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

S.M., Student, by and through Parents  
M.M. and A.M.,  
Petitioners,  
v.  
CATALINA FOOTHILLS School District,  
Respondent.

No. 22C-DP-018-ADE

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARING:** Hearing sessions conducted on March 15, 2022, May 11, 2022, and May 12, 2022, followed by post-hearing memoranda submission and extended review.

**APPEARANCES:** [REDACTED], Mother, represented Petitioner S.M. (Student) and Parents M.M. and A.M. (collectively, Parents).

Denise M. Bainton, Esq., represented Catalina Foothills School District (District); Counsel was accompanied by the District's co-representatives Dr. Denise Bartlett, Assistant Superintendent, and Dr. Erin Matyjasik, Student Services Director.

**WITNESSES:**<sup>1</sup>

- M.M. (**Mother**).
- A.M. (**Father**).
- S.M. (**Student**).
- [REDACTED], **Special Education Teacher**.
- [REDACTED], **Kindergarten Teacher**.
- [REDACTED], **First Grade Teacher**.
- [REDACTED], **Second Grade Teacher**.
- [REDACTED], **Principal**, [REDACTED].
- [REDACTED], **Principal**, [REDACTED] **Elementary**.
- [REDACTED], **School Psychologist**.
- [REDACTED], **Assistant Superintendent**, District.
- [REDACTED], **Student Services Director**, District.

**HEARING RECORD:** Certified Court Reporter Raynbo Silva recorded the proceedings as the official record of the hearing.<sup>2</sup>

<sup>1</sup> Throughout the body of this Decision, proper names of Student and Parents are not used to protect the confidentiality of Student and to promote ease of redaction; pseudonyms, designated here in bold typeface, will be used for multiple witnesses.

<sup>2</sup> The parties stipulated that the court reporter's transcript would be the official record of the proceedings; the three volume transcript contains successive pagination over the three hearing sessions. 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 may stipulate, concede, and/or withdraw issues that, therefore, would not be considered or addressed in a final decision.

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

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Parents brought this due process action on behalf of Student, claiming that District violated the Individuals with Disabilities Education Act (IDEA) and alleging that Respondent failed to provide a free and appropriate public education (FAPE). 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),<sup>3</sup> and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401 through R7-2-406.

**PROCEDURAL HISTORY**

The due process complaint notice (Complaint) in this matter was filed on January 7, 2022 and amended on February 11, 2022. A three-day due process hearing was conducted through virtual means followed by post-hearing written legal argument. The due process timeline is typically recalculated by the Administrative Law Judge after a multiple-day due process hearing, taking into account any further proceedings including post-hearing legal memoranda in lieu of closing argument. Based on Petitioners' request for a written record, the request for post-hearing written legal memorandum submission following the parties' receipt of the due process hearing court reporter's transcript, the parties' submitted written arguments to the Tribunal, and finally, the Tribunal's receipt of the due process hearing court reporter's transcript (*i.e.*, the official hearing session record) thereafter, the 45<sup>th</sup> day is October 27, 2022.

**EVIDENCE AND ISSUES AT HEARING**

**Exhibits – Hearing Record**

Petitioners had pre-marked Exhibits A through Z, AA through AZ, BA through BZ, CA through CZ, DA through DZ, EA through EX, FA through FO, FP through IC [Student's work papers], and ID through IH. District had pre-marked Exhibits 1 through 29.

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

1 The parties did not stipulate to the admission of exhibits and, during the hearing,  
2 the parties presented various exhibits; exhibits specifically admitted during the hearing  
3 are reflected in the Transcripts.<sup>4</sup> Multiple exhibits were duplicative; of the duplicative  
4 exhibits, if one is admitted, both are considered as being admitted.<sup>5</sup>

5 The parties submitted post-hearing closing arguments in the form of written  
6 statements.

### 7 **Issues**

8 By ORDER dated February 24, 2022, the issues for the due process hearing were  
9 clarified to be as follows:<sup>6</sup>

- 10 i. Respondent violated the IDEA when it inappropriately determined  
11 Student to be ineligible for special education/related services on  
12 January 10, 2020 because (a) Student was eligible under multiple  
13 disability categories: (b) Student had not met his IEP goal(s), and (c)  
14 the data regarding his functional capacities and attendance that was  
15 utilized to make the ineligibility determination was inaccurate or had  
16 been falsified. Additionally, (d) Respondent violated the IDEA when  
17 it refused to allow Student to be present at the IEP meeting.
- 18 ii. Respondent violated the IDEA when it failed to implement Stay-Put  
19 for the duration of the previously-filed due process complaint notice  
20 on February 28, 2020.<sup>7</sup>
- 21 iii. Respondent violated the IDEA when it failed to “submit” Student’s  
22 educational records pursuant to Parent’s November 11, 2021  
23 request and made Parent wait until January 6, 2022.

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26 <sup>4</sup> While writing this decision, the Administrative Law Judge utilized additional concurrent or closely related  
27 exhibits to reflect some facts which assist either in the chronology of this matter or the parties’  
28 positions/arguments; if so noted herein, those exhibits are also considered admitted to the hearing record.

29 <sup>5</sup> For example, the January 10, 2020 MET report was Petitioners’ Exhibit BW and District Exhibit 4, and the  
30 PWN dated January 14, 2020 was Petitioners’ Exhibit BZ and District Exhibit 5.

<sup>6</sup> The issues reiterated herein reflect the amendments/clarifications Parents made on February 11, 2022.

<sup>7</sup> The statement of the issue is corrected herein, as the hearing record demonstrates that this referenced  
complaint was filed on February 28, 2020 and not on February 23, 2020.

1 iv. Respondent violated the IDEA when it prevented, or failed to enable,  
2 parental participation in the IEP process and in eligibility  
3 determination processes at the January 2020 IEP meeting, the 2021  
4 MET meeting, the March 2021 MET meeting, and the November  
5 2021 MET meeting when Respondent ignored parental input,  
6 parental recommendations, and parentally-provided assessments  
7 (including a 2020 IEE by Dr. Weeks) regarding Student's medical  
8 condition and educational needs.

9 v. Respondent violated the IDEA when it failed to provide a prior written  
10 notice (PWN) regarding Student's ineligibility until the PWN was  
11 requested by Parent.

12 vi. Since January 10, 2020, Respondent failed its IDEA child find  
13 obligations.

14 vii. Respondent violated the IDEA by ignoring Parent's October 28, 2021  
15 request (and the PCP's November 1, 2021 request) for assessments  
16 and failing to adhere to state timelines for evaluations and  
17 assessments after parental consent was signed on December 3,  
18 2021.<sup>8</sup>

19 Petitioners requested various remedies: compensatory education; reimbursement  
20 for fees paid to outside evaluators; injunctive relief as to receiving records; reinstatement  
21 of Student's IEP; escrow accounts at therapy centers; injunctive relief as to receiving a  
22 PWN terminating special education eligibility; one-on-one paraprofessional in the  
23 classroom; and, intensive reading therapy 5 times a week with outside therapists.

24 **DISCUSSION**

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<sup>8</sup> Based on the information contained in the amendment text for #4, it appears that the first clause stated  
30 herein is tied to the alleged delay in assessments/evaluations.

1 The Administrative Law Judge has considered the entire hearing record including  
2 the testimony and the admitted exhibits,<sup>9</sup> and now makes the following Findings of Fact,  
3 Conclusions of Law, and Decision that Petitioners failed to demonstrate that District  
4 violated the IDEA procedurally, through determining Student's ineligibility on January 10,  
5 2020 and the alleged actions then and thereafter.

6 **FINDINGS OF FACT**

7 **PRIOR PERIODS/BACKGROUND**

8 1. Student qualified for special education/related services as a pre-schooler in  
9 February 2017 under the category of "developmental delay" in the areas of  
10 communication skills/language development and social emotional skills.<sup>10</sup> Student's  
11 three-year evaluation was due to be completed in January 2020.

12 2. In the 2019-2020 school year, Student was in Kindergarten at [REDACTED]  
13 Elementary School, a District school. Student was receiving specially designed  
14 instruction in the area of Social/Emotional Skills in the general education setting,  
15 Occupational Therapy in the special education classroom, and Speech Language therapy  
16 in a Homebound setting.<sup>11</sup> School records showed multiple absences between August 8,  
17 2019 and January 10, 2020: 25 full day, 20 partial day, and 22 tardy.<sup>12</sup>

18 3. In the 2020-2021 school year, Student was in First Grade; Student's  
19 attendance in First Grade was entirely remote.

20 4. For the 2021-2022 school year, Student attended [REDACTED] Elementary  
21 School; Student attended Second Grade in-person.

22 5. On January 10, 2020, District completed its three-year re-evaluation  
23 through the multidisciplinary evaluation team (MET) meeting. School Psychologist  
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27 <sup>9</sup> The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in  
28 this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if  
29 the witness is not specifically mentioned in this Decision.

<sup>10</sup> See District Closing Brief; see *also* District Exhibit 4 at 3 of 40.

<sup>11</sup> See District Exhibit 2 (April 2019 IEP) at 7.

<sup>12</sup> See District Exhibit 4 at 4 of 40; see *also* District Exhibit 9.

1 [REDACTED] drafted the MET report and conducted the meeting.<sup>13</sup> Student's  
2 team, including both Parents, participated in the MET meeting.

3 6. Mother had claimed that Student could not read and write and, apparently,  
4 at the time of the meeting, wanted Student to be brought into the MET meeting so that  
5 Mother could prove her claim.<sup>14</sup> District declined to have Student in the MET meeting for  
6 any testing or assessments because such action was not within the purposes of a MET  
7 meeting.<sup>15</sup> District had informed Mother that, if she disagreed with the District's existing  
8 evaluation results, she could ask for an independent education evaluation (IEE) from a  
9 qualified evaluator.<sup>16</sup>

10 7. At, and after, the MET meeting, Mother disagreed with the information  
11 and/or results of multiple assessment and evaluations and she believed that District had  
12 inaccurately characterized or "falsified" the existing information (both District and  
13 parentally-provided) to come to the eligibility determination (here, an ineligibility  
14 determination). Evidence of Mother's overall disagreements can be seen through (a) the  
15 Behavior Assessment System for Children 3<sup>rd</sup> Ed. (BASC-3)<sup>17</sup> and Autism Spectrum  
16 Rating Scales (ASRS)<sup>18</sup> assessments, as her scoring and personal opinions were, for the  
17 most part, widely divergent from the scoring and observations of the general education  
18 and special education teachers, and (b) her efforts to emphasize the medical opinions  
19 and diagnostic evaluations as definitive in comparison.  
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23 <sup>13</sup> See District Exhibit 4. Drafting of a MET report typically includes the use of, and inclusion of, reports  
previously prepared by other team members and other reports previously provided by parents.

24 <sup>14</sup> School Psychologist testimony. See Day One Transcript at page 79 – 82. The disconnect in this regard  
25 was that Student had computer/type-written a full sentence in First Grade (as reflected in the MET report),  
but Mother was insistent that Student could not "hand-write" a full sentence. See Petitioners' Exhibit CV;  
26 see *also* District Exhibit 11 at 23 of 28. With the DIBELS information, the apparent disconnect was that the  
December 2020 test date results were incorrectly labeled for Kindergarten benchmarks when Student, in  
27 fact, was in First Grade at that time. See Petitioners' Exhibit CW.

28 <sup>15</sup> The purpose of a MET meeting is to review the evaluation and assessment information already available.

29 <sup>16</sup> At the time of the MET meeting, the Occupational Therapist assessment results from December 18, 2019  
and January 9, 2020 were available for the MET review.

30 <sup>17</sup> See District Exhibit 4 at 17-20.

<sup>18</sup> *Id.* at 21-27.

1 8. The MET report contains thorough explanations of the information reviewed  
2 and considered on January 10, 2020. The Summary of prior assessments in the MET  
3 included:

- 4 a. the contents of the 2017 MET report,
- 5 b. statements regarding Dr. [REDACTED] 2015 diagnosis of Autism, Speech Delay  
6 and Sensory Disintegration,
- 7 c. statements regarding Dr. [REDACTED] 2016 medical evaluation/results,
- 8 d. the contents of Dr. [REDACTED] April/May 2019 Comprehensive  
9 Neuropsychological Evaluation report.<sup>19</sup>

10 The Background, medical and developmental review in the MET included:

- 11 e. statements regarding Student's April 2019 District Individual Health Plan,
- 12 f. an April 2, 2019 medical clearance for Student to return to school and activities,
- 13 g. Parental impressions:<sup>20</sup> Mother's opinion of "very mild autism;" not seeing  
14 "inattention" at home but seeing repetitive communications; Student's difficulty in  
15 fine motor skills as to tracing, zippers, and dressing; and, Student's current health  
16 being "ok" blood count numbers and "stable," but Student having continued  
17 chemotherapy<sup>21</sup> and, therefore, absences from school for doctors and therapists.

18 The Current classroom assessment and performances in the MET included:<sup>22</sup>

- 19 h. Student doing well in class, jumping right in and joining, going with the flow and  
20 asking questions, has made friends, is a hard worker, compliant with directives,  
21 maintaining conversations with peers, staying focused on task;
- 22 i. Student challenged with social emotional (using kind words), voice levels  
23 (needing reminders to use lower voice level), fine motor (letter and number

24 <sup>19</sup> Dr. [REDACTED] gave diagnostic impressions of Acute Lymphoid Leukemia (in remission), Attention Deficit  
25 Hyperactivity Disorder (ADHD) (combination presentation, severe), and Oppositional Defiant Disorder  
26 (severe). *Id.* at 8 of 40. At the MET meeting, Mother expressed her opinion that the results of that  
27 assessment were invalid because the testing had been cut short (due to Student's behaviors) and because  
28 Student had been taking steroids. *Id.*

<sup>20</sup> See District Exhibit 4 at 8 of 40. Student receives private occupational therapy once a week and physical  
29 therapy once a week.

<sup>21</sup> Due to his leukemia and treatments, Student is immunocompromised. *Id.* at 9 of 40. The MET indicates  
30 that Student is to go home right away if any other students come to class ill or with signs or symptoms of  
illness; ill students are also to go home. *Id.*

<sup>22</sup> *Id.* at 9-10 of 40; see also *Id.* at 12-13 (classroom observations).

1 formation), off task during longer assignments and writing assignments, showing  
2 adequate interest and persistence on tasks, easily redirected.

3 Assessments in the MET reviewed:<sup>23</sup>

4 j. Speech-Language – December 13, 2019;<sup>24</sup>

5 k. Occupational Therapy – December 18, 2019 and January 9, 2020;<sup>25</sup>

6 l. Social/Emotional – through BASC-3 by Parent, General Education Teacher  
7 and Special Education Teacher;<sup>26</sup>

8 m. Autism – through ASRS by Parent, General Education Teacher and Special  
9 Education Teacher;<sup>27</sup>

10 n. Intellectual – Dr. [REDACTED], April and May 2019.<sup>28</sup>

11 9. On January 10, 2020, the MET team considered Student's progress under  
12 his April 2019 individualized education program (IEP) goals<sup>29</sup> as follows:<sup>30</sup>

13 a. Social emotional goal to regulate emotions and behaviors by using appropriate  
14 tone of voice and social verbal language instead of aggressive behaviors on 3 out  
15 of 4 times; this was considered as progress was being made. The writer noted  
16 that Student was able to describe his emotion at the moment and ask for adult help  
17 as needed during the day.

18 b. Social emotional goal to use appropriate respectful responses to adults as to  
19 directives and non-preferred/challenging activities on 4 out of 5 times; this was  
20 considered as progress was being made.

21 c. Writing goal of maturing his tripod grasp for 80% more legibility in writing his  
22 first/last name in upper/lower case letters by February 2020 on 3 out of 5 times;  
23 this was considered as making progress. The writer noted that, when prompted,  
24 Student maintained use of tripod grasp.

25 <sup>23</sup> *Id.* at 13-27 of 40.

26 <sup>24</sup> *Id.* at 13-16.

27 <sup>25</sup> *Id.* at 16-17.

28 <sup>26</sup> *Id.* at 17-20.

29 <sup>27</sup> *Id.* at 21-27.

30 <sup>28</sup> *Id.* at 27-28.

<sup>29</sup> See Petitioners' Exhibit AJ; see *also* Petitioners' Exhibit AK (District's 4-4-2019 notice of development of Student's IEP).

<sup>30</sup> See District Exhibit 4 at 10-11 of 40 and 36 of 40.



1           10. The MET team specifically noted that Mother was included in the members  
2 who reviewed existing data and participated in the decision regarding the need to gather  
3 additional data, stating the following:

4           The determinant factor in this student's difficulty in progressing in the general  
5 curriculum is lack of appropriate instruction in reading, is lack of appropriate  
6 instruction in math and is not limited English proficiency. [Student] has missed 26  
7 days<sup>31</sup> of school so far which is considered to be a lack of instruction of math and  
8 reading. [Student's] mother has reported [Student's] health has been stable. His  
9 absences have been primarily due to follow up doctor appointments and therapy  
10 appointments. Despite the frequent absences, the team would like to collect  
11 additional data to determined [Student's] current strengths and needs in the areas  
of social/emotion, adaptive behavior, academic, language, fine motor, cognitive  
(review of records from May 2019), and characteristics related to autism to  
determine need for continuation of specialized instruction through special  
education.<sup>32</sup>

12           11. At the January 10, 2020 meeting, despite having indicated to the MET team  
13 that she did not believe the results were valid,<sup>33</sup> Mother complained that District (a) was  
14 not following Dr. [REDACTED] recommendations from the April/May 2019 Comprehensive  
15 Neuropsychological Evaluation report and (b) that the [REDACTED] report had not been  
16 included in the MET draft. Mother further complained that District was not following  
17 recommendations from physicians and therapists.<sup>34</sup>

18           12. At the January 10, 2020 meeting, Mother also complained that "only" the  
19 information from April/May 2019 Comprehensive Neuropsychological Evaluation had  
20 been used (in the November 2019 MET<sup>35</sup>) and that two other reports had also not been  
21 included.<sup>36</sup> Mother referenced the following two reports:

22           a. Phoenix Children's Hospital End of Visit Summary – December 26, 2019;<sup>37</sup> and  
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25 <sup>31</sup> The MET report specified Student's attendance as: 25 full days absent, 20 partial days absent, and 22  
26 days tardy, which the report noted as Student having missed 71% of the school year thus far. *Id.* at 36 of  
40.

27 <sup>32</sup> *Id.* at 11 of 40.

28 <sup>33</sup> *Id.* at 8 of 40.

29 <sup>34</sup> *Id.* at 28 of 40.

30 <sup>35</sup> The November 2019 MET can be found at District Exhibit 21.

<sup>36</sup> See Department Exhibit 4 at 30 of 40.

<sup>37</sup> Mother e-mailed this report to the Special Education Teacher on January 7, 2020. *Id.*

1 b. Final Report Pediatric Office/Clinic noted – April 27, 2019.<sup>38</sup>

2 These two reports were then included in the January 10, 2020 MET report.<sup>39</sup>

3 13. Following the team’s review of all the prior and current assessments,  
4 evaluations and observations, the team next considered Student’s eligibility under the  
5 criteria for each of the possible exceptionalities: Developmental Delay; Speech Language  
6 Impairment; Specific Learning Disability; Other Health Impairment; and, Autism.<sup>40</sup> The  
7 MET report’s lengthy reviews document the MET team’s depth of review and  
8 consideration.

9 14. At the meeting, Parents expressed concern about any “regression,”  
10 mentioning decline in cognitive abilities, memory and academic skills.<sup>41</sup> In response,  
11 School Psychologist noted, if they were to see regression in Student’s skills, that the team  
12 could reconvene, review and collect additional data to determine if Student then required  
13 more extensive support and to determine if Student would be eligible for special education  
14 services.<sup>42</sup>

15 15. As a result of its review and considerations on January 10, 2020, the MET  
16 team determined that Student no longer met the exceptionality criteria under  
17 Developmental Delay for specially designed education instruction and for related services  
18 of speech and occupational therapy within the school setting.<sup>43</sup> While the MET team  
19 acknowledged that Student had an impairment, the MET team determined that Student’s  
20 impairment had not resulted in adverse impact on his educational performance and that  
21 Student did not require specially designed instruction in order to make appropriate  
22 educational progress.<sup>44</sup> Therefore, by consensus, the MET team determined that Student  
23 no longer qualified as a “child with a disability” under the IDEA, and determined that  
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26 <sup>38</sup> Mother brought this report with her to the January 10, 2020 MET meeting. *Id.*

27 <sup>39</sup> *Id.* at 30-33 of 40.

28 <sup>40</sup> *Id.* at 35-39 of 40.

29 <sup>41</sup> *Id.* at 39 of 40.

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

<sup>43</sup> *Id.* at 36-36 of 40.

<sup>44</sup> *Id.* at 40 of 40.

1 Student was no longer was in need of special education services. As a result, Student  
2 was from IDEA services.<sup>45</sup>

3 16. On January 11, 2020, Mother e-mailed Special Education Teacher  
4 regarding obtaining a copy of the PWN and the procedural safeguards.<sup>46</sup> Mother further  
5 wrote “Also, please keep all of [Student’s] services intact [sic] and in place as I will be  
6 filing an appeal . . . .”

7 17. On January 13, 2020, Mother received an email from Special Service  
8 Director regarding Stay Put, informing Mother that it applies only after parent initiates  
9 certain processes, *i.e.*, due process.<sup>47</sup>

10 18. On January 14, 2020, District issued its PWN regarding the termination of  
11 IDEA services, e-mailing it to Mother.<sup>48</sup> School Psychologist further informed Mother that  
12 Stay Put attached when certain processes are initiated.

13 19. On February 28, 2020, Mother filed a due process complaint notice [20C-  
14 DP-065-ADE]. After a pre-hearing process, a formal due process hearing was scheduled  
15 for April 6, 2020.

16 20. On March 17, 2020, Mother had requested Student’s special education  
17 records “once school resumes and is in session.”<sup>49</sup> Student Services Director noted in  
18 (unknown date response) that the records had been sent via email on April 1, 2020 and  
19 were being emailed again that (unknown) day.

20 21. Disclosure from the parties to each other was due on March 30, 2020. While  
21 District did make its Disclosure on March 30, 2020, Mother did not make Disclosure on  
22 March 30, 2020. On March 30, 2020, Mother indicated to the Tribunal that District had  
23 not complied with her subpoenas.<sup>50</sup> On March 31, 2020, District filed a motion to dismiss  
24 the matter for the reason that Mother had not made disclosure and should not be

25 \_\_\_\_\_  
26 <sup>45</sup> One of the arguments Mother continued to make in this matter was that District had predetermined the  
27 outcome; however, predetermination was not an issue for this due process hearing.

28 <sup>46</sup> See Petitioners’ Exhibit CA [ALJ admitted].

29 <sup>47</sup> See Petitioners’ Exhibit CC (same as CE-CF) [ALJ admitted].

30 <sup>48</sup> See District Exhibit 5 and Petitioners’ Exhibit BZ [ALJ admitted]; *see also* Petitioners’ Exhibit CD [ALJ  
admitted].

<sup>49</sup> See Petitioners’ Exhibit AT.

<sup>50</sup> Mother copied District counsel on this filing.

1 permitted to present any evidence in the matter. On March 31, 2020, Mother filed a  
2 motion to vacate the hearing for the reason that District had not complied with providing  
3 subpoenaed information and further indicating that she would retain counsel and file a  
4 new complaint.<sup>51</sup> On April 1, 2020, the Tribunal vacated the matter pursuant to Arizona  
5 Administrative Code (A.A.C.) R2-19-111(3).

6 22. District's position on the Stay Put issue is that, while Stay Put may have  
7 been applicable on the filing of the February 28, 2020 due process complaint notice, it  
8 was not applicable now because Mother terminated that February 2020 due process and  
9 because Student was exited on January 10, 2020. District argued that Student's right to  
10 FAPE ended on January 10, 2020, Student's right to Stay Put ended on January 10, 2020,  
11 that Student's entitlement to FAPE was not revived with the filing of the 2022 Complaint  
12 and, therefore, there can be no remedy of compensatory services for Petitioners' Stay  
13 Put issue.<sup>52</sup>

14 23. In January 2021, District called a meeting to review the IEE Mother had  
15 requested and obtained; this is typically called a review of existing data (RED) meeting.<sup>53</sup>

16 24. On January 27, 2021, School Psychologist emailed Mother a Draft MET,  
17 the agenda, and the basic ground rules for the January 29, 2021 meeting.<sup>54</sup>

18 25. The agenda indicates that it was to be meeting at which the existing data  
19 would be reviewed.<sup>55</sup> The draft MET report for that meeting indicates that the meeting  
20 was scheduled to review the available data along with the IEE completed by Dr. [REDACTED]  
21 [REDACTED].<sup>56</sup> Mother informed School Psychologist that Father would not be participating  
22 "unless there is a solution."<sup>57</sup> School Psychologist responded, explaining the MET  
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24 <sup>51</sup> Mother attempted to copy District counsel on this filing; however, she used an incorrect email address.

25 <sup>52</sup> During an April 1, 2020 pre-hearing conference in 20C-DP-065-ADE, Petitioners were directed to contact  
26 counsel for District regarding Stay Put. See Petitioners' Exhibit IF (recording). In its Closing Brief, District  
27 inferred that, at or about that time, Petitioners did not contact counsel for District regarding Stay Put. See  
28 District Closing Brief at 5.

29 <sup>53</sup> See District Exhibit 10 at 1.

30 <sup>54</sup> See District Exhibit 29 at 2.

<sup>55</sup> See District Exhibit 10 at 4.

<sup>56</sup> See Petitioners' Exhibit Q. It was noted at Day One of the hearing that the last page of the report was  
missing; the Tribunal requested Mother to supplement the exhibit, which she did on March 15, 2022.

<sup>57</sup> See District Exhibit 10 at 2.

1 process being important to determine if any additional information is needed to make a  
2 determination regarding eligibility for special education service.<sup>58</sup>

3 26. At the January 29, 2021 meeting, existing data was reviewed.<sup>59</sup> Mother  
4 participated in this meeting by telephone, beginning at 3:04 p.m.<sup>60</sup> At approximately 3:35-  
5 3:39 p.m., Mother indicated she had set aside about an hour for the meeting, and  
6 expressed her frustration that it had been a waste of time because she/they had already  
7 seen the past data.<sup>61</sup> After more discussion, School Psychologist suggested that due to  
8 the statements about declines in Student's skills, the team wanted to collect additional  
9 data; at that point, Mother expressed more frustration and hung up at 3:56 p.m.<sup>62</sup>

10 27. On February 15, 2021, District issued its PWN regarding the meeting, which  
11 included the team's determination to collect additional performance data, medical data,  
12 language, executive functioning, and fine and gross motor skills.<sup>63</sup> District also provided  
13 the MET report the parental consent form to conduct evaluations and procedural  
14 safeguards.

15 28. On March 10, 2021, Mother e-mailed Principal [REDACTED] indicating that "her  
16 recording" documented that the IEE was never discussed at the RED meeting.<sup>64</sup>

17 29. Principal [REDACTED] responded to Mother that the IEE had been included in the  
18 draft material and had been discussed at length at the RED meeting.<sup>65</sup> Principal [REDACTED]  
19 requested that Mother provide a copy of the recording.<sup>66</sup>

20 30. A series of emails ensued, with Mother questioning statements in the PWN,  
21 demanding correction of the PWN, insisting that the IEE was not discussed at the RED  
22 meeting and, after receiving paperwork from District, refusing consent to evaluate on  
23

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

25 <sup>59</sup> At the beginning of the meeting, the participants were asked if anyone was recording the meeting, and it  
was noted that no one was recording. See District Exhibit 12.

26 <sup>60</sup> Times regarding the meeting are set forth in the PWN dated February 15, 2021. See District Exhibit 14.

27 <sup>61</sup> See District Exhibit 12.

28 <sup>62</sup> *Id.*

29 <sup>63</sup> See District Exhibit 14; see also District Exhibit 29 at 2.

30 <sup>64</sup> See District Exhibit 13. The PWN indicates that the [REDACTED] report was used as one basis for determining  
that additional data should be collected. See District Exhibit 14 at 2 of 3.

<sup>65</sup> *Id.*

<sup>66</sup> The hearing record does not contain a copy of the "recording."

1 March 2, 2021.<sup>67</sup> Subsequently, Mother again questioned the PWN contents to School  
2 Psychologist and to Principal [REDACTED].

3 31. Not receiving parental consent to evaluate, District issued its PWN dated  
4 March 8, 2021, indicating that parents had refused consent, but that the District stood  
5 ready and willing to collect data if parents changed their mind.<sup>68</sup> District further indicated  
6 its recommendation to refer Student for evaluation for a 504 Accommodation Plan.

7 32. Although Petitioners had alleged in the Complaint that there was a March  
8 2021 MET meeting, the hearing record contains no evidence regarding any meeting in  
9 March of 2021.

10 33. The hearing record contains multiple emails on March 11, 2021, one of  
11 which was an indication by School Psychologist that corrections had been made to “pages  
12 18, 19 and 26.”<sup>69</sup> District records indicate School Psychologist emailed Mother on March  
13 11, 2021, writing:<sup>70</sup>

14 Attached are pages 18, 19 and 26 that contain corrections.

15 Pages 18 and 19 had reported the DIBELS 8 results for Kindergarten and  
16 1<sup>st</sup> grade. 2 corrections were made:

17 December 2020 was corrected to Winter 2019. 2020 was the error in the  
18 year the DIBELS was administered.

19 All of the months have been corrected to Fall, Winter or Spring:  
20 August 2019 was corrected to Fall 2019; December 2019 was corrected to  
21 Winter 2019; May 2020 was corrected to Spring 2020; August 2020 was  
22 corrected to Fall 2020.

23 2 typos were corrected on page 26:

24 Page 26 paragraph that begins with “After reviewing the IEE completed on  
25 10-20-2020, it was noted the independent ...”  
26 “[IEEn] in the first sentence of that paragraph was corrected to IEE.

26 <sup>67</sup> See District Exhibit 16.

27 <sup>68</sup> See District Exhibit 15.

28 <sup>69</sup> See Petitioners' Exhibit CV and CW; see also District Exhibit 29 at 2. Exhibit CW, the last page of which  
29 mentions corrections, does not contain a copy of that entire email.

30 <sup>70</sup> See Exhibit 29 at 2-3; Exhibit 29 is a chart of various emails received from, and District responses to,  
Mother; on March 11, 2021, School Psychologist emailed Mother three pages, corrected, from the January  
29, 2021 MET report.

1 “1-10-2020 at the end of the 2<sup>nd</sup> sentence in that paragraph was corrected  
2 to the correct date of 10-20-20.

3 I sincerely apologize for these errors and any confusion they may have  
4 created.

5 34. On October 28, 2021, Mother emailed Second Grade Teacher regarding  
6 having Student evaluated by her staff for “either an IEP or 504 Plan.”<sup>71</sup> Mother signed off  
7 on a November 1, 2021 “Request” for evaluation.<sup>72</sup> Mother reiterated her request to  
8 Second Grade Teacher on November 2, 2021.<sup>73</sup>

9 35. On November 9, 2021, District issued its PWN regarding the request, noting  
10 that Mother had requested an evaluation alleging Student’s “severe” learning problems,  
11 autism, oppositional defiant disorder, ADHD aggression, and obsessive behavior.<sup>74</sup>

12 36. On November 9, 2021, Mother indicated to School Psychologist that she  
13 would sign off on the meeting notice; Mother also questioned why District had not honored  
14 Stay Put from the day due process had been initiated.<sup>75</sup>

15 37. On November 11, 2021, Mother sent an email questioning the non-  
16 correction of a meeting request and noted that the November 1, 2021 evaluation request  
17 was from a physician. Additionally, Mother requested disclosure of Student’s “full records  
18 ... my child’s independent handwriting ... to substantiate your statements made on his  
19 MET report ...statements were written and authored by you.”<sup>76</sup>

20 38. At hearing, Student Services Director acknowledged the November 2021  
21 records request had been received and testified as follows:

22 At that time ... you were in possession of every record that you had  
23 requested. So we had already provided them to you. However, I provided  
24 them to you again in January of 2022.<sup>77</sup>

25  
26 <sup>71</sup> See District Exhibit 19 at 1.

27 <sup>72</sup> See District Exhibit 19 at 3. This document contains also the name of a physician, Dr. [REDACTED].

28 <sup>73</sup> See District Exhibit 19 at 2.

29 <sup>74</sup> See District Exhibit 20.

30 <sup>75</sup> See Petitioners’ Exhibits CG, CH, and CI.

<sup>76</sup> See Petitioners’ Exhibit BC.

<sup>77</sup> See Day Three Transcript (TR) at 593.

1 Generally, regarding record requests, Student Services Director also acknowledged that  
2 Mother would ask for the same records “over and over and over.” Student Services  
3 Director indicated that, when that would happen (*i.e.*, a repetitive request):

4 We either let her know that they’ve already been provided to her, we  
5 generally refer her to the email, the date or dates, multiple dates that they  
6 were provided or we just provide them to her again.<sup>78</sup>

7 39. On November 17, 2021, and November 18, 2021, Mother requested  
8 “handwriting” and records including reading DRA and DIBELS.<sup>79</sup>

9 40. On November 19, 2021, Student Services Director emailed Mother with a  
10 variety of the relevant records regarding the MET in 2019, the MET in 2020, and the MET  
11 in 2021 in addition to the [REDACTED] (2019) and [REDACTED] (2019) medical records.<sup>80</sup> Student  
12 Services Director also specified the records that had previously been provided to Mother:  
13 “handwriting” in March 2021 by [REDACTED] Principal; the MET reports or drafts previously  
14 provided; and, the DIBELS data from prior to September 17, 2021 and the DRA data on  
15 November 9, 2021 from Second Grade teacher.

16 41. On November 19, 2021, District conducted a MET1 meeting.<sup>81</sup> Mother  
17 participated by telephone.<sup>82</sup> During the meeting, Mother indicated that she would obtain  
18 a more current reading evaluation and an assessment regarding writing; additionally,  
19 Mother indicated that she had a physical therapy evaluation to provide to District.  
20

21 <sup>78</sup> See Day Three TR at 591-2; see *also* District Exhibit 29. District Exhibit 29 documents the receipt of  
22 Mother’s multiple and various requests and each of the District responses; the District responses entries  
23 list the documents provided at that time or note the documents that were previously provided. A request  
24 for attendance records on March 11, 2021 is particularly disturbing as Mother emailed, then called, then  
25 arrived at the school the same day demanding the records and disturbing the District person’s work;  
26 [REDACTED] Principal followed up the incident advising Mother that her conduct and demand was  
27 unacceptable and that, by law, District was to provide records within a reasonable time frame not to exceed  
28 45 days. See 34 C.F.R. § 300.613.

29 <sup>79</sup> See District Exhibit 29 at 2

30 <sup>80</sup> *Id.*

<sup>81</sup> A review of existing data meeting is typically known as a RED meeting; in District Closing Brief, District  
indicated it is now known as a MET1 meeting. A draft MET report had been prepared for the meeting. See  
District Exhibit 21. The Draft MET report indicated that Mother also emailed District on November 9, 2021  
alleging Student’s learning disabilities in reading and writing. *Id.*

<sup>82</sup> See District Exhibit 22. Mother indicated that she also had two child school psychologist “observers” on  
the call who would be listening and recording. *Id.*



1           42. The MET team determined to seek additional data in the following areas “to  
2 determine whether the student is or continues to be a student with a disability:” Speech  
3 Language; classroom observations; Psychoeducational; Social Emotional; Education  
4 achievements; gross motor and fine motor; and Medical review regarding any medical  
5 problems that may “impede” learning.<sup>83</sup> District issued its PWN on November 29, 2021.<sup>84</sup>

6           43. On November 29, 2021, School Psychologist provided paperwork to Mother  
7 including: MET report; PWN; record request/release form; and parental consent form for  
8 evaluation.<sup>85</sup>

9           44. On November 30, 2021, Mother demanded a list of the tests that would be  
10 used for Student’s evaluation.<sup>86</sup> Mother further requested Student’s “full records.”

11           45. On November 30, 2021, School Psychologist provided a list of the proposed  
12 assessments and the available data.<sup>87</sup> School Psychologist provided the requisite  
13 parental consent and record request/release forms.

14           46. On December 3, 2021, Mother provided a consent “with amendments.”<sup>88</sup>  
15 Mother wrote conditions and limitations on the parental consent form, one of which was  
16 refusal to agree to an Autism review.<sup>89</sup>

17           47. On December 3, 2021, Student Services Director wrote Mother further  
18 clarifying the requisite evaluation process and the need for parental consent not to be  
19 limited because that would impede District being able to evaluate in all the suspected  
20 areas of disability (including Autism).<sup>90</sup> With her response, Student Services Director  
21 provided the requisite consent and record release form.

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25 <sup>83</sup> See District Exhibit 21.

26 <sup>84</sup> See District Exhibit 22.

27 <sup>85</sup> See District Exhibit 23.

28 <sup>86</sup> See District Exhibit 24; see also Petitioners’ Exhibit BD.

29 <sup>87</sup> *Id.*

30 <sup>88</sup> See District Exhibit 25.

<sup>89</sup> Mother continued her oft-repeated characterizations of personnel and the process.

<sup>90</sup> See District Exhibit 26.

1 48. In December 2021, Mother sent emails in which, among grievances, she  
2 continued to request Student's records.<sup>91</sup> In December 2021 and January 2022, District  
3 made multiple notations that the records had previously been provided to Mother.<sup>92</sup>

4 49. On January 4, 2022, Mother responded regarding giving consent to  
5 evaluate. In her email, Mother reiterated her continuing objection to the ASRS and the  
6 District personnel as well as repeating multiple past grievances as to the prior  
7 processes.<sup>93</sup> However, within her January 4, 2022 response, Mother did agree to the  
8 ASRS. To demonstrate her "agreement," Mother again modified the previously-submitted  
9 modified consent form by crossing out her hand-written rejection of the ASRS; Mother did  
10 not execute an unmodified consent form. Further, although it was submitted to District  
11 on January 4, 2022, Mother did not re-date, or clarify the date of, her newly-modified  
12 consent form.

13 50. On January 4, 2022, Student Services Director emailed Mother, indicating  
14 that the District had already provided "all" of the educational records that Mother was  
15 requesting.<sup>94</sup>

16 51. There followed a series of emails from Mother on January 6, 2022 regarding  
17 requests for Student's records, demanding records immediately, and other grievances.<sup>95</sup>  
18 According to Mother, a "missing" record was a prior IEP and/or meeting notices for an  
19 IEP;<sup>96</sup> the last meeting regarding Student was a MET and no IEP had been developed at  
20 that meeting. On January 6, 2022, Student Services Director advised Mother that Mother  
21 had been provided that specific IEP along with all other then-existing records on April 1,  
22 2020.<sup>97</sup>

23  
24 <sup>91</sup> See Petitioners' Exhibits AU, AV, BA, and BB.

25 <sup>92</sup> See District Exhibit 29.

26 <sup>93</sup> See District Exhibit 27. Mother's grievances include her allegations of inaccurate and falsified data;  
27 additionally, her other grievances were delay of the evaluation and records never having been sent to her  
28 on her multiple requests. Overall, Mother's position with regard to the ASRS refusal was that Student  
29 already had an Autism diagnosis that District could use, and hadn't used, and District's efforts obtain this  
30 consent were simply more evidence that District was delaying the matter.

<sup>94</sup> See District Exhibit 29 at 6.

<sup>95</sup> See Petitioners' Exhibits AN, AQ, AR, AS (same as AQ), and AT; see *a/so* District Exhibit 29 at 6.

<sup>96</sup> See Petitioners' Exhibit AQ.

<sup>97</sup> See Petitioners' Exhibit AT.

52. While meetings were scheduled, or attempted to be scheduled, the hearing record does not demonstrate that any other meetings were conducted by District prior to Petitioners' Complaint being filed and amended.<sup>98</sup>

## CONCLUSIONS OF LAW

### APPLICABLE LAW

#### FAPE

1. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a free appropriate public education (FAPE) that meets their individual needs.<sup>99</sup> These needs include academic, social, health, emotional, communicative, physical, and vocational needs.<sup>100</sup> 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."<sup>101</sup> 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."<sup>102</sup> The IDEA mandates that school districts provide a "basic floor of opportunity."<sup>103</sup> The IDEA does not require that each child's potential be maximized.<sup>104</sup> A child eligible for special education services receives a FAPE if a program of specialized instruction "(1) addresses the child's "unique" needs, (2) provides adequate

<sup>98</sup> See Petitioners' Exhibit AG and AH; see also District Exhibit 28. While Mother wrote in Exhibit AG of a February 22, 2022 due process hearing date, the prior due process hearing was originally scheduled for February 26, 2022 not February 22, 2022.

<sup>99</sup> 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

<sup>100</sup> *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

<sup>101</sup> *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

<sup>102</sup> *Id.*, 485 U.S. at 207. In 2017, in *Endrew 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).

<sup>103</sup> *Rowley*, 458 U.S. at 200.

<sup>104</sup> *Id.* at 198.

1 support services so that child can take advantage of the educational opportunities and (3)  
2 is in accord with that child’s individualized educational program.”<sup>105</sup>

### 3 **Child Find**

4 2. States are required to have policies and procedures in place to identify,  
5 locate and evaluate children with disabilities who are in need of special education and  
6 accompanying related services.<sup>106</sup> “Child with a disability” is a defined term and, with  
7 regard to the specific categorized impairments listed in the IDEA and rules, who is in need  
8 of special education and accompanying related services.<sup>107</sup>

9 3. In Arizona, the “full and individual evaluation” of a child mandates that the  
10 local education agency have procedures in place to determine whether a child is a child  
11 with a disability and to determine the nature and extent of the special education and  
12 related services that particular child needs.<sup>108</sup> Such evaluation includes: a review of  
13 existing data; a decision regarding the need for any additional information; if needed, the  
14 collection of additional data; and a “review of all information about the child and a  
15 determination of eligibility for special education services and needs of the child.

16 4. If an Arizona parent makes a written request for an evaluation of a child, the  
17 local education agency, within 15 days, must either begin the evaluation process by  
18 reviewing existing data or providing PWN refusing to conduct an evaluation.<sup>109</sup> The  
19 mandated 60-day evaluation period begins upon receipt of the parent’s written consent  
20 and ends with the date of the MET team’s determination regarding eligibility.<sup>110</sup>

### 21 **The IEP**

22 5. After the MET team has determined a student is eligible for special  
23 education services, a team composed of the student’s parents, teachers, and others  
24 familiar with the student formulate an individualized education program (IEP) that  
25 generally sets forth the student’s current levels of educational and functional performance

26 <sup>105</sup> *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9<sup>th</sup> Cir. 2006) (citing *Capistrano Unified*  
*Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9<sup>th</sup> Cir. 1995)).

27 <sup>106</sup> 20 U.S.C. §§ 1401(3) and 1412(a)(3); 34 C.F.R. § 300.111(a).

28 <sup>107</sup> 20 U.S.C. §§ 1401(3) and (30); 34 C.F.R. § 300.8.

29 <sup>108</sup> Arizona Administrative Code (A.A.C.) R7-2-401(B)(8).

30 <sup>109</sup> A.A.C. R7-2-401(E)(4). A school may also provide a PWN agreeing to conduct an evaluation.

<sup>110</sup> A.A.C. R7-2-401(E)(3) and (4).

1 and sets annual measurable goals that the IEP team believes will enable the student to  
2 make progress in the general education curriculum.<sup>111</sup> The IEP tells how the student will  
3 be educated, especially with regard to the student's unique needs that result from the  
4 student's disability, and what instructional and related services will be provided to aid the  
5 student.<sup>112</sup> The student's parents have a right to participate in the formulation of an  
6 IEP.<sup>113</sup> An appropriately composed IEP team must consider the strengths of the student,  
7 concerns of the parents, evaluation and assessment results, and the academic,  
8 developmental, and functional needs of the student.<sup>114</sup> The local education agency is  
9 required to have, at the beginning of each school year, an IEP in effect for each eligible  
10 student that resides in the agency's jurisdiction.<sup>115</sup>

### 11 **Substantive versus Procedural**

12 6. A determination of whether a student eligible for special education services  
13 has received a FAPE must be based on substantive grounds.<sup>116</sup> For a substantive analysis  
14 of an IEP, the review of the IEP is limited to the contents of the document.<sup>117</sup> Therefore,  
15 any question regarding whether an IEP is reasonably calculated to provide educational  
16 benefit to a student must be decided on the basis of the content of the IEP itself.

17 7. Procedural violations in and of themselves do not necessarily deny a student  
18 a FAPE. If a procedural violation is alleged and found, it must be determined whether the  
19 procedural violation (1) impeded the student's right to a FAPE; (2) significantly impeded the  
20 parents' opportunity to participate in the decision-making process regarding the provision  
21

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22  
23 <sup>111</sup> 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324. The MET team members typically are persons  
24 that also participate in development of an IEP. It is possible that the student, as a child with a disability,  
25 might be a member of an IEP team; however, the rules allow for that possibility only whenever it might be  
26 "appropriate." 34 C.F.R. § 300.321(a)(7).

27 <sup>112</sup> *Id.*

28 <sup>113</sup> 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a)(1).

29 <sup>114</sup> 20 U.S.C. § 1414(d)(1)(B) and (3)(A); 34 C.F.R. § 300.324(a).

30 <sup>115</sup> 20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a).

<sup>116</sup> 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

<sup>117</sup> *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6<sup>th</sup> Cir. 2001) ("only those services identified or described in the . . . IEP should have been considered in evaluating the appropriateness of the program offered) (relying on *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9<sup>th</sup> Cir. 1994) (IDEA requirement of a formal, written offer should be enforced rigorously)).

1 of a FAPE to the child; or (3) caused a deprivation of educational benefit.<sup>118</sup> If one of those  
2 three impediments occurred, the student was denied a FAPE due to the procedural  
3 violation.

4 8. Procedural violations that “result in the loss of educational opportunity, or  
5 seriously infringe the parent’s opportunity to participate in the IEP formulation process,  
6 clearly result in the denial of a FAPE.”<sup>119</sup> “Educational opportunity” is lost, “where, absent  
7 the error, there is a strong likelihood that alternative educational possibilities for the  
8 student would have been better considered.”<sup>120</sup>

9 9. Once a procedural error is found, it must be determined whether that  
10 violation affected the substantive rights of the parent or the child.<sup>121</sup>

11 **Stay Put**

12 10. Upon the filing of a due process complaint notice, and during the pendency  
13 of a due process hearing and appeal, unless the local education agency and parents  
14 agree otherwise, the student involved in the complaint must remain in his or her “current  
15 educational placement.”<sup>122</sup>

16 **Educational Records**

17 11. Each local education agency must permit parents to “inspect and review”  
18 the education records relating to their child “that are collected, maintained or used by the  
19 agency . . . .”<sup>123</sup> The IDEA does not allow parents to demand to be given copies and  
20 parents do not automatically have the right to request copies; additionally, schools may  
21 charge a fee for copies of records.<sup>124</sup> Parents have the right to request copies when a  
22 failure to provide copies would “effectively prevent the parent from exercising the right to  
23

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24 <sup>118</sup> 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2). This provision was enacted in the 1997  
25 amendments to IDEA.

26 <sup>119</sup> *Capistrano*, 556 F.3d at 909 (citing *W.G. v. Bd. of Trs. of Target Range Sch. Dist. No. 23*, 960 F.2d  
27 1479, 1484 (9<sup>th</sup> Cir 1992) (superseded on other grounds by IDEA Amendments 1997, Public Law 105-17,  
28 § 614(d)(B), 111 Stat. 37)).

29 <sup>120</sup> *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9<sup>th</sup> Cir. (2004, amended 2005)).

30 <sup>121</sup> *Capistrano*, 556 F.3d at 910; see also *Federal Way*, 394 F.3d at 652 and *Target Range*, 960 F.2d at  
1484.

<sup>122</sup> See 34 C.F.R. § 300.518(a).

<sup>123</sup> See 34 C.F.R. § 300.613(a).

<sup>124</sup> See 34 C.F.R. § 300.617.

1 inspect and review the records.”<sup>125</sup> The school must comply with records requests  
2 “without unnecessary delay” and before any meeting regarding an IEP, or any due  
3 process hearing, or any resolution session “no more than 45 days after the request has  
4 been made.”

5 **Burden of Proof and Basis of Decision**

6 12. A parent who requests a due process hearing alleging non-compliance with  
7 the IDEA must bear the burden of proving that claim.<sup>126</sup> The standard of proof is  
8 “preponderance of the evidence,” meaning evidence showing that a particular fact is “more  
9 probable than not.”<sup>127</sup>

10 13. Therefore, in the matter at hand, Petitioners bear the burden of proving by a  
11 preponderance of evidence their allegations as set forth in Issues 1 through 7.

12 **DECISION**

13 **Issue #1**

14 14. Petitioners have not demonstrated that District violated the IDEA when, on  
15 January 10, 2020, the MET team determined Student ineligible for special education and  
16 related services. The MET Report evidences that, at the January 10, 2020 meeting, the  
17 MET team thoroughly reviewed all of the existing data, including the assessment  
18 information Mother brought forward at the time of the meeting, including the parental input  
19 given at that meeting, including medical assessments and records, and including current  
20 observations and progress on Student’s April 2019 IEP goals.<sup>128</sup> While the IEP team  
21 acknowledged and discussed Student’s various medical-related concerns, the MET team  
22 found that those concerns did not create an adverse impact on Student’s educational  
23 performance. The MET team reviewed the criteria for each of the IDEA exceptionalities in  
24 depth against the existing and then-most recent assessments of Student and found that, at

25 <sup>125</sup> However, if a fee would effectively prevent the parent from exercising the right to inspect and review,  
26 the school may not charge a fee.

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

28 <sup>127</sup> *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279  
(1993) quoting *In re Winship*, 397 U.S. 358, 371-72 (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).

29 <sup>128</sup> Student was progressing on his goals. A child with a disability need not meet all the IEP goals in order  
30 to be considered to be making educational progress on the goals.

1 that time, Student did not meet the criteria for any of the exceptionalities. As a result, in the  
2 absence of data demonstrating an adverse impact on Student's educational progress, the  
3 IEP team appropriately determined that Student did not require special education services  
4 or related services to make appropriate educational progress.

5 15. The hearing record failed to demonstrate that any of the data used at the  
6 January 10, 2020 meeting was substantively inaccurate or falsified. Petitioner's pervasive  
7 arguments as to falsification appear to have sprung from inaccuracies and mistakes in  
8 attributions of data to several incorrect time-periods; however, on review herein, the time-  
9 period attribution did not evidence any substantive error in the data itself, the data being  
10 based on either assessments and/or observations.<sup>129</sup> Overall, Petitioners simply disagreed  
11 with the MET team determination.

12 16. Petitioners failed to demonstrate that the IDEA requires, allows, or even  
13 contemplates, that a MET team is tasked with creating a scenario for a student to "perform"  
14 a task in front of the team.<sup>130</sup> The MET team's purview and responsibility is to review the  
15 available and existing data, not to create data. A lack of current or relevant evaluations  
16 may prevent a MET team from proceeding to a determination at any given meeting and,  
17 thus, may result in the team determining that additional data is required before making an  
18 eligibility determination.

#### 19 **Issue #5**

20 17. Petitioners failed to demonstrate that District failed to provide PWN as to  
21 the January 10, 2020 MET determination "until the PWN was requested by Parent."

22 18. The term "prior written notice" can be taken out of context; PWN typically  
23 can't be given at the moment a discussion is taking place or a determination is being  
24 made. "Prior" entails the local education agency notifying parents in writing before the  
25 local education agency actually takes the "action" that it had determined to take. The

26 \_\_\_\_\_  
27 <sup>129</sup> District corrected the inaccurate attributions in March of 2021 after the January 29, 2021 MET meeting.

28 <sup>130</sup> Observations of students as to academic/skills performance and behaviors are required to be done in  
29 the child's learning environment; the observations are to be done in routine classroom instruction and  
30 performance which was completed prior to a child being referred for an evaluation, or, as in this instance,  
clearly prior to the child's evaluations and assessments being considered with regard to eligibility. See 34  
C.F.R. § 300.310(a).



1 PWN assures that parents are advised in writing of the action about to be taken by the  
2 local education agency.

3 19. The hearing record clearly demonstrated that on January 14, 2020, District  
4 provided the PWN regarding the January 10, 2020 determination to terminate Student's  
5 special education services and related services. By law, District could not terminate  
6 services until the PWN was issued to Parent. The fact that Mother requested "a copy of  
7 the PWN" the day after the meeting is inconsequential.

8 **Issue #2**

9 20. Petitioners failed to demonstrate that District violated the IDEA regarding  
10 Stay Put for Student during the pendency of the prior due process filed on February 28,  
11 2020.

12 21. On January 10, 2020, the MET team determined Student to be ineligible for  
13 special education services and it was determined that Student would be exited from  
14 special education, essentially on January 10, 2020, but effectively on January 14, 2020,  
15 once PWN was given.

16 22. Mother emailed Special Education Teacher on January 11, 2020,  
17 requesting that Student's services remain in place because she was going to be filing a  
18 complaint. However, Stay Put does not arise or attach to a District determination until a  
19 the due process complaint notice is filed, *i.e.*, until a local education agency is properly  
20 notified of an appeal of the adverse determination through the filing of a written due  
21 process complaint notice. Regarding Stay Put, the IDEA specifies that a child must  
22 remain in his or her current placement "during the pendency of a due process complaint  
23 notice" unless parents and the school agree otherwise.<sup>131</sup>

24 23. Mother filed a due process complaint notice on February 28, 2020.  
25 Therefore, presuming that District received its copy of that complaint on the same date,  
26 by operation of law, Stay Put would attached to the due process regarding Student's then  
27 "current placement." If applicable, Stay Put would attach and remain in place during the  
28 pendency of that due process. However, pursuant to the PWN, Student had been exited

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<sup>131</sup> 34 C.F.R. § 300.518(a).

1 from special education status and, as of January 14, 2020, Student was a general  
2 education student. Given the hearing record, it seems unlikely that District and Parents  
3 would have come to an agreement otherwise as to Student's status or "placement" during  
4 the pendency of that due process filing; clearly, the hearing record does not evidence any  
5 such agreement. Therefore, Student, as a general education student had no "current"  
6 special education placement.

7 24. Regarding the MET termination of services, the prior Complaint and Stay  
8 Put, School Psychologist testified that, after January 10, 2020, Student received no  
9 special education or related services.<sup>132</sup>

10 25. Regarding the MET termination of services, the prior Complaint and Stay  
11 Put, Student Services Director testified that, after January 10, 2020, Student's placement  
12 was in the general education setting. Student Services Director testified that Student was  
13 not receiving OT or Speech after February 23, 2020.<sup>133</sup>

14 **Issue #3**

15 26. Petitioners failed to demonstrate that District violated the IDEA regarding  
16 provision of Student's educational records after Mother's November 11, 2021 request.  
17 The hearing record demonstrated Mother's repeated requests, and repetitive requests for  
18 the same records. District provided Student's educational records or referenced Mother  
19 to the last date on which those same requested record had been provided to her. The  
20 IDEA does not require immediate provision of records; the IDEA allows a parent to  
21 "inspect and review" educational records within a reasonable period of time not to exceed  
22 45 days.

23 27. Specifically, on November 19, 2021, Student Services Director emailed  
24 Mother with a variety of the relevant records regarding the MET in 2019, the MET in 2020,  
25 and the MET in 2021 in addition to the [REDACTED] (2019) and [REDACTED] (2019) medical  
26 records.<sup>134</sup>

27  
28 <sup>132</sup> See Day One TR at 54, Day Three TR at 552.

29 <sup>133</sup> See Day One TR at 157-8.

30 <sup>134</sup> *Id.*; see also District Exhibit 29. In that email, Student Services Director also specified the records that had previously been provided to Mother: "handwriting" in March 2021 by [REDACTED] Principal; the MET

**Issue #4**

1           28. Petitioners failed to demonstrate that District violated the IDEA regarding  
2 parental participation in the IEP and eligibility determination processes.

3           29. Any question or concern regarding parental participation in the April 2019  
4 IEP falls outside the 2-year limitations period. The hearing record demonstrated that  
5 Student's April 2019 IEP was the last IEP developed by District.  
6

7           30. The hearing record demonstrated that both parents attended and  
8 participated in the January 10, 2020 MET meeting. Parental input was memorialized in  
9 the MET report along with evaluations and assessments.

10           31. The hearing record demonstrated that Mother participated by telephone in  
11 the January 29, 2021 MET meeting until the time at which she disconnected from the  
12 meeting; Father had been invited but declined to attend. The meeting notes indicate  
13 Mother's participation; additionally, parental input from Mother is found within the MET  
14 Report.<sup>135</sup> The MET Report contains evaluations and assessments.

15           32. The draft MET Report for the November 19, 2021 meeting contains parental  
16 input provided to District prior to the meeting.<sup>136</sup> Mother participated by telephone in the  
17 November 19, 2021 meeting; in addition to discussion of parental concerns, Mother  
18 offered up that she had additional a PT evaluation to give to the team and that she would  
19 obtain reading and writing assessments. The MET Report contains evaluations and  
20 assessments. At the November 19, 2021 meeting, the MET team determined that  
21 additional information was needed to make an eligibility determination.

**Issues #6 and #7**

22           33. Petitioners failed to demonstrate that District violated the IDEA with regard  
23 to child find, evaluations, or time periods for evaluations.

24           34. After the January 29, 2021 MET meeting, Mother refused to give parental  
25 consent for District to evaluate Student. District issued its March 8, 2021 PWN indicating  
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27 reports or drafts previously provided; and, the DIBELS data from prior to September 17, 2021 and the DRA  
28 data on November 9, 2021 from Second Grade teacher.

29 <sup>135</sup> See District Exhibit 11 at 19, 10, 21, 25.

30 <sup>136</sup> See District Exhibit 21 at 20, 21, 22, 25, 26.

1 the refusal and that District was ready, willing, and able to proceed with evaluations if  
2 parents changed their minds.

3 35. After Mother's October 28, 2021 request for Student to be evaluated either  
4 for an IEP or 504 Plan, District issued its PWN dated November 9, 2021 agreeing to  
5 evaluate.

6 36. District conducted a MET1 meeting on November 19, 2021. District  
7 determined to seek additional data in the areas of: Speech Language; classroom  
8 observations; Psychoeducational; Social Emotional; Education achievements; gross  
9 motor and fine motor; and Medical review regarding any medical problems that may  
10 "impede" learning.<sup>137</sup> District issued a PWN on November 29, 2021 with regard to MET  
11 team's determination to seek additional information. On November 30, 2021 District  
12 provided Mother with a list of the testing intended to be completed and provided the  
13 requisite parental consent and record request/release forms.

14 37. Rather than give the parental consent, Mother provided a limited and  
15 conditioned consent form dated December 3, 2021, specifically refusing ASRS regarding  
16 Autism. On December 3, 2021, District explained the need for unlimited consent so that  
17 Student could be evaluated in all areas of suspected disability. Subsequently, on January  
18 4, 2021, Mother made her filing continuing her objections regarding the ASRS but Mother  
19 did also give consent for ASRS in that January 4, 2022 filing.

20 38. District appropriately determined that Mother gave, and District received,  
21 parental consent for evaluation on January 4, 2022 and not on December 3, 2021. By  
22 law, District then had 60 days from January 4, 2022 to make its evaluations and make a  
23 determination with regard to eligibility for special education status/services.<sup>138</sup>

24 **ORDER**

25 Based on the findings and conclusions above,

26 **IT IS ORDERED** that Petitioners have failed to meet their burden to demonstrate  
27 any of the alleged District violations of the IDEA.

28 \_\_\_\_\_  
29 <sup>137</sup> See District Exhibit 21.

30 <sup>138</sup> A.A.C. R7-2-401(E)(3) and (4).

1 **IT IS FURTHER ORDERED** that Petitioners' Complaint is dismissed with prejudice  
2 and District is the prevailing party.

3 **ORDERED** this day, October 26, 2022.

4 **OFFICE OF ADMINISTRATIVE HEARINGS**

5  
6 /s/ Kay A. Abramsohn  
7 Administrative Law Judge

8  
9 **RIGHT TO SEEK JUDICIAL REVIEW**

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

18 Transmitted by mail, e-mail, October 26, 2022 to:

19 [REDACTED]  
20 [REDACTED]  
21 Tucson, AZ 85718  
22 [REDACTED]@gmail.com  
23 Parent/Petitioners

24 [REDACTED]  
25 [REDACTED]  
26 Phoenix, AZ 85054  
27 [REDACTED]@me.com  
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5  
6 By Miranda Alvarez  
7 Legal Secretary  
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