

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 N.S., a Student, by and through Parents
4 M.S. and D.S.

No. 22C-DP-032-ADE

5 PETITIONERS,

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 v.

7
8 Tanque Verde Unified School District

9 RESPONDENT.

10
11 **HEARING:** February 6, 2023, February 7, 2023, February 8, 2023, and February
12 9, 2023, followed by extended post-hearing legal memoranda submission and extended
13 review.

14 **APPEARANCES:** Hope N. Kirsch, Esq., appeared on behalf of Petitioners N.S., a
15 Student, by and through Parents M.S. and D.S. Lisa Anne Smith, Esq., and Clayton R.
16 Kramer, Esq., appeared on behalf of Respondent Tanque Verde Unified School District.

17 **WITNESSES:**¹

- 18 • Parent M.S. (**Mother**);
- 19 • Parent D.S. (**Father**) (collectively **Parents**);
- 20 • [REDACTED] Respondent's Special Education Director (Ms. Hodge);
- 21 • Gail Curran, Educational Consultant, Optimal EduOptions;
- 22 • [REDACTED] Educational Advocate (Mr. Jefferson);
- 23 • [REDACTED] Academic Director, LiveStrong House (Ms. Prusse);
- 24 • [REDACTED] Therapist, LiveStrong House;
- 25 • [REDACTED] Counselor / School Psychologist;
- 26 • [REDACTED] Special Education Teacher (Ms. Nielsen);
- 27 • [REDACTED] Ed.S., Lead School Psychologist for Respondent (Ms. Olivas);
- 28 • [REDACTED] Ph.D., Psychologist (Dr. Sammons).

29
30 ¹ 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.

1 **HEARING RECORD:** Certified Court Reporter Richael M. Silvia recorded the
2 proceedings as the official record of the hearing.²

3 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

4
5 Parents brought this due process action on behalf of Student, claiming that
6 Respondent violated the Individuals with Disabilities Education Act (IDEA), alleging
7 procedural and substantive errors. The law governing these proceedings is the IDEA
8 found at 20 United States Code (U.S.C.) §§ 1400-1482 (as re-authorized and amended
9 in 2004),³ and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part
10 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes
11 (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code
12 (A.A.C.) R7-2-401 through R7-2-406.

13 **PROCEDURAL HISTORY**

14 The due process complaint notice (Complaint) in this matter was filed with the
15 Arizona Department of Education (Department) on June 20, 2022. After continuances, a
16 due process hearing was conducted on February 6, 2023, February 7, 2023, February 8,
17 2023, and February 9, 2023.

18 In the instant case, the parties agreed to submit post-hearing briefs.⁴ The parties
19 requested extensions to the deadlines to submit such post-hearing briefs and agreed to
20 extend the 45-day timeline for issuing the Tribunal's decision.

21 ***Evidence, Exhibits, and Issues for Hearing***

22
23
24 ² Transcripts of the testimony have been added to the record. The transcripts are the official record of the
25 hearing. However, by statute, the Tribunal is required to make an audio recording. The Tribunal received
26 the entire transcript after the final hearing session. The Tribunal does not begin its review process with the
27 use of a transcript until the hearing sessions are complete and the post-hearing submissions are complete
28 for the reason that parties often stipulate, concede, and/or withdraw issues that, therefore, would not be
29 considered or addressed in a final decision.

30 ³ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004,"
IDEA 2004 became effective on July 1, 2005.

⁴ Each re-calendar within the hearing process, each additional day of hearing sessions, and each
extension of the matter caused the hearing record review time to be adjusted, increased and re-calendar
due to the Tribunal's existing calendar.

1 The parties presented testimony, exhibits, and some argument at the formal
2 evidentiary hearing sessions that convened over the course of four days.

3 The parties provided pre-marked joint Exhibits A through G. Petitioners had pre-
4 marked Exhibits P1 through P8. Respondent had pre-marked Exhibits R1 through R3.

5 Through the Complaint, Petitioners raised the following issues for a due process
6 hearing:

- 7 1. Whether the August 2020 Individualized Education Program (IEP) provided
8 Student a free appropriate public education (FAPE)?
- 9 2. Whether the May 2021 IEP offered Student a FAPE?
- 10 3. Whether Respondent predetermined placement beginning with the IEP
11 meeting on November 29, 2021, and continuing thereafter?
- 12 4. Whether the IEP created in January 2022 offered Student a FAPE?
- 13 5. Whether LiveStrong was appropriate for Student?

14 ***Requested Remedies***

15 As remedies, Parents requested:

- 16 1. For Respondent to reimburse Parents for tuition, transportation and other
17 related expenses they have incurred for Student attending LiveStrong House;
- 18 2. For Student to remain at LiveStrong House at Respondent's expense until the
19 earlier of Student earning all credits required for graduation or the IEP Team
20 convening to determine that another location or placement is appropriate for
21 Student to receive a FAPE;⁵
- 22 3. Awarding attorneys' fees and expenses, including costs and expert fees,
23 incurred by Petitioners for violations and in connection with the Due Process
24 proceedings, hearing, and any appeals, or deferring to the jurisdiction of
25 Respondent Court for deciding such fees, costs, and expenses; and
- 26 4. For such other and further relief as the Tribunal deems just and proper.

27
28
29 ⁵ After the filing of the Complaint and prior to the hearing in this matter, Student earned all credits required
30 for graduation and received a diploma.

1 The Administrative Law Judge has considered the entire hearing record including
2 the testimony and the admitted exhibits,⁶ and now makes the following Findings of Fact,
3 Conclusions of Law, and Decision finding that Petitioners have failed to demonstrate that
4 Respondent violated the IDEA through the allegations set forth in the Complaint.

5 **FINDINGS OF FACT**

6 1. During the 2018-2019 school year, Student was a ninth-grade student
7 enrolled in Respondent.

8 2. On or about October 25, 2018, Respondent convened a Multidisciplinary
9 Evaluation Team (MET) review and determined that Student was eligible for special
10 education services.⁷ The MET report included evaluation information that provided, in
11 relevant part, as follows:⁸

12 [Student]'s emotional and learning disabilities adversely impact his access
13 to the general education environment without the provision of continued
14 supports.

15 Difficulties with anxiety hamper [Student]'s availability for instruction that
16 would typically be expected of his peers, even in an online course setting.

17 This lack of availability potentially has a harmful effect on [Student]'s ability
18 to maintain and demonstrate important learning concepts. Specialized
19 instruction is needed for the continued development of positive coping
20 strategies and reading skills.

21 **Areas of Eligibility:**

22 **Special Education Primary Category:** Emotional Disability

23 **Special Education Eligibility Category #2:** Specific Learning Disability

24 **For students with SLD only, the following area(s) of eligibility was
25 previously determined:**

26 Reading Comprehension

27 ⁶ 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.

⁷ Exhibit A at 158

⁸ *Id.*

1
2 3. After the completion of the 2018-2019 school year, Student disenrolled from
3 Respondent and enrolled in Primavera, an on-line charter school.

4 4. Student attended Primavera during the 2019-2020 school year.

5 5. At Primavera, Student received accommodations and special education
6 services under an IEP developed during an IEP meeting on August 30, 2019.⁹ Primavera
7 conducted a complete evaluation of Student prior to August 30, 2019 and found that he
8 was eligible for special education and related services.¹⁰ Student's primary eligibility
9 category was Emotional Disability (ED), and his secondary eligibility category was
10 Specific Learning Disability (SLD).¹¹

11 6. At Primavera, Student's IEP included a language arts goal to increase his
12 reading comprehension and a social emotional goal to reach out to his case manager
13 three times per quarter.¹² Student also received three accommodations that provided for
14 (1) testing in a small group environment, (2) extended time to turn in assignments, and
15 (3) the removal of sequence control in his online classroom.¹³ Additionally, Student
16 received 60 minutes of special education services per week, with 30 minutes of instruction
17 in behavior support and 30 minutes of instruction in reading comprehension.¹⁴ While
18 receiving the accommodations and services provided for in the Primavera IEP, Student
19 successfully completed all of the credits he attempted, and he received As, Bs, and Cs in
20 all of his classes.¹⁵ Student also made progress towards both of his goals during the 2019-
21 2020 school year, even though he did not meet them.¹⁶

22 7. After the completion of the 2019-2020 school year, Student disenrolled at
23 Primavera and enrolled in Respondent.
24

25 _____
26 ⁹ Exhibit A at 105-20.

27 ¹⁰ Transcript 2/9/23 at pgs. 14:10-16:18; and Exhibit A at 132.

28 ¹¹ Exhibit A at 105.

29 ¹² Exhibit A at 111-12.

30 ¹³ Exhibit A at 113.

¹⁴ Exhibit A at 118.

¹⁵ Exhibit A at 220.

¹⁶ Exhibit A at 107 and 111-12.

1 8. On August 24, 2020, Respondent convened a meeting to review and revise
2 Student's IEP.¹⁷ The August 2020 IEP acknowledged that:¹⁸

3 **Section 4: Functional Performance**

4 **Social Emotional and Behavior:**

5
6 While [Student]'s behavior did not impact online learning in the past, he is
7 currently struggling with the current online format which requires more
8 interaction with teachers and classmates. He is also struggling with keeping
9 up with due dates. Behavior does significantly and adversely impact the
10 progress in the general curriculum.

11 [Student] does not have a camera on his computer and keeps his
12 microphone off due to social anxiety.

13 [Student] needs to make sure the teacher has a way to assess participation,
14 chat, nod, hand up extension.

15 Remote/online learning has been utilized in the past to allow [Student] to
16 access the general curriculum.

17 There have been no discipline referrals; however, teachers are concerned
18 with [Student]'s lack of participation in class meets as well as his reluctance
19 to follow the class calendar and turn in assignment by their due dates.

20 **Physical Development:**

21 [Student]'s physical development is age expected; however, his social
22 anxiety may prevent him from attending/participating in his classes.

23 **Present level of Academic Achievement**

24 **READING**

25 [Student]'s grades of A's, B's and C's in his online English 9 and 10 classes
26 indicate average reading skills. In the past, [Student] has struggled with
27 comprehension. [Student] needs to work on comprehension of informational
28 text. See accommodation page.

29 **WRITING**

30 ¹⁷ Exhibit A at 148.

¹⁸ Exhibit A at 158.

1 Based on prior English and History classes, [Student]’s writing skills are
2 grade level appropriate. [Student] has no special education needs in this
3 area. See accommodation page.

4 **MATH**

5 Based on grades in former online classes, Algebra 1 and Geometry,
6 [Student] has average Math skills. [Student] has no special education needs
7 in this area. See accommodation page.

8 **Parent/Adult Student’s Input on Student’s Current Academic 9 Achievement:**

10 [Student] and his mother attended the meeting. Mother agrees that Math is
11 one of [Student]’s strongest subjects. He may need more help with writing
12 and reading assignments. Science and History are also a strength.

12 **Current Classroom – Based Data**

13
14 [REDACTED] (LongTerm Sub)

15 Written Language: He is writing me emails when his assignments are late
16 and is trying to complete them. This is showing me that he cares and he is
17 trying. I am very pleased he is emailing me.

18 Mathematics: *I have not worked with him in Math, Social and Emotional:
19 friendships; interactions; mood *He does not have a camera, so I have not
20 been able to see him. He doesn’t like to unmute his microphone, and would
21 rather put comments in the chat. . . .

22 9. Based on Student’s success at Primavera, Respondent drafted an IEP that
23 was substantially similar to Student’s prior IEP.¹⁹ Mother attended the August 24, 2020
24 IEP meeting, and, at that time, she did not report any new concerns with Student’s
25 educational progress.²⁰

26 10. Mother did not express any concerns with Respondent’s proposal to
27 continue providing Student with substantially the same accommodations he had been
28 receiving at Primavera.²¹

29 ¹⁹ Transcript 2/8/23 at 86:6-92:12; compare Exhibit A at 105-20, with Exhibit A at 156-73.

30 ²⁰ Transcript 2/8/23 at 89:3-9.

²¹ Transcript 2/8/23 at 89:10-16.

1 11. Specifically, Respondent's August 2020 IEP continued the same eligibility
2 categories and included similar goals.²² The only significant change in Student's goals
3 was to increase the frequency that he reached out to his case manager; the revised goal
4 being for Student to contact his case manager one time per week, instead of once a
5 month.²³ The August 2020 IEP also provided similar accommodations, calling for (1)
6 Student to be placed with students he knew during small group work, (2) testing in a small
7 group environment, and (3) up to three days of extended time to turn in assignment.²⁴

8 12. The IEP team also considered related services but determined that they
9 were not necessary to provide special education.²⁵

10 13. The Post-Secondary Plan in the August 2020 IEP included almost verbatim
11 the Post-Secondary Plan in the August 2019 IEP; both noted Student wanted to be an
12 engineer, although the August 2019 IEP was more detailed as it provided for Student to
13 "apply for internships at local engineering firms" whereas the August 2020 IEP simply
14 stated Student "will find employment as an engineer."²⁶ Both IEPs stated that to assist
15 Student in meeting post-secondary goals, he would "Graduate from High School; Enroll
16 in classes of interest; Develop a 4 year plan/involve counselor; Register, prepare for/take
17 SAT or ACT; Explore entrance requirements for postsecondary education/training."²⁷

18 2020-2021 School Year

19 14. At the beginning of the 2020-2021 school year, all students within
20 Respondent attended school online due to the COVID-19 pandemic.²⁸ Shortly after the
21 beginning of the 2020-2021 school year, Student began to struggle with synchronous
22 online learning, and he would not turn on his camera or his microphone.²⁹ Initially, Mother
23

24 ²² Exhibit A at 156 and 162-63.

25 ²³ Exhibit A at 163.

26 ²⁴ Exhibit A at 164.

27 ²⁵ Exhibit A at 169.

28 ²⁶ Exhibit A at 115 and 166.

29 ²⁷ Exhibit A at 116 and 167.

30 ²⁸ A hybrid option eventually became available to students during the 2020-2021 school year; however, Student continued to attend school strictly online, against the advice of his psychiatrist. Transcript 2/8/23 at 14:20-19:9.

²⁹ Transcript 2/8/23 at 93:17-94:4.

1 reported Student was having difficulty sleeping, which made it difficult for him to log on to
2 classes.³⁰

3 15. In response, Respondent, Student, and Parents brainstormed ideas to allow
4 Student to be successful, including allowing Student to attend class without turning on his
5 camera, allowing Student to participate in online classes through the chat function, and
6 creating special online meeting rooms so that Student could be in an environment apart
7 from his peers.³¹ In the fall of 2020, Respondent also held a meeting with Student,
8 Parents, and all of Student's teachers to discuss Student's progress and what was
9 expected from him during school.³² Student passed all of his first semester classes except
10 for English.³³

11 16. Nevertheless, Student continued not to participate in most of his classes
12 throughout the spring semester, even though he continued to log in for class.³⁴ Student
13 and Mother repeatedly reported that Student was doing his schoolwork, but in reality,
14 Student failed to turn in many assignments and failed to take several tests.³⁵ As the
15 semester progressed, Student stopped putting forth any effort in some of his classes.

16 17. On March 30, 2021, Mother emailed Student's school counselor to let her
17 know that Student had decided not to take a science test.³⁶

18 18. On April 26, 2021, Mother emailed Student's case manager and informed
19 her that Student had decided not to continue putting forth effort in his core classes so that
20 he could focus on his electives.³⁷ As a result, Student failed all of his core classes but
21 passed his electives during his second semester.³⁸

22 19. During the 2020-2021 school year, Student did not achieve the language
23 arts goal in his IEP; however, his teacher reported that the failure to achieve this goal was
24 not indicative of skills and abilities, rather a reflection of work habits and missing

25 ³⁰ Transcript 2/8/23 at 94:12-20.

26 ³¹ Transcript 2/8/23 at 94:7-9.

27 ³² Transcript 2/8/23 at 99:7-101:25.

28 ³³ Exhibit A at 220.

29 ³⁴ Exhibit B at 383.

30 ³⁵ Exhibit B at 321, 342, 359, and 363.

³⁶ Exhibit B at 387.

³⁷ Transcript 2/8/23 at 126:18-127:18; Exhibit B at 398.

³⁸ Exhibit A at 220.

1 assignments.³⁹ In other words, Student was not completing his work, and Respondent
2 therefore could not measure Student's academic progress.⁴⁰ Although Student was not
3 doing enough work to measure progress on his language arts goal, he made adequate
4 progress on his social emotional goal.⁴¹

5 **May 2021 IEP**

6 20. Even though Student's August 2020 IEP was current through August of
7 2021, Respondent scheduled an IEP meeting for Student on May 14, 2021.⁴² On May 11,
8 2021, Student's Case Manager, Ms. Nielsen, informed Mother that she was working on
9 Student's IEP and asked what Student's plan was for "next year" so that she could make
10 the IEP "appropriate to whichever setting he [would] be in."⁴³ Mother responded that "[h]is
11 plan [was] to do an online school," but that he hadn't decided "whether he want[ed] to do
12 Primavera or Grad Solutions," which are both online public charter schools with self-
13 paced curriculums.⁴⁴ Mother further informed Ms. Nielsen that although Student intended
14 to attend school outside of Respondent "next year," he wanted to retake English over the
15 summer at Respondent.⁴⁵

16 21. A few days later, Mother attended the IEP meeting and acknowledged that
17 the 2020- 2021 school year had been rough for Student "both academically an in terms
18 of his mental health."⁴⁶ Mother again confirmed that she was "very interested in pursuing
19 either Grad Solutions or Primavera for next year, as [Student] [had] been successful in
20 that format in the past."⁴⁷ Mother further reported that Student was "independent in his
21 self-care needs and [took] care of his belongings."⁴⁸ Regarding Student's work habits, the
22 IEP noted that Student had "been successful with fully online classes in the past, but
23 synchronous class structure was very difficult for him."⁴⁹

24 ³⁹ Exhibit A at 199.

25 ⁴⁰ Transcript 2/9/23 at 26:9-27:16.

26 ⁴¹ Transcript 2/9/23 at 27:17-28:15.

27 ⁴² Exhibit A at 200.

28 ⁴³ Exhibit B at 416.

29 ⁴⁴ Exhibit B at 416 and Transcript 2/8/23 at 117:20-118:12.

30 ⁴⁵ Exhibit B at 416.

⁴⁶ Exhibit A at 202.

⁴⁷ *Id.*

⁴⁸ Exhibit A at 203.

⁴⁹ Exhibit A at 204.

1 22. Because Parents had indicated that Student was returning to a format
2 where he had previously been successful, and where Student's existing accommodations
3 and services had allowed him to be successful, the May 2021 IEP did not propose any
4 significant changes. The May 2021 IEP included a language arts goal that was similar to
5 the goal included in the August 2020 IEP, which Student did not achieve because he did
6 not participate in English.⁵⁰ The May 2021 IEP also included a modified social emotional
7 goal geared towards completing and submitting assignments, an executive functioning
8 ability.⁵¹ The May 2021 IEP further included similar accommodations as the August 2020
9 IEP, with the only addition being additional time for Student to take tests.⁵² Student's
10 services remained unchanged.⁵³

11 23. Parents did not raise any concerns with the accommodations and services
12 proposed by the IEP, and they did not inform Respondent that they were rejecting the
13 placement proposed by Respondent.⁵⁴ On June 7, 2021, less than one month after
14 Respondent drafted the May 2021 IEP, Mother contacted Respondent and informed it
15 that Student was starting an online school, and she asked to withdraw him.⁵⁵ Respondent
16 responded that it would take care of withdrawing Student the same day.⁵⁶ Respondent
17 later received a records request from Grad Solutions, one of the online public charter
18 schools that Student was considering attending.⁵⁷

19 **Events from May 30, 2021 to Student's enrollment in the Outback Wilderness**
20 **Program in July of 2021.**

21 24. On May 30, 2021, shortly after the May 14, 2021 IEP meeting, Dr. Leehey
22 wrote a letter detailing Student's struggles with depression and anxiety.⁵⁸ That letter
23 painted a starkly different picture of Student's mental health than had been reported by
24 Parents in August 2020 or May 2021. Indeed, Dr. Leehey reported that Student needed

25 ⁵⁰ Exhibit A at 206.

26 ⁵¹ Exhibit A2 at 07 and Transcript 2/9/23 at 33:22-34:4.

27 ⁵² Exhibit A at 208.

28 ⁵³ Exhibit A at 213.

29 ⁵⁴ Transcript 2/8/23 at 119:2-120:1.

30 ⁵⁵ Exhibit B at 435.

⁵⁶ *Id.*

⁵⁷ Transcript 2/8/23 at 171:10-13 and Exhibit A at 292-93.

⁵⁸ Exhibit G at 1.

1 a residential treatment-oriented level of care as soon as possible.⁵⁹ Dr. Leehey indicated
2 that Student suffered from a combination of diagnoses, including major depression,
3 multiple anxiety disorders, ADHD, a learning disorder in reading, low-average intellect,
4 and parent-child problems.⁶⁰ Dr. Leehey further reported that the clinical manifestations
5 of these diagnoses “include[d], very importantly, that he ha[d] given up” and was
6 struggling with suicidal thoughts.⁶¹

7 25. After receiving Dr. Leehey’s letter, on July 15, 2021, Parents enrolled
8 Student in a wilderness program called Outback.⁶² In their Outback enrollment
9 application, Parents indicated that the specific events that precipitated their decision to
10 seek treatment for Student were because his anxieties and depression had gotten worse
11 “this year,” which had led to isolation, including Student’s refusal to contact his friends or
12 leave the house.⁶³ Parents reported that Student was having issues with respecting
13 Mother, Student wanted to be left alone to do whatever he wanted, and Student wanted
14 to do nothing but play video games and watch TV.⁶⁴ Parents also reported that Student
15 had not left the house in one to two months, and that he would stay in his room even
16 when family came over to the house.⁶⁵ Importantly, Parents never shared this letter, or
17 the information contained in it, with Respondent until well after they had enrolled Student
18 at LiveStrong House.

19 26. Dr. Leehey noted that Student’s current state explained his “severe and
20 completely incapacitating non-compliance with all aspects of his treatment and his life.”⁶⁶
21 Student not only refused to learn how to drive, get a job, or participate in any other school
22 year or summer structure, but also refused to leave the house to see his friends and
23 refused to take his prescribed medications, which led to increased conflict with Parents,
24 including aggressive posturing, pushing, shoving, and destructiveness.⁶⁷ Student also

25 ⁵⁹ *Id.*

26 ⁶⁰ *Id.*

27 ⁶¹ *Id.*

28 ⁶² Exhibit G at 27.

29 ⁶³ Exhibit G at 28.

30 ⁶⁴ Transcript 2/8/23 at 23:24-25:11 and Exhibit G at 27.

⁶⁵ Exhibit G at 27-29.

⁶⁶ Exhibit G at 1.

⁶⁷ *Id.*

1 completely refused to participate in therapy sessions, even by video.⁶⁸ Dr. Leehey
2 described the state of Student’s mental health as a “crisis,” and he opined that Student
3 “require[d] medically (psychiatrically) necessary residential treatment at a facility capable
4 of treating him three to six months.”⁶⁹

5 27. While Student was at Outback, he was evaluated by Dr. Todd Corelli, a
6 licensed clinical psychologist.⁷⁰ On August 31, 2021, Dr. Corelli authored two reports as
7 the result of his evaluation: an eight-page Confidential Educational Assessment Report
8 and a 16-page Confidential Psychological Assessment Report.⁷¹ A psychological
9 assessment is more geared towards medical needs, while an educational assessment
10 includes only information from a psychological assessment that is pertinent to educational
11 needs.⁷² Dividing the information from a comprehensive psychological assessment into
12 two reports allows a patient to “maintain[] privacy in maybe some areas, like on the
13 psychological assessment and MPIS and personality type things, that are not necessarily
14 necessary for an education type assessment,” and it is expected that an educational
15 assessment report would include everything that is relevant to a patient’s educational
16 needs.⁷³

17 28. In Student’s educational assessment report, Dr. Corelli indicated that a
18 diagnosis for ADHD remained appropriate.⁷⁴ Dr. Corelli also diagnosed Student with
19 “deficits in his executive functioning,” and more specifically with “cognitive shifting,” which
20 Student expressed anytime that he was required to adjust to changes in routine or task
21 demands.⁷⁵ Dr. Corelli opined that due to Student’s executive functioning deficits, Student
22 would “need to be provided specific, practical, step-by-step instructions and guidelines to
23 help him develop compensatory skills” to address struggles with initiating tasks and
24 activities, working memory, planning, and organization.⁷⁶ Dr. Corelli further opined that

25 ⁶⁸ *Id.*

26 ⁶⁹ Exhibit G at 2.

27 ⁷⁰ Exhibit G at 3-26.

28 ⁷¹ Exhibit G at 3-10 and Exhibit G at 11-26.

29 ⁷² Transcript 2/9/23 at 40:15-43:5.

30 ⁷³ Transcript 2/9/23 at 42:7-43:5; See Transcript 2/6/23 at 216:20-217:7.

⁷⁴ Exhibit G at 10.

⁷⁵ *Id.*

⁷⁶ *Id.*

1 based on Student's testing results, there was no information to support a continuing
2 diagnosis for a specific learning disability.⁷⁷ Nowhere in the educational assessment did
3 Dr. Corelli indicate an educational need for placement in a residential setting.⁷⁸

4 29. In contrast, Student's psychological assessment report included
5 significantly more information regarding Student's mental health diagnoses.⁷⁹ In addition
6 to the diagnoses listed in the educational assessment, Dr. Corelli diagnosed Student with
7 generalized anxiety disorder, social anxiety disorder, and major depressive disorder.⁸⁰
8 Based on these diagnoses, Dr. Corelli "recommended that following his stay at Outback,
9 [Student] go on to a longer-term therapeutic residential school" that could address his
10 "anxiety, social anxiety, poor social skills, depression, low self-esteem, and self-
11 criticalness."⁸¹ Dr. Corelli further opined that "[r]egular individual, group, and family
12 therapy [would] all be important."⁸²

13 **Parents' Unilateral Placement at LiveStrong House**

14 30. Student was discharged from Outback on September 23, 2021.⁸³ That
15 same day, Parents enrolled Student at LiveStrong House for continued treatment.⁸⁴ When
16 Parents enrolled Student at LiveStrong House, they completed a number of forms,
17 including an Informed Consent for Treatment and Participation and a Confidentiality and
18 Health Insurance Portability and Accountability Act of 1996 (HIPAA) Policy.⁸⁵ In the
19 Informed Consent for Treatment Form, Parents acknowledged that if Student was
20 "removed from [LiveStrong House] against the advice of the treatment team's
21 recommendations, that [Student] would be discharged Against Medical Advice."⁸⁶ And in
22 the Confidentiality and HIPAA Policy, Parents acknowledged that LiveStrong House
23 complies with HIPAA requirements.⁸⁷

24 ⁷⁷ *Id.*

25 ⁷⁸ Exhibit G at 3-10.

26 ⁷⁹ Exhibit G at 10-26.

27 ⁸⁰ Exhibit G at 26.

28 ⁸¹ *Id.*

29 ⁸² *Id.*

30 ⁸³ Exhibit G at 31.

⁸⁴ Exhibit D at 95.

⁸⁵ Exhibit D at 103-04 and 106.

⁸⁶ Exhibit D at 104.

⁸⁷ Exhibit D at 106.

1 31. LiveStrong House is a residential support program that provides treatment
2 for mental health conditions and processing disorders.⁸⁸ Its clinicians include licensed
3 clinical social workers that provide mental health treatment and bill medical insurance
4 carriers for that treatment.⁸⁹ Its treatment modalities include rational behavior therapy,
5 cognitive behavior therapy, solution focused therapy, recreational therapy, motivational
6 interviewing, dialectal behavior treatment, neurofeedback, group therapy, family therapy,
7 individual therapy, and a therapeutic community.⁹⁰

8 32. During his time at LiveStrong House, Student received extensive treatment
9 for his mental health diagnoses pursuant to a Treatment Plan, including the diagnoses
10 that were not listed in Dr. Corelli's educational assessment.⁹¹

- 11 a. First, Student received individual counseling two times per week, where he
12 worked on issues including identifying goals outside of academics,
13 challenging negative self-talk, developing emotional language, addressing
14 symptoms of depression, communicating with Parents, challenging
15 irrational beliefs, addressing suicidal ideation, and addressing symptoms of
16 avoidance personality disorder.⁹²
- 17 b. Second, Student received ongoing neurofeedback, which involved placing
18 electrodes on his scalp to target areas where brain wave activity needed
19 regulation.⁹³
- 20 c. Third, Student participated in ongoing recreational therapy on a daily or
21 weekly basis, which included activities like sports, games, music, arts and
22 crafts, gym participation, exercise, hiking, mountain biking, skiing,
23 snowboarding, running, and swimming.⁹⁴
- 24 d. Fourth, Student participated in group therapy four times per week, where
25 he discussed topics including toxic masculinity, family visits, safe-sex

26 ⁸⁸ Transcript 2/6/23 at 131:13-132:6.

27 ⁸⁹ Transcript 2/6/23 at 132:14-19; see, e.g., Exhibit P7 at 17-18.

28 ⁹⁰ Transcript 2/7/23 at 65:13-67:19.

29 ⁹¹ Transcript 2/7/23 at 62:8-63:18 and Exhibit D at 114-19.

30 ⁹² Transcript 2/7/23 at 68:8 and Exhibit D at 258-64, and 280-86.

⁹³ Transcript 2/7/23 at 66:23-67:10, 68:9-12.

⁹⁴ Transcript 2/7/23 at 66:10-16 and 68:13-20.

1 practices, healthy relationships, what to do with friends besides using
2 substances, mindful meditation, frustrations with relationships with Parents,
3 family interactions, and the impacts of pornography, and he also engaged
4 in art therapy.⁹⁵

5 e. Finally, Student participated in family therapy one time per week.⁹⁶

6 33. Pursuant to an Educational Services Agreement, Coral Sands Academy,
7 Inc. (CSA) provides educational and academic services to the students for which
8 LiveStrong House provides rehabilitation services.⁹⁷ CSA provides LiveStrong House with
9 full teacher support and supervision of courses, tutoring for both individual and small
10 groups, communication with parents and LiveStrong House staff, high school diplomas,
11 ACT and SAT preparation, college and career preparation, development of academic
12 plans, and credit and GPA recovery.⁹⁸ In exchange for these services, CSA bills
13 LiveStrong House at a flat rate of \$180 per student per month.⁹⁹ CSA is a fully online
14 school with self-paced classes.¹⁰⁰ CSA teachers work with students on course subject
15 matter and CSA teachers grade the assignments that students complete.¹⁰¹ Any student
16 can enroll in CSA, and it is unnecessary to have another teacher work with a student at
17 home in order to complete the program.¹⁰²

18 34. While receiving the extensive treatment described above at LiveStrong
19 House, Student attended high school online at CSA four days per week.¹⁰³ Non-
20 certificated LiveStrong House staff members were present while Student completed his
21 course work, and, at times, Student would work with LiveStrong House's Academic
22 Director, Ms. Prusse, who is a special education teacher.¹⁰⁴ But in reality, Student
23 received his education from CSA: Student received all of his credits from CSA, Student

24 ⁹⁵ Transcript 2/7/23 at 68:21-23 and Exhibit D at 275-79.

25 ⁹⁶ Transcript 2/7/23 at 68:24-25.

26 ⁹⁷ Exhibit D at 88.

27 ⁹⁸ *Id.*

28 ⁹⁹ Exhibit D at 90.

29 ¹⁰⁰ Transcript 2/6/23 at 244:10-18.

30 ¹⁰¹ Transcript 2/6/23 at 244:19-245:4.

¹⁰² Transcript 2/6/23 at 245:5-15.

¹⁰³ Exhibit D at 39.

¹⁰⁴ Transcript 2/6/23 at 200:1-202:8.

1 communicated with CSA teachers about his coursework, CSA teachers graded the
2 assignments Student completed, and when he graduated, Student received his diploma
3 from CSA.¹⁰⁵

4 35. LiveStrong House billed Parents \$395 per day for Student's time at
5 LiveStrong House, significantly more than the rates charged by CSA for Student's
6 education.¹⁰⁶ LiveStrong House also billed Parents for a nonrefundable admissions fee,
7 which covered things such as "bedding, ski passes, gym pass, and all company
8 activities."¹⁰⁷ LiveStrong House further billed Parents for incidentals, which covered things
9 such as "clothing, doctor visits, personal activities, etc."¹⁰⁸ Parents submitted claims to
10 their medical insurance carrier for the treatment that LiveStrong House provided, and
11 ultimately, their medical insurance carrier covered a significant portion of the expenses.¹⁰⁹

12 36. When Student graduated from CSA on August 3, 2022, he continued to stay
13 at LiveStrong House.¹¹⁰ Indeed, as of the date of the hearing in February of 2023, six
14 months after his graduation date and one year after he turned 18, Student continued to
15 reside at LiveStrong House to work on "life skills."¹¹¹

16 **The January 2022 IEP**

17 37. On September 27, 2021, Parents contacted Respondent to request an IEP
18 meeting for Student.¹¹² The next day, Respondent's lead school psychologist, Ms. Olivas,
19 responded and asked what online school Student was attending, indicating that typically
20 the school he was attending would be responsible for holding an IEP meeting.¹¹³ Parents
21 responded that they were requesting an out-of-district placement for Student, and in
22 response to another question from Ms. Olivas, Parents informed Respondent for the first
23 time that they had placed Student at LiveStrong House "for residential treatment."¹¹⁴ Ms.

24 _____
25 ¹⁰⁵ Transcript 2/6/23 at 183:22-184:1, 202:25-203:18, 242:14-16; Exhibit D at 12 and 243-45.

26 ¹⁰⁶ Exhibit P7 at 1.

27 ¹⁰⁷ *Id.*

28 ¹⁰⁸ *Id.*

29 ¹⁰⁹ Exhibit P7 at 17-109 and Exhibit R at 3.

30 ¹¹⁰ Transcript 2/8/23 at 34:25-35:3.

¹¹¹ *Id.*

¹¹² Exhibit B at 438-39.

¹¹³ Exhibit B at 348.

¹¹⁴ Exhibit B at 438.

1 Olivas continued to ask for additional information, including whether LiveStrong House
2 had requested a copy of the current IEP or whether it wanted a new IEP.¹¹⁵ Parents did
3 not immediately respond.¹¹⁶ On October 14, 2021, more than two weeks later, Parents
4 responded to Ms. Olivas's September 28th email.¹¹⁷ For the first time, Parents raised
5 several concerns with Student's May 2021 IEP.¹¹⁸ For the first time, Parents provided
6 Respondent with a copy of Dr. Leehey's letter.¹¹⁹ For the first time, Parents indicated that
7 they were rejecting the placement proposed by Respondent and were seeking
8 reimbursement for tuition and related expenses for Student as long as he was at
9 LiveStrong House.¹²⁰ Parents thereafter reiterated the request for an IEP meeting,
10 indicated that they would like placement at a residential treatment center (RTC)
11 considered, and asked Respondent to invite someone from the Regional Behavioral
12 Health Agency (RBHA) to attend the meeting.¹²¹

13 38. One week later, on October 21, 2021, Ms. Olivas responded to Parents to
14 schedule the IEP meeting and to request additional information, including "a copy of any
15 IEP or evaluations that Live Strong House developed or relied on."¹²² After receiving no
16 response, Ms. Olivas contacted Parents again on October 26, 2021.¹²³ Parents
17 responded the same day, and although they provided responses to Respondent's
18 questions, they did not provide a copy of Dr. Corelli's evaluation report, which Ms. Prusse
19 had previously advised Parents not to disclose.¹²⁴

20 39. Eventually, after several email exchanges regarding scheduling,
21 Respondent scheduled the first of three IEP meetings for Student on November 29,
22 2021.¹²⁵ Prior to that meeting, however, and in fact immediately after Mother contacted
23 Respondent on September 27, 2021, Ms. Olivas contacted the Department to request

24 ¹¹⁵ Exhibit B at 437-38.

25 ¹¹⁶ Exhibit B at 437.

26 ¹¹⁷ *Id.*

27 ¹¹⁸ *Id.*

28 ¹¹⁹ *Id.*

29 ¹²⁰ *Id.*

30 ¹²¹ *Id.*

¹²² Exhibit B at 443.

¹²³ Exhibit B at 446.

¹²⁴ *Id.* and Exhibit E at 3.

¹²⁵ Exhibit B at 447-49 and B at 452; see generally P1, P2, and P3.

1 further information regarding educational placements in RTCs.¹²⁶ Ms. Olivas also
2 contacted the RBHA in an attempt to get a representative to attend the IEP meeting, as
3 Parents had requested.¹²⁷ The RBHA informed Ms. Olivas that because Student had
4 been placed by Parents, rather than Respondent, Parents would need to be the ones to
5 initiate a request for a RBHA representative.¹²⁸

6 40. The first IEP meeting was attended by Parents; their advocate, Mr.
7 Jefferson; Ms. Prusse; Ms. Olivas; Ms. Nielsen; Respondent's representative and Director
8 of Student Services, Ms. Hodge; and a general education teacher within Respondent.¹²⁹
9 During that meeting, the IEP team discussed Student's present levels, which were
10 reported by Ms. Prusse and Parents.¹³⁰ Ms. Prusse indicated that she had seen "serious
11 engagement" on Student's part, Student was working well independently, Student had
12 been self-advocating, Student had a high degree of work completion, Student had been
13 on-task and attending to tasks well, and Student had been "coming up every day up the
14 stairs to the classroom with a smile on his face."¹³¹ Ms. Prusse also reported that
15 LiveStrong House had not seen any issues with Student's reading comprehension.¹³² For
16 their part, Parents provided information about how and why they had placed Student at
17 Outback, and they reported that since Student had been at LiveStrong House, he had
18 been "using his coping skills," was a "different person" than before he had received
19 treatment, and that his progress had been "unbelievable."¹³³ Parents also provided
20 Respondent with Dr. Corelli's evaluation report for the first time.¹³⁴

21 41. Although the IEP team had not yet discussed Student's goal or services,
22 towards the end of the first IEP meeting, Mr. Jefferson raised the issue of Student's
23 eventual placement and indicated that Parents believed that Student "still require[d] a
24

25 ¹²⁶ Transcript 2/8/23 at 180:18-182:21 and Exhibit B at 464-65.

26 ¹²⁷ Transcript 2/8/23 at 188:24-189:8.

27 ¹²⁸ Transcript 2/8/23 at 189:9-13.

28 ¹²⁹ Exhibit P1 at 3.

29 ¹³⁰ See generally Exhibit P at 1.

30 ¹³¹ Exhibit P1 at 7.

¹³² *Id.*

¹³³ Exhibit P1 at 10-12.

¹³⁴ Exhibit P1 at 15.

1 residential level of support.”¹³⁵ In response, Ms. Hodge stated that “at this point,
2 Respondent does not feel that he needs placement in a—in a residential treatment facility
3 for educational purposes.”¹³⁶ Mr. Jefferson thereafter accused Respondent of
4 predetermining Student’s placement.¹³⁷ After being interrupted several times by Mr.
5 Jefferson, Ms. Hodge was able to clarify that Respondent did not believe that Student
6 had an educational need for placement in a residential setting based on what it saw in
7 May of 2021, and that Respondent had only recently been provided information from
8 LiveStrong House, including, but not limited to, Dr. Corelli’s evaluation report.¹³⁸ Shortly
9 after this exchange, the IEP team agreed to reconvene at a later date to allow Respondent
10 to review the information that had recently been provided by LiveStrong House and
11 Parents.¹³⁹

12 42. After two additional IEP meetings on January 15 and 24, 2022, Respondent
13 developed a new IEP for Student.¹⁴⁰ In developing the January 2022 IEP, Respondent
14 incorporated substantial feedback from Parents and information provided by Parents and
15 LiveStrong House.¹⁴¹ The IEP included six social emotional goals aimed towards
16 requesting assistance with non-preferred tasks, checking in with a special education
17 teacher regarding Student’s emotional state, identifying emotions and behaviors in real
18 or hypothetical scenarios, identifying coping strategies, identifying strategies to complete
19 non-preferred tasks, and breaking down complex assignments.¹⁴² The January 2022 IEP
20 also provided a number of accommodations, including providing a consistent daily
21 routine, using visual tools to allow Student to break down and plan assignments, breaking
22 down assignments into smaller parts, frequently monitoring independent work to ensure
23 completion, allowing extra test time, placing Student in groups with students he knew as
24

25 _____
26 ¹³⁵ Exhibit P1 at 15-16.

27 ¹³⁶ Exhibit P1 at 16; see also Transcript 2/6/23 at 264:1-6 (identifying speaker).

28 ¹³⁷ Exhibit P1 at 16.

29 ¹³⁸ *Id.*

30 ¹³⁹ Exhibit P1 at 18.

¹⁴⁰ See generally Exhibits P2 and P3.

¹⁴¹ Transcript 2/7/23 at 228:2-7; compare Exhibit R2, with Exhibit A at 229-49.

¹⁴² Exhibit A at 236.

1 much as possible, teacher prompting to initiate tasks, allowing breaks when needed,
2 testing in a small group environment, and extended time to complete assignments.¹⁴³

3 43. The January 2022 IEP further offered Student numerous services.¹⁴⁴ The
4 IEP first provided for 60 minutes per day of behavior support delivered by a special
5 education teacher, which amounted to five hours per week of direct, specially designed
6 instruction.¹⁴⁵ Although the amount of direct instruction offered was 60 minutes per day,
7 in reality, Student would have been in a study support class for 120 minutes per day,
8 which amounted to 10 hours per week.¹⁴⁶

9 44. At LiveStrong House, Student received a total of six hours of behavior
10 support per week, delivered by a combination of an executive functioning coach, non-
11 certificated LiveStrong House staff, and Ms. Prusse.¹⁴⁷ Of this amount, Ms. Prusse
12 characterized two hours as being delivered by a special education teacher and four hours
13 as push-in services provided by non-certificated LiveStrong House personnel inside the
14 classroom.¹⁴⁸ The January 2022 IEP provided more hours of special-educator delivered
15 and supervised behavior support than Student was receiving at LiveStrong House.

16 45. The January 2022 IEP also provided for 30 minutes per week of counseling
17 delivered by a counselor or psychologist.¹⁴⁹ This instruction was aimed towards
18 recognizing and accurately labeling emotions and how they are linked to behavior, as well
19 as helpful self-talk strategies to use in stressful situations.¹⁵⁰ At LiveStrong House,
20 Student received five hours of counseling per week, delivered through individual and
21 group therapy.¹⁵¹ But as set forth above, that counseling was medical and therapeutic in
22 nature, rather than educational in nature. Based on the services offered by Respondent,
23 the IEP indicated that the least restrictive environment (LRE) for Student's education was
24 to be inside the general education classroom between 40 and 79 percent of the school

25 ¹⁴³ Exhibit A at 238.

26 ¹⁴⁴ Exhibit A at 244.

27 ¹⁴⁵ *Id.*

28 ¹⁴⁶ *Id.*

29 ¹⁴⁷ Exhibit P3 at 21.

30 ¹⁴⁸ Exhibit P3 at 22.

¹⁴⁹ Exhibit A at 244.

¹⁵⁰ *Id.*

¹⁵¹ Exhibit P3 at 20.

1 day.¹⁵² For the remainder of the day, Student would be in a small group setting (the study
2 support classes) and counseling.

3 46. On January 25, 2022, Respondent provided Parents with a Prior Written
4 Notice (PWN) detailing the decisions reached by the IEP team.¹⁵³ The PWN noted that
5 adding additional counseling minutes was considered and refused because removing
6 Student from class for additional counseling would remove him from interactions with his
7 nondisabled peers and was not the LRE for Student's education.¹⁵⁴ The PWN further
8 explained that the extensive counseling that Student was receiving at LiveStrong House
9 went far beyond Student's educational needs and addressed the medical needs identified
10 by his doctor, i.e., Dr. Leehey.¹⁵⁵ Additionally, the PWN noted that placing Student at a
11 therapeutic RTC was considered and refused because an RTC was not the LRE for
12 Student's education, and Respondent was willing and able to provide the services
13 provided for in the IEP within Respondent.¹⁵⁶

14 47. Parents ultimately rejected the services and accommodations offered by
15 Respondent in the January 2022 IEP. Instead, they elected to keep Student at LiveStrong
16 House, where he remained until at least the date of the hearing in this matter—six months
17 after Student received his high school diploma from CSA and one year after he turned
18 18.

19 **Dr. Sammons' Testimony at Hearing**

20 48. Dr. Sammons is a licensed psychologist in private practice.¹⁵⁷ She has
21 never worked for Respondent.¹⁵⁸ In addition to her private practice, Dr. Sammons teaches
22 special education classes in the area of assessment at the University of Arizona.¹⁵⁹ She
23 obtained her Ph.D. in school psychology in 2009, her masters in special education in
24 1997, and her bachelor's in liberal studies in 1981.¹⁶⁰ Dr. Sammons is a nationally certified

25 ¹⁵² Exhibit A at 229.

26 ¹⁵³ Exhibit A at 246-47.

27 ¹⁵⁴ Exhibit A at 246.

28 ¹⁵⁵ *Id.*

29 ¹⁵⁶ *Id.*

30 ¹⁵⁷ Transcript 2/9/23 at 3:5 and Ex R1 at 1.

¹⁵⁸ Transcript 2/9/23 at 8:12-14.

¹⁵⁹ Transcript 2/9/23 at 6:6-18.

¹⁶⁰ Exhibit R1.

1 school psychologist, and she holds certificates in school psychology; special education;
2 general education; and cross-cultural, language, and academic development.

3 49. Dr. Sammons has worked with students who refuse to go to school and
4 students who have anxiety, depression, and Attention Deficit Hyperactivity Disorder
5 (ADHD).¹⁶¹ Throughout her career, she has worked with hundreds of students and clients
6 with anxiety and depression.¹⁶² In general, parents come to Dr. Sammons for educational
7 assessments when they are unhappy with the services that a school is providing.¹⁶³ There
8 are times when Dr. Sammons agrees with parents that there should be more done at the
9 school level, and there are others when she informs parents that the services they are
10 requesting are not for school-related issues.¹⁶⁴

11 50. In this case, Dr. Sammons reviewed numerous educational records related
12 to Student, including a MET report from 2018, the Primavera IEP, the August 2020 IEP,
13 the May 2021 IEP, the January 2022 IEP, and Student's grades.¹⁶⁵ Dr. Sammons also
14 reviewed a letter written by Student's psychiatrist, Dr. [REDACTED] Leehey, and educational and
15 psychological evaluation reports prepared by an independent psychologist, Dr. [REDACTED]
16 Corelli.¹⁶⁶ Based on her review of these records, Dr. Sammons opined that Respondent
17 offered Student appropriate services and supports at all times relevant to this action.¹⁶⁷

18 51. With respect to the August 2020 IEP, Dr. Sammons opined that the IEP
19 offered Student an appropriate education based on the needs reflected in his 2019
20 evaluation.¹⁶⁸ Specifically, that evaluation indicated that Student had needs as a result of
21 his emotional disability and in reading comprehension, which the August 2020 IEP
22 addressed.¹⁶⁹

23 52. When Respondent drafted the August 2020 IEP, Parents did not identify
24 any new concerns with Student's academic performance. Parents reported that Student

25 ¹⁶¹ Transcript 2/9/23 at 9:12-20.

26 ¹⁶² Transcript 2/9/23 at 122:21-123:2.

27 ¹⁶³ Transcript 2/9/23 at 8:15-10:4.

28 ¹⁶⁴ Transcript 2/9/23 at 9:21-10:4.

29 ¹⁶⁵ Transcript 2/9/23 at 10:15-11:24.

30 ¹⁶⁶ *Id.*

¹⁶⁷ Transcript 2/9/23 at 11:25- 12:16.

¹⁶⁸ Transcript 2/9/23 at 16:19-23:24.

¹⁶⁹ Transcript 2/9/23 at 16:19-23:24.

1 had his driver's permit, helped around the house with household chores and upkeep, was
2 responsible for pet care, and managed his own academic schedule.¹⁷⁰ According to Dr.
3 Sammons, none of the information that Parents provided would have raised any
4 concerns.¹⁷¹

5 53. Dr. Sammons opined that, all told, Student gained a meaningful educational
6 benefit during the 2020-2021 school year, notwithstanding his grades, in large part
7 because later testing showed that Student experienced growth both academically and
8 cognitively.¹⁷²

9 54. Dr. Sammons opined that the May 2021 IEP offered Student an appropriate
10 education because it continued to provide special education services for him.¹⁷³ Further,
11 the May 2021 IEP included social emotional services and goals, which was where Student
12 was struggling.¹⁷⁴ Nothing within Student's present levels suggested a need for more
13 intensive educational services because when Student did his assigned work, he did so
14 adequately, which indicated that his poor academic performance was not related to
15 academic needs.¹⁷⁵

16 55. Dr. Sammons opined that the January 2022 IEP offered Student an
17 appropriate education at the time it was written and that Student did not need placement
18 in an RTC to access the general education curriculum.¹⁷⁶ The IEP provided Student with
19 access to the general education curriculum, provided Student with additional support and
20 services, included appropriate goals to address Student's needs as identified by Dr.
21 Corelli's educational assessment report, and included sufficient service minutes to
22 address Student's goals.¹⁷⁷ In fact, Dr. Sammons testified that she had never seen as
23 many service minutes as Respondent offered in Student's IEP, which "indicate[d] that the
24 [Respondent] was trying to go above and beyond in terms of meeting [Student's]

25 _____
26 ¹⁷⁰ Transcript 2/9/23 at 22:1- 23:7.

¹⁷¹ Transcript 2/9/23 at 23:8-10.

¹⁷² Transcript 2/9/23 at 28:16-30:14.

¹⁷³ Transcript 2/9/23 at 31:18-25.

¹⁷⁴ Transcript 2/9/23 at 31:18-25.

¹⁷⁵ Transcript 2/9/23 at 32:1-33:8.

¹⁷⁶ Transcript 2/9/23 at 57:10-14, 60:20-61:2.

¹⁷⁷ Transcript 2/9/23 at 57:15-59:10.

1 needs.”¹⁷⁸ Dr. Sammons also testified that the therapy Student was receiving at
2 LiveStrong House was to address his medical needs, and that it is not the role of schools
3 to provide clinical therapy to students to treat anxiety and depression.¹⁷⁹

4 **CONCLUSIONS OF LAW**

5 **APPLICABLE LAW**

6 ***FAPE***

7
8 1. Through the IDEA, Congress has sought to ensure that all children with
9 disabilities are offered a FAPE that meets their individual needs.¹⁸⁰ These needs include
10 academic, social, health, emotional, communicative, physical, and vocational needs.¹⁸¹
11 To provide a FAPE, a school district must identify and evaluate all children within their
12 geographical boundaries who may be in need of special education and services. The
13 IDEA sets forth requirements for the identification, assessment, and placement of
14 students who need special education, and seeks to ensure that they receive a FAPE. A
15 FAPE consists of “personalized instruction with sufficient support services to permit the
16 child to benefit educationally from that instruction.”¹⁸² The FAPE standard is satisfied if
17 the child’s IEP sets forth his or her individualized educational program that is “reasonably
18 calculated to enable the child to receive educational benefit.”¹⁸³ The IDEA mandates that
19 school districts provide a “basic floor of opportunity.”¹⁸⁴ The IDEA does not require that
20 each child’s potential be maximized.¹⁸⁵ A child receives a FAPE if a program of
21 specialized instruction “(1) addresses the child’s “unique” needs, (2) provides adequate

22 _____
23 ¹⁷⁸ Transcript 2/9/23 at 59:2-10.

24 ¹⁷⁹ Transcript 2/9/23 at 59:11-60:19.

25 ¹⁸⁰ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

26 ¹⁸¹ Seattle Sch. Dist. No. 1 v. B.S., 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983
27 U.S.C.C.A.N. 2088, 2106).

28 ¹⁸² Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 204 (1982).

29 ¹⁸³ *Id.*, 485 U.S. at 207. In 2017, in *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ____, 137 S. Ct.
30 988, 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).

¹⁸⁴ *Rowley*, 458 U.S. at 200.

¹⁸⁵ *See id.* at 198.

1 support services so the child can take advantage of the educational opportunities and (3)
2 is in accord with the child’s individualized educational program.”¹⁸⁶

3 2. The FAPE to which a child with a disability is entitled under the IDEA is not
4 the absolute best or “potential-maximizing” education.¹⁸⁷ The IDEA “cannot and does not
5 promise ‘any particular [educational] outcome.’ No law could do that—for any child.”

6 ***The IEP***

7 3. Once a student is determined eligible for special education services, a team
8 composed of the student’s parents, teachers, and others familiar with the student
9 formulate an IEP that generally sets forth the student’s current levels of educational and
10 functional performance and sets annual goals that the IEP team believes will enable the
11 student to make progress in the general education curriculum.¹⁸⁸ The IEP tells how the
12 student will be educated, especially with regard to the student’s unique needs that result
13 from the student’s disability, and what services will be provided to aid the student. The
14 student’s parents have a right to participate in the formulation of an IEP.¹⁸⁹ The IEP team
15 must consider the strengths of the student, concerns of the parents, evaluation results,
16 and the academic, developmental, and functional needs of the student.¹⁹⁰

17 4. An IEP is “the centerpiece of the [IDEA’s] education delivery system for
18 disabled children.”¹⁹¹ An IEP is prepared by an “IEP team” which includes teachers,
19 school officials, and the child’s parents.¹⁹² When an IEP team meets to determine the
20 needs of a student with a disability, participation of the student’s parents is crucial to
21 ensure that their student receives all of the benefits to which he or she is entitled under
22 the IDEA.¹⁹³ Determining whether the IEP is crafted to meet the “reasonably calculated”
23 standard requires the IEP team to undergo a fact-intensive exercise that is informed by
24 the expertise of school officials and the input of the child’s parents. *Id.* at 399.

25 ¹⁸⁶ *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006) (citing *Capistrano Unified*
26 *Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995).

27 ¹⁸⁷ See *Rowley*, 458 U.S. at 197 n. 21 (1982).

28 ¹⁸⁸ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

29 ¹⁸⁹ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

30 ¹⁹⁰ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

¹⁹¹ *Honig v. Doe*, 484 U.S. 305, 311 (1988).

¹⁹² *Endrew F.*, 580 U.S. at 391.

¹⁹³ *Rowley*, 458 U.S. at 208-09.

Substantive versus Procedural

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

5. A determination of whether or not a student received a FAPE must be based on substantive grounds.¹⁹⁴ For a substantive analysis of an IEP, the review of the IEP is limited to the contents of the document.¹⁹⁵ Therefore, any question regarding whether an IEP is reasonably calculated to provide educational benefit to a student must be decided on the basis of the content of the IEP itself.

6. Procedural violations in and of themselves do not necessarily deny a student a FAPE. If a procedural violation is alleged and found, it must be determined whether the procedural violation either (1) impeded the student’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefit.¹⁹⁶ If one of those three impediments has occurred, the student has been denied a FAPE due to the procedural violation.

Burden of Proof and Basis of Decision

7. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.¹⁹⁷ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”¹⁹⁸ Therefore, in this case Petitioners bear the burden of proving by a preponderance of evidence that Respondent substantively violated the IDEA through the alleged actions or inactions. If a procedural violation is alleged and demonstrated, Petitioners must then show that the procedural violation either (1) impeded Student’s right to a FAPE, (2) significantly impeded Parents’ opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit to Student.¹⁹⁹

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

¹⁹⁵ *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))).

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

¹⁹⁷ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

¹⁹⁸ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) (quoting *In re Winship*, 397 U.S. 358, 371-72 (1970)); see also *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

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

Issue #1

8. Parents alleged that the August 2020 IEP denied Student a FAPE.

9. The appropriateness of Respondent’s offer of FAPE is to be determined in light of the circumstances at the “snapshot in time” when the IEP was developed—not with the benefit of hindsight.²⁰⁰

10. Under the IDEA, a parent must bring a claim within two years of the date that they knew or should have known about the actions forming the basis of their complaint.²⁰¹ Here, in order to establish a claim for relief, Parents have the burden of proving a violation of the IDEA that occurred on or after June 2, 2020. Respondent’s actions prior to that date cannot form the basis for Parents’ claims. Because Student was not enrolled in Respondent during the 2019-2020 school year, the facts relevant to this matter being when Student returned to Respondent in August of 2020.

11. The hearing record shows that based on Student’s academic success the prior year at Primavera, the August 2020 IEP was substantially similar to the IEP from the prior school year. Parents did not identify any new concerns with Student’s academic performance. Parents reported that Student had his driver’s permit, helped around the house with household chores and upkeep, was responsible for pet care, and managed his own academic schedule. The information provided by Parents did not raise any concerns.

12. The August 2020 IEP included one change from the prior year which was that student would reach out to his case manager once a week instead of once a month regarding any concerns. The August IEP continued accommodations such as placing Student with other students he knew during small group work, testing Student in a small

²⁰⁰ J.W., 626 F.3d at 439 (“The standard for evaluating IEPs, commonly called the ‘snapshot rule,’ is not retrospective ‘We do not judge an [IEP] in hindsight; rather, we look to the [IEP’s] goals and goal achieving methods at the time the plan was implemented.’” (quoting Adams, 195 F.3d at 1149)); D.A. *ex rel.* Adams v. Fairfield-Suisun Unified Sch. Dist., 2013 WL 5278952 (E.D. Cal. Sept. 18, 2013) (holding that the adequacy of an IEP must be evaluated “in terms of what was objectively reasonable when it was developed.”); Pangerl, 2017 WL 603834, at *6 (“A court must not critique an IEP with the benefit of hindsight; instead, it must evaluate whether the goals and methods were reasonably calculated to ensure that the child would receive educational benefits at the time of implementation.” (citing Anchorage Sch. Dist. v. M.P., 689 F.3d 1047, 1058 (9th Cir. 2012))).

²⁰¹ See Avila v. Spokane Sch. Dist. 81, 852 F.3d 936, 937 (9th Cir. 2017); see also 20 U.S.C. § 1415(f)(3)(C).

1 environment, and providing a 3 day extension to submit work. The August 2020 IEP also
2 included a post-secondary plan. The August IEP team considered other related services
3 but determined that such services were not necessary to provide special education.

4 13. Based on Findings of Fact 1 through 13 and 51 through 52 above, the
5 evidence presented at hearing shows that Respondent offered Student a FAPE that met
6 his unique needs. Petitioners failed to establish by a preponderance of the evidence that
7 the August 2020 IEP was not reasonably calculated to ensure that Student would receive
8 educational benefit at the time that the IEP was developed. Parents' allegation is
9 dismissed.

10 ***Issue #2***

11 14. Parents alleged that the May 2021 IEP denied Student a FAPE.

12 15. Parents did not provide information during the May 2021 IEP meeting that
13 suggested that the August 2020 IEP was inappropriate. A few days prior to the May 14,
14 2021 IEP meeting, Mother informed Ms. Nielsen that she would enroll Student in an online
15 charter school with a self-paced curriculum for the upcoming school year.

16 16. Because Student was returning to a self-paced curriculum where he had
17 been successful, and because Student's poor performance outwardly appeared to be the
18 result of the lack of attendance and effort, the May 2021 IEP did not propose any
19 significant changes to the August 2020 IEP. The new IEP kept a similar language arts
20 goal, which had not been measured because Student did not attend classes. But the IEP
21 included a revised goal regarding on-task behavior, which was aimed towards addressing
22 the work completion issues that had plagued Student's junior year. The IEP continued the
23 same accommodations and services that Student had been receiving previously. As with
24 the August 2020 IEP, the May 2021 IEP was reasonably calculated to allow Student to
25 make meaningful academic progress based on the information known to Respondent at
26 the time it was drafted.

27 17. Based on Findings of Facts 14 through 23 and 53 through 54 above, the
28 evidence presented at hearing shows that Respondent offered Student a FAPE that met
29 his unique needs. Petitioners failed to establish by a preponderance of the evidence that
30 the May 2021 IEP was not reasonably calculated to ensure that Student would receive

1 educational benefit at the time that the IEP was developed. Parents' allegation is
2 dismissed.

3 ***Issue #3***

4 18. Parents alleged that Respondent predetermined placement beginning with
5 the IEP meeting on November 29, 2021, and continuing thereafter.

6 19. "A school district violates the IDEA if it predetermines placements for a
7 student before the IEP is developed or steers the IEP to the predetermined placement."²⁰²
8 School officials must therefore "come to the IEP table with an open mind[,] [b]ut this does
9 not mean they should come to the IEP table with a blank mind."²⁰³ "Thus, while a school
10 system must not finalize its placement decision before an IEP meeting, it can, and should,
11 have given some thought to that placement."²⁰⁴

12 20. As Parents acknowledge, predetermination is a procedural violation, which
13 does not necessarily deny a student FAPE unless it (1) impedes the student's right to
14 receive a FAPE, (2) significantly impedes the parents' opportunity to participate in the
15 decision-making process, or (3) causes a deprivation of educational benefit.²⁰⁵

16 21. Respondent did not predetermine placement. The evidence presented at
17 hearing shows that Ms. Hodge remarked, "at this point, Respondent does not feel that he
18 needs placement in a—in a residential treatment facility for educational purposes" in
19 direct response to Mr. Jefferson's comments that Parents still believed that Student
20 needed a residential level of support.

21 22. Additionally, the remaining evidence in this case, both documentary and
22 testimonial, conclusively establishes that Respondent did not predetermine Student's
23 placement. Before the IEP meeting even occurred, Respondent took numerous steps to
24 look into the process regarding placements in RTCs. Ms. Olivas emailed the Department
25 to ask for information about residential placements and received information regarding
26 residential vouchers. Ms. Olivas also contacted the RBHA in an effort to facilitate

27 ²⁰² K.D. ex rel. C.L. v. Dep't of Educ., Hawaii, 665 F.3d 1110, 1123 (9th Cir. 2011).

28 ²⁰³ Doyle v. Arlington Cnty. Sch. Bd., 806 F. Supp. 1253, 1262 (E.D. Va. 1992); see also K.D., 665 at 1123
(citing Doyle).

29 ²⁰⁴ Doyle, 806 F. Supp. at 1263.

30 ²⁰⁵ 20 U.S.C. § 1415(f)(3)(E)(ii); see also Adam J. v. Keller Indep. Sch. Dist., 39 IDELR 1 (5th Cir. 2003).

1 discussion regarding residential placements. If Respondent had already determined that
2 it would not consider placement in a residential setting, it would make little sense for
3 Respondent to take these steps. Additionally, each of Respondent witnesses testified that
4 they entered the IEP meeting with an open mind.

5 23. The IEP team spent a considerable amount of time discussing Student's
6 present levels; developed appropriate goals for Student, which are not at issue in this
7 action; and determined the services that would allow Student to achieve those goals
8 before it made a final decision on placement. That decision was not made until two IEP
9 meetings after Ms. Hodge's comments. After looking at the services proposed by the IEP,
10 Respondent correctly determined that the services could be provided within Respondent.

11 24. Assuming, *arguendo*, that Respondent predetermined Student's placement
12 (which it did not), that alleged predetermination would not have resulted in a denial of
13 FAPE. Parents were provided ample opportunity to participate in the decision-making
14 progress over the course of three IEP meetings. And as is further explained below, the
15 placement decision neither impeded Student's right to receive a FAPE nor caused the
16 deprivation of educational benefit.

17 25. Based on Findings of Facts 37 through 42 above, the evidence presented
18 at hearing shows that Respondent did not predetermine Student's placement prior to the
19 November 29, 2021 IEP meeting. Parents' allegation is dismissed.

20 ***Issue #4***

21 26. Parents alleged that January 2022 IEP denied Student a FAPE.

22 27. Under the IDEA, each public agency must ensure that "[t]o the maximum
23 extent appropriate, children with disabilities . . . are educated with children who are
24 nondisabled" and "removal of children with disabilities from the regular educational
25 environment occurs only if the nature or severity of the disability is such that education in
26 regular classes with the use of supplementary aids and services cannot be achieved
27 satisfactorily."²⁰⁶ The issue is whether a residential placement for Student was necessary
28 for educational purposes.²⁰⁷ "If 'the placement is a response to medical, social, or

29 ²⁰⁶ 34 C.F.R. § 300.114(a).

30 ²⁰⁷ See *Ashland Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1010 (9th Cir. 2009).

1 emotional problems . . . quite apart from the learning process,' then it cannot be
2 considered necessary under the IDEA."²⁰⁸

3 28. The hearing record shows that the January 2022 IEP was reasonably
4 calculated to ensure that Student would receive an educational benefit based on
5 recommendations and medical information that Respondent received from two medical
6 health professionals regarding Student. The January 2022 IEP included six, agreed-upon
7 social emotional goals, 60 minutes per day of behavior support delivered via direct
8 instruction by a special education teacher, the requirement that Student to be in a special
9 education classroom—a smaller and more restrictive environment—for an additional 60
10 minutes per day, and 30 minutes of counseling per week.

11 29. The Administrative Law Judge concludes that Respondent is not
12 responsible for treating Student's mental health diagnoses. The preponderance of the
13 evidence shows that Student was placed at LiveStrong House in response to medical,
14 social, or emotional needs separate from the educational needs.

15 30. Dr. Leehey's letter and Dr. Corelli's psychological assessment report were
16 the driving forces behind Student's initial placement, and both of those authorities
17 indicated that the placement was not due to an educational need. Dr. Leehey's letter
18 describes a panoply of manifestations of Student's behavioral health diagnoses that have
19 nothing to do with his education: refusal to participate in scheduled therapy, refusal to
20 take medication, increased conflict with his parents, and refusal to leave the house at all.
21 Dr. Corelli's educational assessment report did not recommend residential placement;
22 that recommendation was only included in the psychological assessment report.

23 31. To the extent there was a need for Student's continued placement in a
24 residential setting, which is itself unclear, the evidence likewise shows that the need for
25 that placement was not educational in nature. At the time that the January 2022 IEP was
26 drafted, by all accounts, Student was doing well academically. The academic reports from
27 LiveStrong House representatives were glowing: Student was self-advocating, making
28 significant academic progress, and showed up to the classroom with a smile on his face.

29 ²⁰⁸ *Id.* (quoting Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hrgs. 903 F.2d 635, 643 (9th Cir. 1990)).

1 Further, Father reported that during a home visit in December of 2021, Student continued
2 to work on physics. But Father also reported that during that visit, Student regressed
3 emotionally. Due to that emotional regression, Parents flew someone down from
4 LiveStrong House to “talk [Parents] off the ledge with him.” Importantly, this emotional
5 regression occurred during a home visit when Student was not even attending school at
6 CSA.

7 32. Based on Findings of Facts 14 through 55 above, the evidence presented
8 at hearing shows that Respondent offered Student a FAPE that met his unique needs.
9 Petitioners failed to establish by a preponderance of the evidence that the January 2022
10 IEP was not reasonably calculated to ensure that Student would receive educational
11 benefit at the time that the IEP was developed. Parents’ allegation is dismissed.

12 ***Issue #5***

13 33. Petitioners allege that LiveStrong House was an appropriate placement for
14 Student.

15 34. Because the Administrative Law Judge has concluded that Respondent had
16 offered Student a FAPE, the Administrative Law Judge does not address the issue of
17 whether LiveStrong House was an appropriate placement for Student.²⁰⁹

18 **CONCLUSION**

19 Because the evidentiary record does not demonstrate any violation of the IDEA by
20 Respondent and, therefore, no remedies would be fashioned, the Administrative Law
21 Judge does not address Petitioners’ requested remedies. The Administrative Law Judge
22 concludes that Petitioners’ Complaint shall be dismissed.

23 **RULING**

24 Based on the findings and conclusions above,

25 **IT IS HEREBY ORDERED** that Petitioners’ Complaint is dismissed in its entirety.

26 ORDERED this day, June 29, 2023.

27
28

²⁰⁹ Furthermore, in response to a Motion for Partial Summary Judgment, the Administrative Law Judge
29 ruled that Parents were not entitled to reimbursement for Student’s placement at LiveStrong House because
30 it is a for-profit entity and Parents placed him there unilaterally.

1 **RIGHT TO SEEK JUDICIAL REVIEW**

2 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and
3 Order is the final decision at the administrative level. Furthermore, any party aggrieved
4 by the findings and decisions made herein has the right to bring a civil action, with respect
5 to the complaint presented, in any State court of competent jurisdiction or in a Legacy
6 court of the United States. Pursuant to Arizona Administrative Code § R7-2-405(H)(8),
7 any party may appeal the decision to a court of competent jurisdiction within thirty-five
8 (35) days of receipt of the decision.
9

10 Done this day, June 29, 2023.

11
12 /s/ Velva Moses-Thompson
13 Administrative Law Judge
14

15 Transmitted by either mail, e-mail, or facsimile to:

16 Jeff Studer
17 Arizona Department of Education
18 Director of Dispute Resolution
19 100 N. 15th Ave
20 Phoenix, AZ 85007
21 Jeffrey.Studer@azed.gov

22 Lisa Anne Smith
23 Clayton R. Kramer
24 DeConcini McDonald Yetwin & Lacy, P.C.
25 2525 E. Broadway, Suite 200
26 Tucson, AZ 85716
27 lasmith@dmyl.com
28 ckramer@dmyl.com

29 Hope Kirsch-Goodwin, Attorney
30 KIRSCH-GOODWIN & KIRSCH, PLLC
8900 E. Pinnacle Peak Road, Suite 250
Scottsdale, Arizona 85255
hope@kgklaw.com

By: OAH Staff

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30