14 the next school day *when they are not available on their teacher web page*:
15 a copy of the notes (if applicable), any homework, and a brief outline of the
16 lecture and/or any important information discussed in class. When [Student]
17 returns from absences, require him to only complete work needed to show
mastery of concepts. No busy work when making up for being absent.
[Student] will be expected to take quizzes, tests, exams, etc., if he was
present in class for instruction concerning those topics. If [Student] is absent
due to chronic illness, he will take tests/quizzes with the tutor at the next
appropriate session. If [Student] is absent due to chronic illness, he will be
permitted to arrange a time to take test/quizzes at a later time if he feels
unprepared.

18 Emphasis added. Based on the MET, his academic achievement, and functional
19 performance, the IEP team further noted that Student did not require modified tests,
20 modified classwork, or modified homework, but continued to have educational needs
21 regarding his hearing impairment.⁵³

22 21. The PWN dated July 25, 2014, specified that the determinations in the July
23 25, 2014 Addendum were made "as a result of a resolution meeting held with [Parent] on
24 5/19/2014 (while [Parent's] special education due process case was pending) and as a
25 result of [Parent's] 5/21/2014 email (4:30 a.m.) to Dr. Diane Bruening, [Parent's] 6/3/2014
26 email to Dr. Bruening, and Dr. Bruening's responsive emails dated 5/30/2014 (4:32 p.m.)
27 and 6/05/2014 (4:22 p.m.)."⁵⁴

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29 ⁵² Exhibit F and E.

⁵³ Exhibit F at HUSD0559

30 ⁵⁴ The relevant exhibits appear to be S13 at HUSD0781-0787, S13 at HUSD0775-0780, and HUSD0751;
these email are also contained at Exhibit G34. The hearing record does not appear to contain a copy of the

1 22. The PWN dated July 25, 2014 indicates there was an agreement to provide
2 supplementary services of additional tutoring opportunities in academic year 2014-2015
3 June as follows:

4 Upon parent request, [Student] will be entitled to receive up to an additional
5 4 hours per week *following any week in which he missed all of his regular 4*
6 *hours of tutoring*; however, in no event shall [Student] be entitled to receive
7 more than 8 hours of tutoring in any given week, nor shall hours carry over
8 into the summer of 2015.⁵⁵

9 Emphasis added.

10 23. On July 25, 2014, Respondent emailed Parent a copy of Student's "most
11 current IEP and PWN, developed from the emails."⁵⁶

12 24. On July 25, 2014, Parent emailed Respondent indicating as follows:

13 I did not agree to some of the changes made when we had a resolution
14 meeting at the district office. These need to be removed as previously stated
15 in more than one email. It is not alright for the district to unilaterally make
16 changes. If not, then I will be forced to file a due process to require the stay
17 put. I shouldn't have to do this!⁵⁷

18 25. The academic school year 2014-2015 began on August 4, 2014.⁵⁸

19 26. Although there was information in the record that Student attended school
20 on the first day,⁵⁹ there is also documentation that he went to the hospital on August 4,
21 2014.⁶⁰ Student was absent on August 5, 2014, due to illness;⁶¹ Student was given a
22 school excuse at the hospital for being "homebound until symptoms resolve."⁶²

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last referenced Bruening email of June 5, 2014. The referenced due process case was Case No. 14C-DP-049-ADE. It is noted that, in her emails, Parent states that she did not agree with certain items either omitted or added on May 19, 2014, and characterized the situation as Respondent "insisting" on the items remaining in the IEP.

⁵⁵ Parent had requested, as a change in the May 2014 IEP Addendum, that Respondent provide tutoring until Student was "caught up" with all of his missed work, homework, and tests during the school year 2014-2015. Exhibit E at HUSD0551 and Exhibit G32 at page 3 of 5. In the July 25, 2014 IEP Addendum, Respondent rejected this option, noting that such a request was neither reasonable nor feasible. Presumably this option rejection was based on the offered four hours per week of tutoring and the offered "supplemental services" of possibly up to eight hours per week of tutoring.

⁵⁶ Exhibit G35 (last page).

⁵⁷ *Id.*

⁵⁸ Exhibit B contains attendance information for academic year 2014-2015.

⁵⁹ Exhibit G39.

⁶⁰ Exhibit N9; also N10.

⁶¹ Exhibit B.

⁶² Exhibit N9.

1 27. On August 6, 2014, Parent notified Respondent that Student had been in
2 the hospital for two days.⁶³ On August 6, 2014, Student was given a school excuse at
3 the hospital indicating that he could return to school "when symptoms resolve."⁶⁴

4 28. Student was absent August 5, 6, 7, and 8, 2014.⁶⁵

5 29. On August 9, 2014, Parent notified Respondent that Student was
6 discharged that day.⁶⁶

7 30. Student was again hospitalized on August 10, 2014, and discharged on
8 August 11, 2014; he received a return to school release for August 13, 2014, or August
9 14, 2014, "depending on headache pain."⁶⁷ This release recommended that Student not
10 be scheduled for tutoring "immediately following the end of the school day (*without a*
11 *break*)."⁶⁸

12 31. Student went to the hospital again on August 12, 2014, and was discharged
13 on August 12, 2014; he received a return to school release "when headache free." The
14 doctor noted that Student was to have "limited homework until medically cleared."⁶⁹

15 32. Student went to the hospital again on August 13, 2014, and was discharged
16 on August 16, 2014; he received a return to school release for August 18, 2014.⁷⁰ Dr.
17 Itoro Edet, M.D., wrote a statement regarding Student on August 16, 2014, stating:

18 [Student] is a ■■■ year old male with past medical history significant for
19 chronic migraines that have resulted in multiple doctor office visits and
20 hospitalizations since his diagnosis. He is followed closely by neurology for
21 his migraines and has most recently been hospitalized for an extended
22 exacerbation of his chronic migraines. Management of his migraines and
23 anticipatory guidance have been discussed extensively amongst [Student's]
24 primary pediatric team and his neurologist. In addition to proper medication
25 management, it is felt that environmental triggers should be appropriately
26 addressed in order to decrease the likelihood of recurrent migraines. In
particular, it has been stressed that overstimulation should be avoided. This
includes but is not limited to excessive video games and excessive school
hours. While [Student] is fully capable of attending and participating in a full
day of school (seven hour day with appropriate breaks), completion of a

27 ⁶³ Exhibit G38 (last page).

28 ⁶⁴ Exhibit N10.

29 ⁶⁵ Exhibit B.

30 ⁶⁶ *Id.*

⁶⁷ Exhibit N11.

⁶⁸ *Id.* (emphasis added).

⁶⁹ Exhibit N12.

⁷⁰ Exhibit N13.

1 nine hour school day is considered excessive and may contribute to stress
2 and overstimulation. As his physicians, we strongly advise avoidance of
3 this so as not to exacerbate his condition and to maximize not only his health
4 but his educational potential. In addition upon discharge today, we are
5 requesting that [Student] be excused from homework this weekend so as to
6 fully recuperate and be prepared to resume his studies next Monday,
7 August 18, 2014.⁷¹

8 33. Student was absent August 11, 12, 13, 14, and 15, 2014.⁷²

9 34. Student was absent August 18, 19, 20, 21, and 22, 2014.⁷³

10 35. Student was again hospitalized on August 21, 2014, and discharged on
11 August 22, 2014; he received a school excuse for the two days. The school excuse
12 further notes a recommended limit "on screen time (including TV, video, as well as school
13 work) . . . to 2 hr/day."⁷⁴

14 36. Student arrived at school on August 25, 2014, at 8:44 a.m. and left school
15 at 12:40 p.m. as chronic ill.⁷⁵

16 37. Student was absent August 27, 2014.⁷⁶ Student attended on August 29,
17 2014, beginning at 12:18 p.m.

18 38. Student went to the hospital on September 2, 2014; he received a school
19 excuse for September 2, 2014, and September 3, 2014, "due to illness."⁷⁷

20 39. Regarding a medical procedure scheduled for September 4, 2014, Student
21 was asked to be excused from school on September 3, 2014, and September 4, 2014.⁷⁸
22 Student had another pain procedure on September 5, 2014.⁷⁹

23 40. Student was absent on September 2, 3, 4, and 5, 2014.⁸⁰

24 41. Student was absent on September 8, 9, 10, 11, and 12, 2014.⁸¹

25 ⁷¹ Exhibit N14.

26 ⁷² Exhibit B.

27 ⁷³ Exhibit B.

28 ⁷⁴ Exhibit N15.

29 ⁷⁵ Exhibit B.

30 ⁷⁶ *Id.*

⁷⁷ Exhibit N16.

⁷⁸ Exhibit N17.

⁷⁹ *Id.*

⁸⁰ Exhibit B.

⁸¹ *Id.*

1 42. Student was absent on September 16 and 17, 2014; he attended on
2 September 18, 2014, beginning at 9:57 a.m. Student was absent on September 19,
3 2014.⁸²

4 43. Student attended on September 23, 2014, beginning at 10:25 a.m.,
5 attending for 150 minutes. Student was absent on September 24, 25, and 26, 2014.⁸³

6 44. Student attended on September 29, 2014, beginning at 8:00 a.m.; he left
7 school at 12:48 p.m.⁸⁴ Student was absent on September 30, 2014. He attended on
8 October 1, 2014, for 60 minutes. He attended on October 2, 2014, but departed at 2:03
9 p.m. for a medical appointment. He attended on October 3, 2014, for 90 minutes.⁸⁵

10 45. Student attended on October 7, 2014, for 60 minutes.⁸⁶

11 46. In his medical illness certification dated October 9, 2014, Dr. Eric Hastriter
12 anticipated that Student's condition of chronic migraines would result in frequent
13 absences from school perhaps exceeding 20 days in the semester and that, "at which
14 point he would benefit from homebound services to catch up on missed work."⁸⁷ Dr.
15 Hastriter noted that Student's prognosis was "fair" if he avoided all triggers, managed
16 stress levels by sleeping 8-9 hours at night, having no caffeine, with regular exercise,
17 relaxation exercises, eating 3 meals a day, drinking 90 ounces of water each day. Dr.
18 Hastriter indicated some limitations in the event that Student had a headache: take
19 medication, hydrate, and use relaxation breathing "until headache resolves."

20 47. Parent provided Respondent with Dr. Hastriter's statement on October 11,
21 2014.⁸⁸

22 48. Student attended on October 13, 2014, for 60 minutes. He attended on
23 October 14, 2014, for 120 minutes.⁸⁹

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27 ⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Exhibit N18.

⁸⁸ *Id.*

⁸⁹ Exhibit B.

1 49. An IEP meeting was set for October 14, 2014.⁹⁰ Parent attended the
2 October 14, 2014, IEP meeting by phone; Student did not attend as he did not answer his
3 phone.

4 50. At the IEP meeting on October 14, 2014, Student's current circumstances
5 were reviewed regarding his medical status, his work performance, his attendance and
6 options for placement. Parent noted that Student had four medical procedures in
7 September 2014 (with more to come), indicating that had made it difficult for him to think,
8 learn, or complete any work assignments but also arguing that he had not had enough
9 information.⁹¹ Parent acknowledged that academic instruction for Student was "a moving
10 target" because he may not be available for tutoring and the doctor was recommending
11 no more than two hours per day of screen time.

12 51. Respondent considered Student's attendance records to date, documenting
13 he had attended only 7 full days and 6 partial days out of 46 school days (essentially
14 missing 33 of 46 school days) and had participated in only 11 of the offered 37 hours of
15 in-home tutoring sessions.⁹² Respondent noted that, as to that date, Student had not yet
16 completed the course work from the first quarter of 2014-2015.⁹³

17 52. Respondent considered not making any changes to the IEP but rejected
18 that option due to Student's having missed too much school and being so far behind on
19 his work that even with extended time frames to complete the work, he would likely not
20 be able to "have a meaningful educational experience."⁹⁴

21 53. At the IEP meeting, Respondent discussed the option of attendance at a
22 special education private day school, Brightmont, where Student would be able to have
23 1:1 instruction on curriculum which is adjusted according to students' capabilities at the
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27 ⁹⁰ The hearing record contains pre-meeting emails between Parent and counsel for Respondent. Exhibits S28 and S29.

28 ⁹¹ Exhibit C. Parent indicated that if he would be well enough to do school work, "then he is well enough to
29 be present." In its memorandum submitted on July 10, 2017, Respondent noted that Student had "not set
30 foot in a District classroom since September 2014."

⁹² Exhibit C at HUSD0533.

⁹³ Exhibit C at HUSD0537 and Exhibit D at HUSD0546.

⁹⁴ Exhibit C at HUSD0547-8.

1 time taking into account medical issues.⁹⁵ However, due to the homebound status being
2 recommended for medical reasons, this option was rejected by the IEP team.⁹⁶

3 54. At the October 14, 2014 IEP meeting, Student's level of placement was
4 changed from Level A (General Education 80% or more of the day) to Level H
5 (Homebound) based on Dr. Hastriter's medical illness certification.⁹⁷ Due to the level of
6 service change to Homebound status, the IEP team determined that Student would not
7 need the classroom accommodations while receiving homebound instruction.⁹⁸ At the
8 time of the hearing sessions, Student had not returned to Respondent's classrooms since
9 being placed on Homebound status.⁹⁹

10 55. Student's transition goal was modified in regard to interaction with the tutor
11 as to class work and work progress and asking questions, with any data measurements
12 being taken from tutor logs.¹⁰⁰

13 56. The IEP team determined that homebound instruction needed to be in a
14 form/format that is available to Student at the times he is well enough to work on
15 curriculum at any hour of the day and that can work at his own pace and pick up where
16 he left off; therefore, the IEP team determined that the e2020 program was the academic
17 program that was able to meet Student's academic needs while he was Homebound
18 status.¹⁰¹ The e2020 program contained academic classes in Spanish I, Algebra I,
19 Biology I, English 9, Intro to Art, and Human Geography. Respondent noted that those

20 ⁹⁵ Exhibit C at HUSD0548.

21 ⁹⁶ Parent's original Complaint had contained an allegation that Respondent "plans" to change Student's
22 placement to Brightmont Academy in Chandler. Parent was either exaggerating her complaint or simply
23 not understanding the totality of the IEP meeting and the PWN.

24 ⁹⁷ Exhibit D and C. It is noted that in the past (November 2012 to January 2013), Student had been on
25 Homebound status and the Parent advocated for Student to not be retained in 7th Grade, the Team
26 indicating that Student "had the ability to master the necessary content to be promoted to 8th grade and
27 earn grades for his second semester classes." Exhibits G3 and G4.

28 ⁹⁸ Ms. Miller described Homebound instruction as specialized instruction just by the nature of it being
29 provided 1:1 in the home. TR Vol 1 at 55-56. Prior to being on Homebound status, the general education
30 teachers of record were responsible to provide the instructional work content for Student: however,
Respondent was also providing tutoring for Student due to his illness related absences. TR Vol 1 at 87-
89. Inexplicably, Student's attendance records demonstrate "attendance" on several Homebound days:
October 21st for 60 minutes; October 24th for 90 minutes; October 27th for 60 minutes; and October 29th
for 60 minutes. Exhibit B.

⁹⁹ TR Vol 1 at 224.

¹⁰⁰ Previously, the transition goal called for Student to turn in assignments without being prompted upon
returning from absences and data measurement was taken from Student's work and recorded in teacher
grade books. Exhibit F at HUSD0562.

¹⁰¹ Exhibit C at HUSD0533.

1 classes approximated the requisite freshman classes and "correlate as closely as
2 possible . . . the subjects [Student] has been taking to date."¹⁰² Respondent specifically
3 noted it would continue to provide tutors for academic support in addition to the support
4 provided within the e2020 program.

5 57. The IEP team determined that Student's HI services would focus on
6 accessibility to the e2020 program instruction and would continue to have Student
7 advocate for himself.¹⁰³

8 58. Respondent argues that it had provided the information and materials
9 Student needed to access the general academic curriculum while Parent continued to
10 disagree on this point, as she had for months.¹⁰⁴ Respondent felt that Parent wanted
11 Respondent to "completely recreate a school experience . . . by having the teachers
12 provide [Student] in writing everything that has occurred during the school day," which
13 Respondent felt was not realistic or feasible.

14 59. Initially, in 2014-2015, the information that was not on a teacher website
15 was compiled and delivered to Student after absences.¹⁰⁵ The hearing record
16 demonstrated that this activity changed somewhat after Student was on Homebound
17 status, after Parent filed this Complaint on October 28, 2014, and after Student asked
18 that Ms. Miller not be the tutor anymore (on October 29, 2014).

19 60. By letter dated November 3, 2014, in regard both to Stay Put and in order
20 to assist Student "to salvage" the semester, Respondent notified Parent that it was
21 creating binders for each of Student's classes containing the following types of
22 information: dividers by project or week; assignments and homework due; materials that
23 were provided to Student or were available to him; quiz and test information; copies of
24 any work he completes and turns in; and emails from teachers to Student.¹⁰⁶ At hearing,

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27 ¹⁰² Exhibit D at HUSD0547. If it was going to be possible for Student to access the Honors or advanced
28 placement courses through e2020, Respondent agreed to allow Student to be enrolled in those classes if
29 Parent so requested. *Id.*

30 ¹⁰³ Exhibit C at HUSD0541.

¹⁰⁴ Exhibit D at HUSD0548.

¹⁰⁵ TR Vol 1 at 133.

¹⁰⁶ Exhibit S33.

1 Ms. Miller indicated that these binders contain “every piece of material that Student had
2 access to on the teachers’ websites from the first day of school forward.”¹⁰⁷

3 61. Ms. Miller further indicated that those binders were picked up on November
4 7, 2104.¹⁰⁸ Thereafter, the binders would be used by the homebound teachers and/or
5 tutors with Student.

6 62. The e2020 program is geared to provide a course curriculum in a clear,
7 linear, and consistent manner, and is available to a student at any time and for whatever
8 length of time is appropriate. For Student, therefore, e2020 would have been available
9 at any time his health permitted him to focus on school work and he could work at his own
10 pace as needed or accelerate as he mastered the content. The e2020 program is not an
11 educational placement; Student never utilized the e2020 program.¹⁰⁹

12 63. The hearing record contains a description of the e2020 program in a May
13 2013 PWN as follows:

14 The e2020 program will enable [Student] to receive consistent academic
15 programming. The e2020 program is a provider of core and elective
16 instruction in virtual and blended learning environments for students in
17 grades 6-12. It is a research-based video course curriculum, which offers
18 more than 125 semester-equivalent core and elective online courses for
19 students. The program can be used at home or in school. Programs within
20 e2020 are based on state standards and the Common Core; as Arizona
21 adds additional requirements (on top of the Common Core curriculum),
22 e2020 is keeping up with those additional requirements. It incorporates
23 both formative and summative assessments.¹¹⁰

24 64. Ms. Miller specified that the e2020 program provides video instruction in 15-
25 minute increments followed by related activities that take about 15 to 20 minutes in that
26 content area.¹¹¹ Ms. Miller noted that any student using the e2020 program has access
27 to a content teacher for questions and, if there were a tutor along with the e2020, the

28 ¹⁰⁷ TR Vol 1 at 302. Ms. Miller also noted that, even at the time of that hearing sessions, Respondent had
29 continued to compile binders of 10th grade coursework for the time that Student was, or would be, ready for
30 that coursework. *Id.* At hearing, Homebound Math Teacher (from October of 2015) indicated that the
information in the math binder was not all in sequential order and would take some time to work through;
he felt that “a few” review sheets were missing and that someone working through the example/problems
may need to read through them several times. TR Vol 1 at 323-26.

¹⁰⁸ TR Vol 1 at 304.

¹⁰⁹ TR Vol 1 at 218 and 173-74, respectively.

¹¹⁰ Exhibit G4.

¹¹¹ TR Vol 1 at 59-60 and 156.

1 student would first ask the tutor and then access the teacher if necessary. Ms. Miller
2 specified that Student was never being asked to “withdraw” from his courses.¹¹²

3 65. Parent filed the instant Complaint with the Arizona Department of Education
4 on October 28, 2014.¹¹³ Respondent advised Parent that, due to the filing of the
5 Complaint, Respondent would not implement the October 14, 2014 IEP, but would
6 “continue to utilize the IEP that was in effect prior to October 14, 2014 unless the parties
7 reach some other agreement.”¹¹⁴ The IEP that was in effect prior to October 14, 2014,
8 was the July 25, 2014 IEP; that IEP contained an amalgam of the prior accommodations
9 set forth in the May 2014 and March 2014 Addendums.

10 66. As had been requested by Parent, it was Ms. Miller who provided tutoring
11 services to Student in the summer of 2014 and in the academic year beginning in August
12 2014.¹¹⁵ The tutoring was provided at various locations including the family home,
13 Student’s grandmother’s home, the elementary school, and Respondent’s District’s
14 offices.

15 67. When she provided tutoring, Ms. Miller found that Student’s ability to
16 tolerate tutoring instruction was “sporadic.”¹¹⁶ Ms. Miller noted that it depended on
17 whether he was in pain, noting that on some days they were able to work for two hours
18 straight and on some days they were unable to continue after as little as 15 minutes.¹¹⁷

19 68. Ms. Miller indicated that, at all times during tutoring, Student was able to
20 comprehend the instruction; she also indicated that Student did not need to be “re-taught”
21 any concepts.¹¹⁸

22 69. During the academic year 2013-2014 and until November 3, 2014, in order
23 to assist with Student being able to keep up with his work, Respondent collected Student’s

24 ¹¹² TR Vol 1 at 293.

25 ¹¹³ Parent had initially filed the Complaint only with Respondent. Exhibit S33.

26 ¹¹⁴ *Id.* Clearly, the parties were unable to reach any agreement.

27 ¹¹⁵ TR Vol 1 at 105; also Exhibit G at HUSD0568-9 and Exhibit E at HUSD0551. As a tutor, it was not Ms.
28 Miller’s responsibility to provide the content class work; the teachers were responsible to provide the
29 classwork and Ms. Miller would provide tutoring in that subject area. TR Vol 1 at 73. She noted that it had
30 been difficult to provide work to Student when he was in 8th Grade as the teachers did not know when or if
he was going to be in attendance; she indicated this was another reason they began to compile the work
for Student and take it to the school front office. *Id.* at 74-5

¹¹⁶ TR Vol 1 at 30.

¹¹⁷ Ms. Miller indicated that there were tutoring sessions cancelled prior to her arrival due to Student being
in pain and some sessions ended in mid-session due to Student reporting he was in pain. TR Vol 1 at 70.

¹¹⁸ TR Vol 1 at 70, 96, and 161.

1 work information when he was absent the prior day and placed the work information in a
2 folder for Student, or his family, to pick up.¹¹⁹ Additionally, Respondent provided a laptop
3 for Student to use to access teacher pages, assignments, etc., in the event he was unable
4 to come to school.¹²⁰ Respondent maintained a log of persons who picked up the
5 materials in 2013-2014.¹²¹

6 70. As indicated herein, while he may have attended the first day of school for
7 at least part of the day on August 4, 2014, Student was essentially absent for the first
8 three weeks due to illness and medical issues. Respondent scheduled tutoring sessions
9 beginning in September. Respondent's tutoring log documents tutoring sessions offered,
10 the hours scheduled, the hours provided, and the cancellations from September of 2014
11 through December 2014.¹²² Student utilized only 9.32 hours in September, 2.66 hours in
12 October, 1.5 hours in November, and 6 hours in December.¹²³ The hearing record
13 demonstrates that Student utilized far less than the offered tutoring hours.

14 **Issue #5**

15 71. Parent alleged that Respondent "altered" Student's IEP without holding an
16 IEP meeting and without parental agreement. It was not clear whether this was a two-
17 part allegation or simply an allegation of failing to hold an IEP meeting. Neither the
18 original Complaint nor the Amended Complaint provided any further details regarding this
19 allegation. In her original Complaint, Parent indicated that this was done in July 2014
20 and, in the Amended Complaint, she indicated that this was done a few days before
21

22 ¹¹⁹ TR Vol 1 at 35.

23 ¹²⁰ TR Vol 1 at 111. Overall, Ms. Miller indicated that Student had no trouble accessing the instructional
24 information for his classes. TR Vol 1 at 113. However, Ms. Miller recalled a time when she discovered that
25 Student was not clicking further into the website information to access more of the available information.
26 TR Vol 1 at 132-33 and 294-96 (also Exhibit S31 HUSD0865-66). This likely correlates to documents
27 regarding a late October 2014 tutoring session where Ms. Miller insisted on showing Student where to find
28 some particular information and Student then made multiple allegations regarding the incident and Ms.
29 Miller, and subsequently advised Respondent that he did not want Ms. Miller to tutor him anymore. Exhibits
30 G70, G 71, and S32; also TR Vol 1 at 254-58. Thereafter, through the special education department, Ms.
Miller continued to arrange and/or coordinate tutoring for Student, but did not herself provide the tutoring.
TR Vol 1 at 198.

¹²¹ Exhibit M.

¹²² Exhibit S6 HUSD0750 through 0753 plus additional notes (not bate-stamped).

¹²³ *Id.* The stated number of tutoring hours for December is likely short of the actual number; the notes
accompanying the tutoring log do not contain the hours of two documented tutoring sessions, on December
29, 2014 and December 30, 2014.

1 school started; therefore, the Administrative Law Judge determines that Parent's
2 allegation applies to the July 25, 2014 IEP Addendum.

3 72. The hearing record indicates that the July 25, 2014 IEP Addendum was
4 specifically created as a bridge for Student into 9th Grade in the 2014-2015 academic
5 year. The hearing record specifically evidences that the determinations therein were
6 made "as a result of a resolution meeting held with [Parent] on 5/19/2014 (while [Parent's]
7 special education due process case was pending) and as a result of [Parent's] 5/21/2014
8 email (4:30 a.m.) to Dr. Diane Bruening, [Parent's] 6/3/2014 email to Dr. Bruening, and
9 Dr. Bruening's responsive emails dated 5/30/2014 (4:32 p.m.) and 6/05/2014 (4:22
10 p.m.)."¹²⁴ The hearing record evidences, therefore, that the July 25, 2014 IEP Addendum
11 was the result of Respondent's efforts to address Parent's concerns raised in the
12 referenced emails, to resolve the prior due process complaint,¹²⁵ and to transition Student
13 from 8th Grade to 9th Grade.

14 73. Regarding Parent's allegation of "altering," in comparing the July 25, 2014
15 IEP Addendum to the two prior IEP Addendums, it does not appear that the basic
16 accommodations at issue therein were altered.¹²⁶ On review of the three IEP
17 Addendums, it is found that the July 25, 2014 IEP Addendum contains the
18 accommodations from each of the two prior Addendums, with two exceptions: first, a new
19 accommodation was added, that the teachers would provide Student with any
20 assignments that he requests; and second, the e2020 program was *not* listed as one of
21 Student's options for a circumstance when Student or parent felt he needed some "extra
22 curriculum."

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25 ¹²⁴ The relevant exhibits appear to be S13 at HUSD 0781-0787, S13 at HUSD 0775-0780, and HUSD at
26 HUSD0781; these email are also contained at Exhibit G34. The hearing record does not appear to contain
27 a copy of the last referenced Bruening email of June 5, 2014. The referenced due process case was Case
28 No. 14C-DP-049-ADE; it was dismissed on June 6, 2014. It is noted that, in her emails, Parent states that
29 she did not agree with certain items either omitted or added on May 19, 2014 and characterized the situation
30 as Respondent "insisting" on the items remaining in the IEP. Despite taking the position with the Tribunal
at that time that the matter was resolved except for a few details, Parent continued to complain to
Respondent about the items being resolved. For example, see Exhibits S13 and S14.

¹²⁵ At hearing, Parent indicated that they were negotiating to resolve the due process complaint. TR Vol 6
at 1308.

¹²⁶ Because Parent provided no details as to the alleged alterations, the Administrative Law Judge applies
this allegation only to the problems complained of in the Complaint.

1 74. Substantively, the availability of tutoring is there, along with the same
2 number of tutoring hours, four, and the possibility of up to eight hours for missed tutoring.
3 The alternative assignment provision is there. That Student will not be penalized for work
4 not done by the original due date is there. More time to complete assignments, written
5 or typed, is there. Written or textbook assignments in place of missed lab activity is there.
6 The provision of notes, homework and outlines by the next day *when they are not on the*
7 *teacher's website* is there. On returning from absences, giving no busy work and student
8 only needing to do work to demonstrate mastery of concepts is there. Taking quizzes if
9 he was present for the work is there; allowing a later time to take tests/quizzes if he was
10 absent and feels unprepared is there. Therefore, it does not appear that any "alterations"
11 were made to Student's already-existing accommodations in the July 2014 25, IEP
12 Addendum.

13 75. Procedurally, the hearing record does not indicate that an IEP meeting was
14 scheduled during the summer following the May 19, 2014 resolution meeting. However,
15 the parties were in the process of resolving the complaint underlying Case No. 14C-DP-
16 049-ADE during the summer following the resolution session or sessions held in May of
17 2014 and the parties understood that another IEP would be developed for the academic
18 year 2014-2105.¹²⁷

19 76. It is noted that, in September, when Parent was asking Respondent for the
20 latest version of Student's IEP and she then received from Respondent a copy of the July
21 25, 2014 IEP Addendum, Parent replied to Respondent that she had "never seen that
22 version . . . before nor did I agree to it."¹²⁸ However, the hearing record indicates that
23 Parent had received a copy in July; the hearing record evidences not only that Parent
24 received a copy of the July 25, 2014 IEP Addendum on July 25, 2014, but also that she
25 had responded back to Respondent noting her disagreement with "some of the changes
26 made when we had a resolution meeting These need to be removed as previously
27 stated in more than one email. It is not alright for the district to unilaterally make changes.
28 If not, then I will be forced to file a due process to require the stay put."¹²⁹

29 ¹²⁷ Exhibit G HUSD0569.

30 ¹²⁸ Exhibit S26, S27, and G35 (last page).

¹²⁹ Exhibit S16 and S17. After Parent's response, Parent was specifically asked to provide information regarding the items she believed were not agreed upon; however, the emails in the hearing record that

1 of the available work information and the "if applicable" notes is when information is not
2 available on the teachers' webpages.¹³⁴

3 80. The hearing record demonstrated that Respondent had been collecting
4 from teachers the work information for Student's classes and taking it to the front office in
5 the 2013-2014 school year once it found out that Student had no access to the internet.
6 Respondent also provided a laptop for Student to use to access the teachers' webpages.
7 There is no indication in the hearing record that the collection of work information was
8 discontinued or that the laptop was no longer with Student for his use in the academic
9 year 2014-2015.

10 81. On August 6, 2014, Parent emailed Dr. Bruening requesting class work
11 information, including books for all classes (especially Spanish), and she indicated that
12 she was "not sure" whether the teachers had sent the class work information to the front
13 office.¹³⁵ She stated that it would be "nearly impossible" for Student to complete missing
14 work in a timely manner unless he has all the "tools" to be successful, "including an
15 accurate class website with homework assignments, notes and books."

16 82. On August 6, 2014, Respondent informed Parent that Mr. DeRose was
17 working on the textbooks and "any applicable material not on teacher websites."¹³⁶ Mr.
18 DeRose subsequently emailed the information to Parent, but it came back as
19 undeliverable; Respondent then printed out the information for Student or Parent to pick
20 up along with the textbooks.¹³⁷

21 83. Respondent did not provide a log for 2014-2015 school year of the work
22 information being picked up.

23 84. On August 10, 2014, Parent complained in an email, apparently to all
24 Student's teachers and to administrators, that Student was not being provided notes and
25 outlines from lectures he missed by the next day.¹³⁸ However, Parent further stated
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27 ¹³⁴ Ms. Miller indicated that the teacher websites had links to other materials that could be viewed or printed
28 off for study. TR Vol 1 at 142.

29 ¹³⁵ Exhibit G38 at 3 of 3. The uncertainty so stated would signal that Parent had not gone to the school to
30 pick up any material.

¹³⁶ *Id.* Mr. DeRose was the special education team lead at the high school. TR Vol 1 at 182.

¹³⁷ *Id.* Respondent indicated that Parent would need to sign the form and leave it at the front office.

¹³⁸ Exhibit G39.

1 “Luckily, some of the teacher websites had information listed.”¹³⁹ Finally, Parent stated
2 “[i]t is hard to tell what information [Student] missed when we only have the teacher
3 websites to review.” Parent noted missing information from Social Studies Teacher’s
4 website and questioned how to Student was supposed to use the information that was
5 set out on Spanish Teacher’s Website.

6 85. During the hearing, there were several references about the websites either
7 not being fully functional or operational at the beginning of the 2014-2015 school year;
8 however, neither party provided specifics on this.¹⁴⁰

9 86. At hearing, Parent generally focused her argument to be that the work
10 information simply was not on the teachers’ websites the day after Student had been
11 absent; this argument was made in conjunction with her arguments that Student was not
12 allowed to have screen time in excess of two hours per day. The “medical” restriction
13 regarding two hours of screen time per day a day was given to Student on August 22,
14 2014, following a hospitalization.

15 87. Respondent’s position is that in the first semester of 2014-2015, and until
16 the binders were created, Student’s classwork information was collected every day after
17 Respondent knew he was absent and was available to Parent at the front office.

18 ***Issue #1(f)***

19 88. Parent alleged that teachers failed to provide assignments to Student “on
20 his request, as specified in Student’s IEP.” The July 25, 2014 IEP Addendum indicated
21 that this was an accommodation available to Student.¹⁴¹ It is apparent from the hearing
22 record that Parent took over Student’s expected role of asking teachers for information
23 regarding his class work, which was the basic substance of his social emotional goal in
24 the May 14, 2014 IEP Addendum. Parent, not Student, was requesting the assignments;

25 ¹³⁹ Parent does not name those teachers. At hearing, Math Teacher indicated that her website contained
26 handwritten notes including examples, reviews with answers, and videos. TR Vol 2 at 388-89 and 395. At
27 hearing, Social Studies Teacher indicated that, in his class, he used a textbook and provided reading
28 guides, and that most of the classroom work was discussion; he further indicated that an absent student
29 would be given make-up assignments. TR Vol 2 at 409, 415-16, 419. Homebound Social Studies Teacher
30 began working with Student in April 2015; therefore, his testimony does not provide specific information
about the notes and outlines in the first semester of 2014-2015. TR Vol 2 at 526-29.

¹⁴⁰ In Exhibit G40, Social Studies Teacher mentions that some of the information was not available online
due to the software and being trained on use of the software.

¹⁴¹ Exhibit F HUSD0563.

1 Parent testified that she usually did so for Student, because “he had difficulty really
2 grasping what subjects he did or didn’t miss because he had missed so much school. He
3 was overwhelmed.”¹⁴² While she provided many of her emails requesting information or
4 complaining about the information, Parent did not always produce responsive emails.¹⁴³

5 **Issue #1(e)**

6 89. Parent alleged that Respondent’s teachers failed to provide alternative
7 assignments, for Student to earn “points,” so that Student was not penalized for not
8 completing work.¹⁴⁴

9 90. Respondent indicated that some teachers did provide alternative
10 assignments and, essentially, argued that this issue was related to Parent’s
11 misunderstanding regarding the manner in which Respondent was tracking Student’s
12 work and regarding the manner in which his grades, or the completion of his work, was
13 being recorded in the grading system.

14 91. Parent had argued that Student should not be given “zeros” in the grading
15 system for any missing or uncompleted work, as it would affect his future ability to move
16 into honors classes and affect his standing.

17 92. Regarding “zeros,” Respondent explained the distinction between
18 assignment grades and final grades.¹⁴⁵ Respondent indicated that, every time Student
19 completed an assignment, the grade for that assignment was placed on the student’s
20 grade page for that class; Respondent created a specific Google webpage for Student
21 and Parent to be able to track the his assignment grades.¹⁴⁶ Respondent indicated that
22 because the district’s grading system will not allow the grade space to be left blank, while
23 a course was still open for Student, *i.e.*, not completed, either an “I” or a “0” were used as
24 a placeholder only.

25 ¹⁴² TR Vol 6 at 1269. She further indicated that this was another reason why she believed that Respondent
26 should have been providing “direct, in person instruction and/or notes with instructional information ... rather
27 than outlines.” Parent later noted that Student had been absent so much and did not know what he had
28 missed, did not know what to ask because “he had no idea what was going on.” TR Vol 6 at 1297.

29 ¹⁴³ Many emails contained in Petitioners’ exhibits dealt with timeframes outside the timeframe of the instant
30 Complaint, *i.e.*, either prior to the February 2014 IEP or after the filing of the instant Complaint, and/or dealt
with the other due process complaints.

¹⁴⁴ The hearing record demonstrated that Student received final grades for 8th grade; therefore, this issue
would apply to the first semester of 2014-2015.

¹⁴⁵ Post-hearing argument at 17-18.

¹⁴⁶ Student was not given a final grade in any course until the assignments were completed.

1 93. Ms. Miller indicated that Student was never given any “zeros” for 9th Grade
2 classes.¹⁴⁷ Based on Respondent’s explanation of the district’s grading system, it
3 appears that Ms. Miller was likely referring to any final grades.

4 ***Issue #1(d)***

5 94. Parent alleged that Respondent failed to provide adequate tutoring hours to
6 review all concepts Student missed due to absences. Because the tutoring was instituted
7 following the May 2014 IEP meeting(s) as a means to assist Student with the transition
8 from 8th to 9th grade, the time frame regarding such absences and any tutoring to which
9 Student was entitled is the summer and fall of 2014, up to the time of Student’s
10 Homebound status. The tutoring issues are essentially all connected because Parent
11 argues, overall, that there was insufficient tutoring for Student due to his illness absences.
12 However, while Parent argued that Student had needed more than the 8 hours per week
13 (in summer 2014) and more than the up-to 4 hours per week (for 2014-2015) that
14 Respondent had agreed to provide, the existing and continuing scenario was that Student
15 was not available for the offered tutoring even up to the agreed hours.¹⁴⁸

16 95. On September 2, 2014, Parent requested scheduling from Ms. Miller
17 regarding tutoring; Parent asked for make-up tutoring for hours Student had missed while
18 in the hospital, the prior week and the first week of school.¹⁴⁹ On September 3, 2014, Ms.
19 Miller provided her scheduled for tutoring for that week, per the requisite four hours.¹⁵⁰

20 96. On September 4, 2014, Parent gave Ms. Miller some availability and
21 unavailability information for Student’s tutoring; Parent also continued to call for no more
22 than two hours per day of screen time and stated that Respondent needed to provide
23 paper assignments and note “when possible rather than having [Student] utilize the
24 computer.”¹⁵¹

25 97. No witness testified regarding an evaluated or determined need for more
26 tutoring hours, *i.e.*, more than what had been offered, or regarding any impact on Student
27 during the applicable time frame from the alleged failure to provide more tutoring hours.

28 ¹⁴⁷ TR Vol 1 at 151.

29 ¹⁴⁸ The summer 2014 tutoring hours were not documented to the hearing record by either party.

30 ¹⁴⁹ Exhibit S23 at HUSD0815.

¹⁵⁰ *Id.* Additionally, Ms. Miller was asking for Parent’s availability for an IEP meeting.

¹⁵¹ *Id.* at HUSD0818

Issue #1(c)

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98. Parent alleged that Respondent failed to provide make-up tutoring for regular tutoring hours Student missed due to Student's absences, "as specified in Student's IEP." However, the subject IEPs do not contain any provision for Respondent to provide make-up tutoring for regular tutoring hours missed due to Student's absences. The PWN dated May 14, 2014, sets forth Respondent's "agreement" outside the IEP regarding providing tutoring both in the summer of 2014 and for academic year 2014-2015. The PWN is specific as to Respondent's agreement, that up to eight hours of tutoring per week in the summer of 2014 would be provided "depending on Student's health and availability for tutoring" and, the PWN clearly stated the condition that "[a]ny tutoring that is missed due to student illness, doctor's appointments, vacation, and the like, will not be made up the following week." The same condition was stated as to the "up to four (4) hours" per week for the academic year 2014-2015. While Parent disagreed with the condition of not providing make-up tutoring "if [Student] was ill since this was the reason for the instruction,"¹⁵² the fact remains that the IEP contains no provision for any make-up tutoring for regular tutoring hours that Student might miss.

Issue #1(b)

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99. Parent alleged that Respondent failed to provide back-up tutoring for tutoring hours Ms. Miller missed, "as specified in Student's IEP." The hearing record documented only two dates, September 26, 2014, and October 15, 2014, on which Ms. Miller was unavailable to provide the scheduled tutoring.¹⁵³ Ms. Miller acknowledged that the two sessions were rescheduled.¹⁵⁴

Issue #2

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100. Parent alleged that Respondent's "proposal to withdraw" Student from current classes and "start over" in the e2020 program failed to provide FAPE because it was not the least restrictive environment. It was not clear whether this was a two-part allegation or simply an allegation that the e2020 program was not LRE. The Complaint

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¹⁵² Exhibit G25.

¹⁵³ Exhibit S6.

¹⁵⁴ TR Vol 1 at 159-60 and 253-54; also Exhibit S6.

1 contained no factual information regarding any proposed IEP, any proposed IEP
2 addendum or any prior written notice to "withdraw" Student.

3 101. Neither the original Complaint nor the Amended Complaint provided any
4 further details regarding this allegation.

5 102. The hearing record is not clear regarding in what classes Student was finally
6 enrolled in the fall of 2014. Prior to school beginning, Parent requested certain classes,
7 or changes to a particular schedule regarding science.¹⁵⁵ On August 1, 2014,
8 Respondent indicated that Student's classes were set according to prerequisites and 9th
9 Grade pairing of classes, as well as according to prerequisites Student would need for
10 the projected future 10th Grade schedule Parent desired Student to take.¹⁵⁶ Parent's
11 response was to request that Student be allowed to take placement tests for Honors
12 classes and to switch to Honors classes.¹⁵⁷

13 103. After indicating that Student was being placed on Homebound status, the
14 PWN does indicate that Respondent proposes to provide a general curriculum for
15 Student. As a general statement, that curriculum is variant from what appeared to be the
16 classes Respondent initially enrolled Student in (and with which Parent disagreed).
17 However, there is no specificity as to a "withdrawal" from his classes.¹⁵⁸ The hearing
18 record indicated that the binders that Respondent created after November 3, 2014,
19 contained class information from Student's enrolled classes.

20 104. The PWN reflects that the IEP team determined that the current situation
21 and the current program was not working with regard to providing curriculum to Student
22 due to his absences, noting that, at that time, Student had only attended 7 full days of
23 school (of the 46 days) and had participated in only 11 of the offered 37 hours of home
24 tutoring.¹⁵⁹ The PWN specifies that Respondent proposed the variant schedule through
25 the e2020 program based on several factors: the availability of the e2020 program at any
26 time that Student was well enough to attend to the e2020 program; the fact that he could

27 ¹⁵⁵ Exhibit G36.

28 ¹⁵⁶ Exhibit G37. Dr. Bruening's email sets forth what appears to be Student's schedule.

29 ¹⁵⁷ *Id.* Parent does indicate that she had been told that the district no longer does placement testing, and
she questioned that policy.

30 ¹⁵⁸ The hearing record reflected that Respondent continued to collect and place in binders the classwork
information for Student's classes.

¹⁵⁹ The hearing record does not indicate what classes Student had attended to that point.

1 work on the curriculum at his own pace, stopping and starting as he might need to do;
2 and, these were appropriate 9th Grade classes that correlated as closely as possible to
3 the classes he had participated in to that point. Respondent specified that Student would
4 have "continued home tutoring support . . . in order to provide [Student] with additional
5 academic supports (*additional to the support available through the e2020 program.*)"
6 Finally, Respondent noted that it would research whether Student could access the
7 Honors or advanced Placement classed through e2020 and, if that was possible,
8 Respondent was going to enroll Student in those classes.¹⁶⁰

9 105. Parent disagreed with e2020 as she argued that this proposal would have
10 been the primary source of Student's education while Student did not have clearance to
11 have extended screen use due to his prior chemical brain injury.¹⁶¹ Parent argues that
12 the October 21, 2014 IEP calling for e2020 was inappropriate in not taking into account
13 Student's long term and recent medical history, his absences, memory issues and brain
14 injury. Parent argues that Student needs direct or specialized instruction and should not
15 be given a do-it-yourself program.¹⁶² At hearing, Parent stated "it's my understanding
16 Student would have been expected to work independently using [e]2020 and that there
17 would not be . . . comprehension checks every time he used it to see if he remembered
18 the material."¹⁶³ Parent argued Student has memory issues and that Respondent cannot
19 expect him to use the program on his own and that the online e2020 could not promote
20 long-term memory retrieval and does not meet his unique needs to have a specially
21 trained service provider.¹⁶⁴

22 106. Parent further argued that the e2020 proposal does not accommodate the
23 recommendations contained in the March 28, 2014 MET report¹⁶⁵ and does not provide
24 an appropriate education to meet "his specialized needs, where he required specialized

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26 ¹⁶⁰ It is not clear whether Parent received further information in that regard following the filing of the
27 Complaint.

28 ¹⁶¹ TR Vol 6 at 1274.

29 ¹⁶² TR Vol 6 at 1283-84.

30 ¹⁶³ TR Vol 6 at 1289. However, Parent's "understanding" conflicts with the description of e2020 and with
Respondent's further clarification of the support available to any student using the e2020 program.

¹⁶⁴ TR Vol 6 at 1291.

¹⁶⁵ The recommendations Parent noted were providing a written list of tasks to be accomplished, checking
with Student to ensure he understood the directions (in the order to be completed) and to limit the length of
directions. Exhibit K at HUSD0612.

1 services."¹⁶⁶ Parent essentially argued that Student was struggling academically and
2 needed 1:1 direct instruction. However, the hearing record contains no evidence of any
3 academic struggles by Student at this time, only evidence of medical issues and evidence
4 that Student was not attending school on any regular basis due to his chronic migraine
5 headaches. There are no evaluations, MET determinations, or IEP team determinations
6 indicating that Student needed specialized instruction for all his classes due to some
7 disability with the exception that the IEP team had determined in the past that Student be
8 provided with some specialized instruction in Math.¹⁶⁷

9 107. Parent's LRE argument cannot be meshed with the circumstance that
10 Student was on Homebound status, a restrictive status by itself. Based on the hearing
11 record, had Student not been placed on Homebound status due to the medical
12 certification recommending it after 20 days of absences, Student's placement level would
13 have continued to be Level A, general education. There is no evidence that any other
14 placement level was discussed due to the medical certification.

15 ***Issue #4***

16 108. Parent alleged that Respondent failed to provide FAPE by not providing
17 "direct, in person instruction and/or notes with instructional information . . . rather than
18 outlines" to Student. Parent argued that Student had previously received such direct 1:1
19 instruction from an English teacher for writing skills.¹⁶⁸ Student had previously been given
20 specialized instruction in Math.¹⁶⁹

21 109. The July 25, 2014 IEP Addendum noted that Student had a strong
22 understanding of basic math facts but also indicated there was no additional information
23 available due to Student not having completed the academic assessments.¹⁷⁰ Also, the
24 Addendum noted that Student works on the assignments when he is in class but had not
25 completed any of the 2nd semester tests.¹⁷¹ The July 25, 2014 IEP Addendum does not

26 ¹⁶⁶ TR Vol 6 at 1292-95.

27 ¹⁶⁷ The March 28, 2014 MET report, on his triennial evaluation, did not find any adverse impact on his
28 education due to disabilities, but continued to acknowledge his category of OHI and HI. The MET noted
29 that Parent had not allowed scheduling for achievement assessments. Exhibit K at HUSD0608.

30 ¹⁶⁸ Exhibit G99 (email dated June 2013). However, the May 20, 2013 PWN notice proposes tutoring in
Math, not English; there is no documentation demonstrating 1:1 instruction in English. Exhibit G4.

¹⁶⁹ Exhibits H and J.

¹⁷⁰ Exhibit F at HUSD0557.

¹⁷¹ *Id.* at HUSD0559.

1 contain any specialized instruction for Math. Even in October, the IEP Team did not
2 indicate any need for any specialized instruction in Student's classes; the concern of all
3 at that time was Student's absences from class due to illness and his falling further behind
4 due to the absences.

5 110. At hearing, regarding her disagreement with e2020, Parent argued that the
6 IEP Team should have discussed extra "direct" supports for Student at that time due to
7 the absences and Student not having completed assignments.¹⁷² Parent argued that
8 because Student was not "moving forward," the IEP Team should have given him extra
9 support and not the e2020 program.¹⁷³

10 111. Parent argued that Respondent should have contacted Student's doctors
11 for an assessment of whether Student could tolerate an online program for two hours a
12 day five days a week.¹⁷⁴ Parent argued that Respondent should have evaluated Student
13 before making a determination that he no longer needed specialized Math instruction or
14 no longer needed supports.¹⁷⁵ Parent presented no independent evaluations regarding
15 Student's educational needs, and the hearing record does not evidence any request for
16 any independent educational evaluations.

17 112. Despite being guided numerous times with regard to the only issues at hand
18 and the only IEPs at issue, Parent's arguments continually attempted to encompass
19 Student's past history and multiple issues she has raised in prior due process
20 complaints.¹⁷⁶ Presumably, Parent presents in this way because she finally ended up at
21 a due process hearing on her multiple issues and complaints, and she simply feels she
22 can pursue all of this together under her position and argument that Respondent failed to
23 provide FAPE. It should be noted that Parent passionately pursues her issues on behalf
24 of her son.

25 CONCLUSIONS OF LAW

26 ¹⁷² TR Vol 6 at 1312.

27 ¹⁷³ *Id.* at 1313.

28 ¹⁷⁴ *Id.* at 1314.

29 ¹⁷⁵ *Id.* at 1317, 1319, and 1320. The instant Complaint does not contain an allegation of failure to conduct
30 assessments or evaluations; further, the hearing record demonstrates that in March 2014, Parent refused
to give permission for academic assessments. Exhibit I. The basic information that the IEP Team had at
that time was the last MET Report and the 2013-2014 academic information.

¹⁷⁶ TR Vol 6 at 1276-79.

APPLICABLE LAW

FAPE

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1. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a FAPE (free appropriate public education) that meets their individual needs.¹⁷⁷ These needs include academic, social, health, emotional, communicative, physical, and vocational needs.¹⁷⁸ To provide a FAPE, a school district must identify and evaluate all children within their geographical boundaries who may be in need of special education and services. The IDEA sets forth requirements for the identification, assessment, and placement of students who need special education, and seeks to ensure that they receive a FAPE. A FAPE consists of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”¹⁷⁹ The FAPE standard is satisfied if the child’s IEP sets forth his or her individualized educational program that is “reasonably calculated to enable the child to receive educational benefit.”¹⁸⁰ The IDEA mandates that school districts provide a “basic floor of opportunity.”¹⁸¹ The IDEA does not require that each child’s potential be maximized.¹⁸² A child receives a FAPE if a program of specialized instruction “(1) addresses the child’s “unique” needs, (2) provides adequate support services so the child can take advantage of the educational opportunities and (3) is in accord with the child’s individualized educational program.”¹⁸³

The IEP

2. Once a student is determined eligible for special education services, a team composed of the student’s parents, teachers, and others familiar with the student formulate an IEP (individualized education program) that generally sets forth the student’s

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

¹⁷⁸ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

¹⁷⁹ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

¹⁸⁰ *Id.*, 485 U.S. at 207. In 2017, in *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ____, 137 S. Ct. 988, 2017 West Law 1234151 (March 22, 2017), the Supreme Court reiterated the *Rowley* standard, adding that a school “must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” but the Court declined to elaborate on what “appropriate progress” would look like case to case (*i.e.*, in light of a child’s circumstances).

¹⁸¹ *Rowley*, 458 U.S. at 200.

¹⁸² *Id.* at 198.

¹⁸³ *Park v. Anaheim 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)).

1 current levels of educational and functional performance and sets annual goals that the
2 IEP team believes will enable the student to make progress in the general education
3 curriculum.¹⁸⁴ The IEP tells how the student will be educated, especially with regard to
4 the student's unique needs that result from the student's disability, and what services will
5 be provided to aid the student. The student's parents have a right to participate in the
6 formulation of an IEP.¹⁸⁵ The IEP team must consider the strengths of the student,
7 concerns of the parents, evaluation results, and the academic, developmental, and
8 functional needs of the student.¹⁸⁶

9 ***Substantive versus Procedural***

10 3. A determination of whether or not a student received a FAPE must be based
11 on substantive grounds.¹⁸⁷ For a substantive analysis of an IEP, the review of the IEP is
12 limited to the contents of the document.¹⁸⁸ Therefore, any question regarding whether an
13 IEP is reasonably calculated to provide educational benefit to a student must be decided
14 on the basis of the content of the IEP itself.

15 4. Procedural violations in and of themselves do not necessarily deny a student
16 a FAPE. If a procedural violation is alleged and found, it must be determined whether the
17 procedural violation either (1) impeded the student's right to a FAPE; (2) significantly
18 impeded the parents' opportunity to participate in the decision-making process; or (3)
19 caused a deprivation of educational benefit.¹⁸⁹ If one of those three impediments has
20 occurred, the student has been denied a FAPE due to the procedural violation.

21 ***Burden of Proof and Basis of Decision***

22 5. A parent who requests a due process hearing alleging non-compliance with
23 the IDEA must bear the burden of proving that claim.¹⁹⁰ The standard of proof is
24 "preponderance of the evidence," meaning evidence showing that a particular fact is "more

25 ¹⁸⁴ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

26 ¹⁸⁵ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

27 ¹⁸⁶ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

28 ¹⁸⁷ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. §§ 300.513(a)(1).

29 ¹⁸⁸ *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001) ("only those services identified or
described in the . . . IEP should have been considered in evaluating the appropriateness of the program
offered) (relying on *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) (IDEA requirement of a
formal, written offer should be enforced rigorously)).

30 ¹⁸⁹ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

¹⁹⁰ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

1 probable than not.”¹⁹¹ Therefore, in this case Petitioners bear the burden of proving by a
2 preponderance of evidence that Respondent substantively violated the IDEA through the
3 alleged actions or inactions. If a procedural violation is alleged and demonstrated,
4 Petitioners must then show that the procedural violation either (1) impeded Student’s right
5 to a FAPE, (2) significantly impeded Parents’ opportunity to participate in the decision-
6 making process, or (3) caused a deprivation of educational benefit to Student.¹⁹²

7 **DECISION**

8 ***Issue #5***

9 6. Parent alleges that Respondent “altered” Student’s IEP without holding an
10 IEP meeting and without parental agreement.

11 7. The hearing record demonstrated that the July 25, 2014 IEP Addendum
12 was created as a result of a May 2014 resolution meeting conducted to resolve Case No.
13 14C-DP-049-ADE and as a result of multiple emails regarding the issues and items
14 therein. The hearing record evidences that, at that resolution meeting, the parties went
15 through the IEP line by line to ensure that the parties were in agreement on each item.¹⁹³

16 8. 34 C.F.R. § 300.321(c) provides that there are other methods of parental
17 participation for the process of developing an IEP. Those circumstances, and the timing
18 involved to have an IEP ready for Student to begin 9th Grade, appear to be just such a
19 situation of other methods.

20 9. The Administrative Law Judge concludes that the development of this
21 particular IEP addendum without an IEP meeting, even if it were found to be a procedural
22 violation, did not significantly impede Parent’s opportunity to participate in the decision
23 making process, as she fully participated in the May 2014 resolution meeting along with
24 continually providing her input through emails.

25 10. The circumstances of the development did not impede Student’s rights to
26 FAPE as the IEP was specifically developed to provide the accommodations projected by

27 ¹⁹¹ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
28 (1993) quoting *In re Winship*, 397 U.S. 358, 371-72 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437,
29 930 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).

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

30 ¹⁹³ TR Vol 1 at 244 and 272-74. That Parent then made other demands and changes is the stuff of due
process.

1 the parties to be needed to assist Student to garner educational benefit in 9th Grade.
2 Parent's allegation is dismissed.

3 ***Issues #1(a) and (f)***

4 11. Parent alleged that Respondent failed to provide notes and outlines to
5 Student the day after he was absent. However, the IEP provision stated that the notes
6 and outlines would be provided "unless it is on the teacher's website."

7 12. The hearing record demonstrates that Respondent, in fact, did compile the
8 available notes, assignments and work information from teachers. Much of the classwork
9 information was available on the teacher websites; there was evidence that Student was
10 not drilling down on the website far enough to obtain all the available information.¹⁹⁴

11 13. The hearing record demonstrated that Student's medical absences were
12 day-to-day and that the teachers were never certain when or if Student was going to be
13 in class on any one day or the next. Once it was determined that Student had been
14 absent, Respondent gathered up the information available from the teachers and placed
15 it in a folder in the office for Parent to pick up. This practice was in place in 2013-2014
16 and was again followed for the 2014-2015 for absences until Student was placed on
17 Homebound status. At that point, it is not clear whether the family was to pick up
18 materials; however, Ms. Miller began to use the available classwork information in tutoring
19 Student. Parent's allegation is dismissed.

20 14. Parent alleged that teachers failed to provide assignments to Student "on
21 his request."

22 15. Parent's emails requesting additional classwork information do not signify
23 that Student was not being provided with the assignments. With the collection of the
24 classwork from teachers, Student's assignments were also a part of the information
25 compiled for Student to utilize. Parent's allegation is dismissed.

26 ***Issue #1(e)***

27 16. Parent alleged that there were no alternative assignments and that Student
28 was being penalized for failing to complete classwork by due dates.

29
30 ¹⁹⁴ This accommodation was not in place to address Parent's demands for further and more detailed information regarding the coursework.

1 23. Parent alleged that it was a failure to provide FAPE to not provide "direct, in
2 person instruction and/or notes with instructional information . . . rather than outlines."¹⁹⁵
3 Parent offered no evaluative evidence that Student needed direct, in person instruction,
4 i.e., specialized instruction, in any coursework. Parent's allegation is dismissed.

5 **CONCLUSION**

6 24. Because the evidentiary record does not demonstrate any violation of the
7 IDEA by HUSD and, therefore, no remedies would be fashioned, the Administrative Law
8 Judge does not address Petitioners' requested remedies. The Administrative Law Judge
9 concludes that Petitioners' Amended Complaint shall be dismissed.

10 **RULING**

11 Based on the findings and conclusions above,

12 **IT IS HEREBY ORDERED** that Petitioners' Amended Complaint is dismissed in its
13 entirety.

14 ORDERED this day, May 22, 2018.

15 /s/ Kay A. Abramsohn
16 Administrative Law Judge

17
18
19 **RIGHT TO SEEK JUDICIAL REVIEW**

20 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this
21 Decision and Order is the final decision at the administrative level.
22 Furthermore, any party aggrieved by the findings and decisions made
23 herein has the right to bring a civil action, with respect to the complaint
24 presented, in any State court of competent jurisdiction or in a HUSD court
25 of the United States. Pursuant to Arizona Administrative Code § R7-2-
26 405(H)(8), any party may appeal the decision to a court of competent
27 jurisdiction within thirty-five (35) days of receipt of the decision.
28
29

30 ¹⁹⁵ The allegation itself made little sense, as it called for either direct instruction or better notes.

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7
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