

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 [REDACTED] a Student, by and through Parents [REDACTED]

No. 20C-DP-044-ADE

4 [REDACTED] Petitioners,

5 v.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Catalina Foothills School District,
7 Respondent.

8
9 **HEARING:** Convened on May 18-21, 2020,¹ followed by review of the official
10 record received on June 05, 2020, and review of closing arguments received on July 01,
11 2020, July 31, 2020, and August 16, 2020.²

12 **APPEARANCES:** Hope Kirsch, Esq. and Lori Kirsch-Goodwin, Esq. appeared on
13 behalf of Petitioner Parent [REDACTED] ("Parent"), Petitioner Parent [REDACTED] (collectively "Parents")
14 and Petitioner Student [REDACTED] ("Student") (collectively "Petitioners").

15 Denise Bainton, Esq. and Lisa Ann Smith, Esq. appeared on behalf of Catalina
16 Foothills School District ("Respondent" and "CFSD"), accompanied by Dr. Denise Bartlett,
17 Executive Director of Special Education.

18 **WITNESSES:**³

- 19 • **Parent;**
- 20 • [REDACTED], **Clinical Psychologist;**
- 21 • [REDACTED], **Academic Director – [REDACTED]**
- 22 • [REDACTED], **Counselor – [REDACTED];**
- 23 • [REDACTED], **Principal – [REDACTED];**
- 24 • [REDACTED], **English Teacher – Catalina Foothills High School;**
- 25 • [REDACTED], **Spanish Teacher – Catalina Foothills High School;**
- 26 • [REDACTED], **Health & Wellness Teacher – Catalina Foothills High School;**
- 27 • [REDACTED], **Principal – Catalina Foothills High School;**
- 28 • [REDACTED], **CFSD School Psychologist; and**
- 29 • [REDACTED], **Neuropsychologist**

30
1 ¹ At the time the underlying Complaint was filed, Student was in the midst of [REDACTED] grade during the 2019-20
2 school year. However, by the time the hearing record was closed Student had completed his [REDACTED] grade
3 year.

4 ² The parties requested that the timeline be extended to allow for the receipt of the transcript and written
5 closing arguments. As a result, the 45th day, the day by which a decision is due, was October 10, 2020.

6 ³ Throughout this Decision, proper names of Parents and Student's teachers are not used in order to protect
7 confidentiality of Student and to promote ease of redaction. Pseudonyms (appearing above in bold type)
8 will be used instead. Proper names of administrative personnel, service providers, and expert witnesses
9 are used.

1 **HEARING RECORD:** Certified Court Reporter Raynbo Silva (CR No. 50014),
2 RAYNBO COURT REPORTING, LTD., recorded the proceedings as the official record of the
3 hearing.⁴

4 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

5 Parents bring this due process action on behalf of Student, claiming that CFSD
6 violated the Individuals with Disabilities Education Act ("IDEA"), alleging procedural and
7 substantive errors.

8 The law governing these proceedings is the IDEA found at 20 United States Code
9 ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),⁵ and its implementing
10 regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well as the Arizona
11 Special Education statutes, Arizona Revised Statutes ("ARIZ. REV. STAT.") §§ 15-761
12 through 15-774, and implementing rules, Arizona Administrative Code ("ARIZ. ADMIN.
13 CODE") R7-2-401 through R7-2-406.

14 **PROCEDURAL HISTORY**

15 Petitioners' due process complaint notice ("Complaint") with 8 allegations was filed
16 on January 14, 2020. On January 17, 2020, the Arizona Department of Education
17 ("Department") issued a NOTICE OF HEARING setting the matter for hearing at 9:00 a.m. on
18 March 03, 2020, before the Office of Administrative Hearings, and independent state
19 agency. On May 06, 2020, the parties submitted a STIPULATION CONFIRMING OUTCOME OF
20 MARCH 18, 2020 PREHEARING CONFERENCE whereby Allegation #3 was withdrawn. The
21 remaining allegations, Allegation #1-2, 4-8, were heard at due process. The matter was
22 continued from its original hearing date and ultimately heard May 18-21, 2020.

23 **EXHIBITS**

24 The parties presented testimony, exhibits, and argument at the formal evidentiary
25 hearing session. Petitioners Exhibits A through M were admitted into the record.⁶
26 Respondent Exhibits 1 through 25 were admitted into the record. The NOTICE OF HEARING,

27 ⁴ The parties stipulated that the court reporter's transcript would be the official record of the proceedings,
28 which were timely received on June 09, 2020.

29 ⁵ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004,"
IDEA 2004 became effective on July 01, 2005.

30 ⁶ Exhibits M is a demonstrative exhibit only.

RESPONDENT'S PREHEARING MEMORANDUM, RESPONDENT'S REPLY TO COMPLAINT, PETITIONERS' CLOSING ARGUMENT, RESPONDENT'S CLOSING ARGUMENT, and PETITIONERS' REPLY ARGUMENT were all admitted into the record as their own exhibits.

ISSUES AT HEARING

Based on a review of the Complaint, the Administrative Law Judge ("ALJ") determined the following issues were raised for determination at the due process hearing:

(1) Whether Respondent violated its Child Find obligation by failing to identify and evaluate Student for special education and related services, thereby denying Student a FAPE;

(2) Whether Respondent wrongly refused Parents' request for an evaluation for special education and related services;

(3) ~~Whether the District's refusal of Parents' request for an evaluation deprived Parents of their right to meaningfully participate in the decision-making process regarding the provision of a FAPE to a student;~~⁷

(4) Whether Respondent violated the IDEA by failing to timely respond to Parents' request for an independent educational evaluation ("IEE");

(5) Whether Parents are entitled to reimbursement for the evaluation they obtained at their own expense after Respondent failed and refused to respond to their request for an IEE;

(6) Whether Student requires a residential treatment center to receive educational benefit;

(7) Whether [REDACTED] is an appropriate educational location for Student to receive educational benefit; and

(8) Whether compensatory and/or prospective education, and/or other relief, is appropriate for any of the foregoing violations.

REQUESTED REMEDIES

Petitioners requested the following remedies:

⁷ On May 06, 2020, this issue was withdrawn by stipulation of the parties.

1 (1) Respondent should reimburse Parents for tuition, transportation and other
2 related expenses they incurred for Student's placement at [REDACTED].

3 (2) Student should remain at [REDACTED] at Respondent's expense, including
4 transportation and other related services, through the end of the 2019-2020 school year
5 at least and thereafter until Respondent and Parents agree on an LRE where Student can
6 receive a FAPE;

7 (3) Respondent should reimburse Parents for expenses incurred for the private
8 evaluation they obtained for Student, and pay for the private evaluator to attend a meeting
9 to discuss the provision of a FAPE to Student and placement;

10 (4) Respondent should reimburse Parents' attorneys' fees and expenses,
11 including costs and experts' fees, incurred by Parents during the proceedings, hearing
12 and any appeals, or deferring to the jurisdiction of the District Court for deciding such
13 fees, costs and expenses; and

14 (5) Any additional relief deemed just and proper by the Tribunal.

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

17
18 The ALJ has considered the entire hearing record including the testimony and the
19 admitted Exhibits,⁸ and now makes the following Findings of Fact, Conclusions of Law,
20 and Ruling finding that Petitioners have failed to demonstrate that CFSD violated the
21 IDEA through the allegations set forth in the Complaint.

22 **FINDINGS OF FACT**

23 1. The crux of the claims in the instant matter are based on alleged actions
24 and inactions by both parties that occurred between Student's 9th grade and 10th grade
25 years, from 2018-2020. The substantive facts of record are as follows:

26 **Early Childhood**

27
28 ⁸ The ALJ has read and considered each page of each exhibit, even if not mentioned in this Decision. The
29 ALJ has also considered the testimony of every witness, even if the witness is not specifically mentioned in
30 this Decision.

- 1 a. On August 12, 2004, Student was born. Parents legally adopted Student at
2 age 11 months.

3 7th Grade

- 4 b. At the onset of his 7th grade year in 2016-17, Student enrolled in CFSD's
5 middle school.
6 c. Student's academic performance during his 7th grade year in 2016-17⁹ was
7 reported as follows:

- 8 i. Student earned an average of [REDACTED] in Science 7.

9 1. Science Teacher noted that Student needed to "take
10 advantage of opportunities for help."

- 11 ii. Student earned an average of [REDACTED] in Spanish 1a.

- 12 iii. Student earned an average of [REDACTED] in English Language Arts 7.

- 13 iv. Student earned an average of [REDACTED] in Social Studies 7.

- 14 v. Student earned an average of [REDACTED] in Math 7.

- 15 vi. Student earned an average of [REDACTED] in Physical Education
16 ("PE")/Health 7.

- 17 vii. Student earned an average of [REDACTED] in Art 7.

- 18 viii. Student earned an average of [REDACTED] in General Music 7.

19 1. Music Teacher noted that Student was a "pleasure to have in
20 class."

- 21 ix. Student was tardy to class on 8 occasions and absent from school
22 on 4 days during the 2016-17 school year.¹⁰

- 23 x. Student's Spring 2017 Grade 7 English Language Arts ("ELA")
24 Assessment by AzMERIT score was Level 2 (Partially Proficient).¹¹

- 25 d. Student was disciplined on 1 occasion during his 7th grade year in 2016-17
26 for "aggression."¹²

27 ⁹ See Petitioners Exhibit A, pages 23-27.

28 ¹⁰ See Petitioners Exhibit A, page 27. Student also missed 8 other days of PE and 1 day of Math and Music
29 class.

30 ¹¹ See Petitioners Exhibit A, pages 28-32.

¹² See Petitioners Exhibit A, page 16.

8th Grade

- e. During Student's 8th grade year in 2017-18 he was evaluated and granted academic accommodations pursuant to Section 504 of the Rehabilitation Act of 1973 ("504 Plan"), in part, due to an Attention-Deficit/Hyperactivity Disorder ("ADHD") diagnosis.¹³ Specifically, Student's 504 Plan afforded him additional time to complete tasks and offered preferential classroom seating to eliminate distractions.¹⁴
- i. On May 15, 2018, Respondent issued a Prior Written Notice ("PWN") to Parents.¹⁵ The purpose of the PWN was to update Student's 504 Plan for continued use and remove "alternative forms of testing" as an accommodation because Student did not utilize the safeguard during his 8th grade year.
- f. Student's academic performance during his 8th grade year in 2017-18 ¹⁶ was reported as follows:
- i. Student earned an average of [REDACTED] 5 in Science 8.
- ii. Student earned an average of [REDACTED] in Spanish 1b.
- iii. Student earned an average of [REDACTED] in English Language Arts 8.
- iv. Student earned an average of [REDACTED] in Social Studies 8.
- v. Student earned an average of [REDACTED] in Math 8.
1. Math Teacher noted Student was a "pleasure to have in class."
- vi. Student earned an average of [REDACTED] in PE/Health 8.
- vii. Student earned an average of [REDACTED] in Art 8.
- viii. Student's Spring 2018 Grade 8 ELA Assessment by AzMERIT score was Level [REDACTED]).¹⁷

¹³ Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394, codified at 29 U.S.C. § 701 et seq., is legislation that guarantees specific rights to students with disabilities. See Petitioners Exhibit A, page 13 and Petitioners Exhibit B, page 19.

¹⁴ See Petitioners Exhibit A, pages 14-15, 17-18, 37-38, 40-41, and 63-64.

¹⁵ See Petitioners Exhibit A, pages 40-41.

¹⁶ See Petitioners Exhibit A, pages 43-46.

¹⁷ See Petitioners Exhibit A, pages 47-50.

ix. Student passed the Spring 2018 Arizona's Instrument to Measure Standards ("AIMS") Assessment with a score of "meets the standard."¹⁸

x. Student was tardy to class on 6 occasions and absent from school on 2.5 occasions during the 2017-18 school year.¹⁹

g. Student was disciplined on 1 occasion during his 8th grade year in 2017-18 for a tobacco policy violation.²⁰

9th Grade

h. At the onset of his 9th grade year in Fall of 2018, Student matriculated to CFSD's high school.

i. Student's academic performance during his 9th grade year in 2018-19 ²¹ was reported as follows:

i. First semester, Student earned a ■ in Global Issues. Second semester, Student earned a ■ in Global Issues.

ii. First semester, Student earned a ■ in Spanish 1. Second semester, Student earned a ■ in Spanish 1.

iii. First semester, Student earned a ■ in Algebra 1. Second semester, Student earned a ■ in Algebra 1.

1. Algebra Teacher noted Student was a "pleasure to have in class."

iv. First semester, Student earned a ■ in Honors Biology. Second semester, Student earned a ■ in Honors Biology.

1. Honors Biology Teacher noted that Student's grade was due, in part, because "[m]ajor assessment(s) not turned in."

v. First semester, Student earned an ■ in Beginning Guitar. Second semester, Student earned an ■ in Beginning Guitar.

¹⁸ See Petitioners Exhibit A, pages 51-52.

¹⁹ See Petitioners Exhibit A, page 46. Student was absent for half of a day during the 4th quarter of the school year.

²⁰ See Petitioners Exhibit A, page 42.

²¹ See Petitioners Exhibit A, pages 68-69.

vi. First semester, Student earned a [REDACTED] in Honors English 9. Second semester, Student earned a [REDACTED] in Honors English 9.

1. Honors English Teacher noted Student was a “pleasure to have in class.”

vii. First semester, Student earned a [REDACTED] in PE.

viii. Second semester, Student earned a [REDACTED] in Health & Wellness.

ix. Student’s Spring 2019 Grade 9 ELA Assessment by AzMERIT score was Level [REDACTED].²²

x. Student passed the Spring 2019 AIMS Assessment with a score of “meets the standard.”²³

j. Student was disciplined on 2 occasions during his 9th grade year in 2018-19 for name-calling²⁴ and for in-class possession and use of an electronic cigarette.²⁵

k. On April 25, 2019, Respondent issued a PWN to Parents.²⁶ The purpose of the PWN was to continue Student’s 504 Plan and afford him a better chance of achieving academic success, as it was noted that Student was not using his plan accommodations regularly. It was also remarked that “[Student] is not achieving to his ability, and he needs accommodations in place to be successful academically.”

l. On May 22, 2019, the 2018-19 school year ended.

2019 Summer Break – 1st Semester of 10th Grade

m. On May 31, 2019, Student was voluntarily admitted to a behavioral health hospital (“BHH”) after he [REDACTED]
[REDACTED].²⁷ Student was diagnosed with Unspecified Bipolar Disorder. On June 11, 2019, Student was discharged.²⁸

²² See Petitioners Exhibit A, pages 72-73.

²³ See Petitioners Exhibit A, pages 74-75.

²⁴ See Petitioners Exhibit A, page 53.

²⁵ See Petitioners Exhibit A, pages 54-56.

²⁶ See Petitioners Exhibit A, pages 65-66.

²⁷ See Petitioners Exhibit C.

²⁸ *Id.*

- 1 n. On July 01, 2019, Student was voluntarily readmitted to [REDACTED] after he self-
2 reported feeling “super suicidal and super homicidal.”²⁹ Student was
3 discharged on July 08, 2019.³⁰
- 4 o. On July 09, 2019, Parents enrolled Student in a short-term Residential
5 Treatment Center (“RTC”) [REDACTED] in Petaluma, California.³¹ Student
6 transferred to another RTC on or about August 13, 2019, after he
7 “completed treatment” to “become capable of handling angry feelings in
8 constructive ways that enhance daily functioning.”³²
- 9 i. On June 21, 2019, Parents first made contact with [REDACTED].
- 10 ii. At his intake, Student indicated that he viewed “family conflict” and
11 “drugs” as his current problems.³³ Student also reported daily
12 marijuana use and prior use of alcohol and benzodiazepines.³⁴
13 Student further reported that he used drugs as a support system and
14 means of social functioning.³⁵ Student’s 9th grade GPA was listed as
15 [REDACTED] and his education needs were listed as “none.”³⁶
- 16 iii. During his stay at [REDACTED], Student was evaluated by staff and a
17 private Clinical Neuropsychologist whereby he was diagnosed with
18 Cannabis Use Disorder, Major Depressive Disorder (“MDD”)/Bipolar
19 Disorder, Substance Abuse Disorder (“SUD”), Oppositional Defiance
20 Disorder (“ODD”), Social Phobia, Generalized Anxiety Disorder
21 (“GAD”), and had his previous ADHD diagnosis confirmed.³⁷
- 22 iv. It is unclear what tuition, if any, Parents paid [REDACTED] for Student’s
23 short-term RTC placement.
- 24

25 ²⁹ See Petitioners Exhibit D.

26 ³⁰ *Id.*

27 ³¹ See Respondent Exhibit 20, pages 239-279; see also Petitioners Exhibits A, pages 76-85 and E.

28 ³² See Respondent Exhibit 20, page 277.

29 ³³ *Id.* at 243.

30 ³⁴ *Id.*

³⁵ *Id.* at 246.

³⁶ *Id.*

³⁷ See Respondent Exhibit 20

- 1 p. On July 17, 2019, Student submitted to 7 psychological tests administered
2 by a licensed Clinical Neuropsychologist, whereby Student was diagnosed
3 with [REDACTED]
4 diagnosis confirmed.
- 5 q. On August 05, 2019, Parents submitted a written request to Respondent for
6 “an IEP meeting.”³⁸
- 7 r. On August 06, 2019, Parents notified Respondent in writing that they “are
8 going to withdraw him.”³⁹
- 9 s. On August 07, 2019, Parent advised Respondent that Student had been
10 enrolled at [REDACTED] to seek treatment for his substance abuse disorder.
- 11 t. August 08, 2019, was the first day of the 2019-20 school year. Parent called
12 Student “out sick” of school. Later, Parents submitted a second written
13 request to Respondent for “an IEP meeting” that specifically noted should
14 take place “no more than 10 business days from our original request, as
15 required by law.”⁴⁰
- 16 u. Parents offered that Student had been “diagnosed with a new disorder
17 which will impact his learning and requires intensive psychological therapy
18 services as well as tailored education for his disability.”⁴¹
- 19 v. On August 09, 2019, Respondent informed Parents that for Student to be
20 considered for a special education evaluation, Student would need to be a
21 registered homeschool student, enrolled in online school, or remain enrolled
22 in high school and attend regularly.⁴² Respondent further advised that it had
23 15 school days post receipt of Parent’s evaluation request to review existing
24 data or issue a PWN.⁴³ Respondent further advised that it would have an
25 additional 60 calendar days to complete an evaluation if it determined that

26 ³⁸ See Petitioners Exhibit B, page 48.

27 ³⁹ *Id.*

28 ⁴⁰ See Petitioners Exhibit B, page 49.

29 ⁴¹ *Id.*

30 ⁴² See Petitioners Exhibit B, page 50.

⁴³ *Id.*

1 a review of existing data was not sufficient.⁴⁴ Respondent informed Parents
2 that it would conduct an evaluation of existing data or issue a PWN by
3 August 28, 2019.⁴⁵

4 w. On August 09, 2019, Parents informed Respondent that Student was “out
5 of school sick right now due to his disability.”⁴⁶ Respondent warned Parents
6 that Student could be withdrawn after 10 consecutive days of non-
7 attendance and informed Parents that they may report absence(s) for
8 Student by calling the attendance hotline, emailing the school’s attendance
9 representative, or submitting an online form on the school’s website, and
10 attached an Exclusion and Exemptions from School
11 Attendance/Certification of Students with Chronic Health Conditions
12 (“Health Waiver”) form.⁴⁷ Respondent noted that the Health Waiver could
13 be implemented if Student did not qualify for special education services.⁴⁸

14 x. On August 11, 2019, Parents enrolled Student at [REDACTED] in [REDACTED]
15 [REDACTED].⁴⁹ Respondent was not advised.

16 i. Parent continued to call and/or email Student “out sick” through
17 September 2019, citing “depression.”⁵⁰

18 y. On August 21, 2019, Respondent informed Parents that the Student Study
19 Team determined that a special education referral for Student was not
20 warranted, and instead offered to meet with Parents to discuss alternative
21 options for Student.⁵¹ Parents responded by informing Respondent of
22 Student’s RTC placement and noted “[w]e feel that the school has a
23 responsibility to help us pay for this placement and we will be seeking
24 reimbursement from the school district.”⁵²

25 ⁴⁴ *Id.* Notably, a typographical error appears in the referenced email.

26 ⁴⁵ *Id.*

27 ⁴⁶ See Petitioners Exhibit B, page 51.

28 ⁴⁷ See Petitioners Exhibit B, page 52.

29 ⁴⁸ *Id.*

30 ⁴⁹ See Petitioners Exhibits B, page 55 and F.

⁵⁰ See Respondent Exhibit 14, page 86.

⁵¹ See Petitioners Exhibit B, page 54.

⁵² See Petitioners Exhibit B, pages 55 and 69.

- 1 i. Parents paid [REDACTED] \$154,880.13 for Student's RTC placement from
2 August 12, 2019, through May 31, 2020.⁵³
- 3 ii. Parents spent \$3,496.76 in travel expenses to visit Student between
4 October 10, 2019, and February 23, 2020.⁵⁴
- 5 z. On August 22, 2019, Respondent issued a PWN to Parents.⁵⁵ The purpose
6 of the PWN was to document and inform Parents of Respondent's
7 determination not to evaluate Student for special education and related
8 services, per their August 05, 2019, request. Respondent noted that it
9 based its decision on a review of Student's academic information, including
10 his 504 Plan and disciplinary record, and while it acknowledged Student's
11 recent psychological diagnoses, Respondent concluded that Student's
12 education history did not illustrate an adverse impact on his educational
13 performance. Respondent also noted that because Student had not yet
14 attended school that academic term, Respondent was unable to obtain input
15 from Student's 10th grade teachers, and that it could not make a
16 determination as to whether Student's psychological diagnoses currently
17 had an adverse impact on his educational performance.
- 18 aa. On or about August 26, 2019, Respondent received a Health Waiver form
19 on behalf of Student.⁵⁶ The form stated "[Student] had been admitted to a
20 residential program out of town for 3 months. He will return to school after
21 completion of the program."⁵⁷
- 22 bb. On September 12, 2019, Respondent declined responsibility for any costs
23 Parents incurred in their unilateral placement of Student at [REDACTED].⁵⁸
- 24 cc. On September 16, 2019, Parents reached out to Respondent to determine
25 whether they "have a right to an [IEE] since we disagree with your
26

27 ⁵³ See Petitioners Exhibit I.

28 ⁵⁴ *Id.*

29 ⁵⁵ See Petitioners Exhibits A, pages 86-89 and B, pages 64-68.

30 ⁵⁶ See Petitioners Exhibits A, pages 90-91 and B, pages 59-60.

⁵⁷ *Id.*

⁵⁸ See Petitioners Exhibit B, page 70.

1 conclusion that [Student] does not need an evaluation?" Parents noted that
2 the PWN "doesn't say what happens if the school refuses to perform an
3 evaluation," and asked "Can you explain our rights?"

4 dd. On September 19, 2019, Respondent provided written notice to Parents that
5 "[Respondent] will be required to withdraw [Student] from school because
6 he's in attendance at another school ([REDACTED]). Unfortunately, [Respondent
7 is] not allowed to dual enroll students. When [Student] returns to Tucson,
8 we are ready to educate him on our campus."⁵⁹ Respondent also advised
9 that it would get back to Parents "as soon as possible" regarding Parents
10 question related to an IEE.⁶⁰

11 ee. On September 20, 2019, Respondent withdrew student, and backdated the
12 withdrawal to August 07, 2019.⁶¹

13 ff. On November 20, 2019, Student submitted to a psychological assessment
14 Parents arranged for him to have while at [REDACTED].⁶² Clinical Psychologist
15 made the following determinations:

- 16 i. Student requires continued residential schooling with individualized
17 academic intervention(s);
- 18 ii. Student requires continued residential academic-therapeutic
19 intervention(s);
- 20 iii. Student suffers from attachment problems including trust issues,
21 interpersonal manipulation and self-injury that require continued
22 therapy;
- 23 iv. Student requires an academic setting that includes reduced class
24 size, one-on-one attention, visual and auditory directions, a
25 workspace near his instructor, extended time on exams and projects,
26 and predictable rewards and consequences

27
28 ⁵⁹ See Respondent Exhibit 14, page 88.

⁶⁰ *Id.*

⁶¹ See Petitioners Exhibit A, pages 93-96.

⁶² See Petitioners Exhibit H.

- 1 v. Student requires integrated social skills training; and
2 vi. Student requires a structured and predictable lifestyle to better
3 regulate neuro-chemical levels, which impacts Student's ability to
4 regulate his mood and re-focus when distracted.

5 1. Parents paid \$4,100.00 to Clinical Psychologist for the
6 assessment and travel fees related thereto.⁶³

7 gg. On December 04, 2019, Parents provided Respondent with written notice
8 that Student would remain at [REDACTED] for "some more months."⁶⁴

9 2. In closing, Petitioners argued that Respondent was the local education
10 agency ("LEA") responsible for Child Find and evaluation of Student, pursuant to ARIZ.
11 ADMIN. CODE R7-2-401(D)(4)(b) and 20 U.C.S. § 400 *et seq.* and that based on Student's
12 grades and behaviors Respondent should have suspected that Student had a disability
13 notwithstanding any specific request(s) from Parents and had Student evaluated for
14 special education and related services no later than August of 2019. Petitioners conceded
15 that not every student with ADHD requires specialized instruction and may achieve
16 academic success with 504 Plan accommodations, but argued that Student's 504 Plan
17 was not effective because he continuously struggled academically despite his grade
18 advancement. Petitioners also argued that Respondent's issuance of the August 22,
19 2019, PWN without Respondent's consultation with Parents, deprived Parents of their
20 right to meaningfully participate in the decision-making process and amounted to an IDEA
21 violation. Petitioners also argued that Respondent's failure to agree to fund Student's IEE
22 or file for due process to defend its denial position, should result in a \$4,100.00
23 reimbursement award to Petitioners. Petitioners further argued that Student's placement
24 at [REDACTED] evinced his need for therapeutic supports in a tailored academic environment,
25 and that Respondent's 504 Plan was inadequate to address the entanglement of
26 Student's social-emotional needs from his learning processes.⁶⁵ To that end, Petitioners
27 opined that Student's placement at [REDACTED] was the most appropriate choice Parents could

28 ⁶³ *Id.*

29 ⁶⁴ See Respondent Exhibit 14, page 94.

30 ⁶⁵ See Respondent Exhibit 21.

1 make under their family's given circumstances and further argued that an award of
2 compensatory education would be the most equitable relief Petitioners could receive from
3 the Tribunal. Specifically, Petitioners seek an award of no less than \$233,809.76 with an
4 accompanying order requiring Respondent to pay for Student's tuition at [REDACTED], including
5 transportation and related expenses, up to and until Student transitions home or to
6 another appropriate placement.⁶⁶

7 3. In closing, Respondent argued that Student is not a "child with a disability"
8 with rights under the IDEA and that Petitioners have effectively placed "the cart before
9 the horse" in their Complaint. Respondent argued that it had no reason to suspect that
10 Student had one or more disabilities that would warrant an evaluation for special
11 education and related services and that Respondent's knowledge of Student's ADHD
12 diagnosis was insufficient to establish such grounds. Respondent noted that to the extent
13 Student was academically impacted by his ADHD, his 504 Plan was set up to provide
14 sufficient supports to assist and compensate. Respondent argued that Student's 9th
15 grade year was rather unremarkable as he passed all of his classes and had no major
16 disciplinary issues, and it was not until after the academic year ended that Student
17 experienced mental health episodes which resulted in hospitalizations and Parents'
18 placement of Student at [REDACTED], unbeknownst to Respondent. Respondent further
19 argued that the events of Summer 2019 did not create a basis for Respondent to have a
20 reasonable suspicion that Student was in need of specially designed instruction. Parent's
21 testimony and Student's medical records indicate that the root cause of his behavioral
22 issues stemmed from his relationship with Parent and drug use. Additionally, Respondent
23 argued that Parents never requested an IEE, instead, Parents had merely inquired as to
24 whether they had a right to an IEE as they disagreed with the school's decision not to
25 evaluate Student. Respondent noted that 34 C.F.R. § 300.502(b)(2) only applies when a
26 district has already conducted its own evaluation and a student's parent(s) disagrees with
27 said evaluation. Because Student was not evaluated, Respondent argued that Parents
28 were never entitled to an IEE as a matter of right. To that end, Respondent argued that

29 ⁶⁶ See Petitioner Exhibit I.

Parents were not entitled to reimbursement for Student's evaluation because only a disputed public evaluation may trigger a right to a publically funded IEE. Respondent further argued that Parents' unilateral placement of Student at [REDACTED] was inappropriate because (1) it was not necessary to provide special education and related services, (2) Student did not require such services, (3) [REDACTED] never provided Student with any such services, and (4) [REDACTED] "sole focus is helping teens with a history of developmental trauma complicated by adoption," and does not accept health insurance. Respondent argued, per Student's [REDACTED] records, that Student was not admitted for educational reasons or "academic concerns." Respondent noted that [REDACTED] primary academic goal is "helping students learn to regulate their emotions and their behavior in a classroom," and argued that Student made no progress in this area from December 2019 to April 2020 according to his Treatment Plan. Lastly, Respondent argued that Petitioners are not entitled to tuition reimbursement because Student was unilaterally placed by Parents in a for-profit institution, and not a "private secondary school" or "nonprofit institutional day or residential school" as required by 34 C.F.R. §§ 300.145(c) and 300.36.

CONCLUSIONS OF LAW

APPLICABLE LAW

1. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.⁶⁷ The standard of proof is "preponderance of the evidence," meaning evidence showing that a particular fact is "more probable than not."⁶⁸ Therefore, Petitioners bear the burden of proving their claims and complaints by a preponderance of evidence.

⁶⁷ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

⁶⁸ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

1 2. The IDEA's statute of limitations requires courts to bar claims made more
2 than two years after the parents "knew or should have known" about the actions forming
3 the basis of the complaints.⁶⁹

4 3. This Tribunal's determination of whether Student received a free appropriate
5 public education ("FAPE") must be based on substantive grounds.⁷⁰ Procedural violations
6 in and of themselves do not necessarily deny a student a FAPE. If a procedural violation is
7 alleged and found, it must be determined whether the procedural violation either (1)
8 impeded the student's right to a FAPE; (2) significantly impeded the parents' opportunity to
9 participate in the decision-making process; or (3) caused a deprivation of educational
10 benefit.⁷¹ If one of the three impediments listed has occurred, the child has been denied a
11 FAPE due to the procedural violation.

12 4. Through the IDEA, Congress has sought to ensure that all students with
13 disabilities are offered a FAPE that meets their individual needs.⁷² These needs include
14 academic, social, health, emotional, communicative, physical, and vocational needs.⁷³ To
15 do this, school districts must identify and evaluate all children within their geographical
16 boundaries who may be in need of special education and services. The IDEA sets forth
17 requirements for the identification, assessment and placement of students who need
18 special education, and seeks to ensure that they receive a free appropriate public
19 education. The IDEA mandates that school districts provide a "basic floor of
20 opportunity."⁷⁴ A FAPE consists of "personalized instruction with sufficient support
21 services to permit the child to benefit educationally from that instruction."⁷⁵ The FAPE
22 standard is satisfied if the child's individualized education plan ("IEP") sets forth his or her
23 individualized educational program that is "reasonably calculated to enable the child to

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25 ⁶⁹ 20 U.S.C. §1415(f)(3)(C); see also *Avila v. Spokane Sch. Dist.* 81, 852 F.3d 936, 937 (9th Cir. 2017); *J.K. and J.C. on behalf of themselves and K.K-R v. Missoula County Publ. Schools*, 713 F. App'x 666 (9th Cir. 2018).

26 ⁷⁰ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

27 ⁷¹ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

28 ⁷² 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

29 ⁷³ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

30 ⁷⁴ *Rowley*, 458 U.S. at 200.

⁷⁵ *Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

1 receive educational benefit.”⁷⁶ Therefore, a school offers a FAPE by offering and
2 implementing an IEP “reasonably calculated to enable [a student] to make progress
3 appropriate in light of [the student’s] circumstances.”⁷⁷ The IDEA does not require that
4 each student’s potential be maximized.⁷⁸ A student receives a FAPE if a program of
5 instruction “(1) addresses his unique needs, (2) provides adequate support services so
6 he can take advantage of the educational opportunities and (3) is in accord with an
7 individualized educational program.”⁷⁹

8 5. Once a student is determined to be eligible for special education services,
9 a team composed of the student’s parents, teachers, and others formulate an IEP that,
10 generally, sets forth the student’s current levels of educational performance and sets
11 annual goals that the IEP team believes will enable the child to make progress in the
12 general education curriculum.⁸⁰ The IEP tells how the child will be educated, especially
13 with regard to the child’s needs that result from the student’s disability, and what services
14 will be provided to aid the student. The student’s parents have a right to participate in the
15 formulation of an IEP.⁸¹ The IEP team must consider the strengths of the student,
16 concerns of the parents, evaluation results, and the academic, developmental, and
17 functional needs of the student.⁸² To foster full parent participation, in addition to being a
18 required member of the team making educational decisions about the student, school
19 districts are required to give parents written notice when proposing any changes to the
20 IEP,⁸³ and are required to give parents, at least once a year, a copy of the parents’

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23 ⁷⁶ *Id.*, 485 U.S. at 207. In 2017, in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ , 137 S. Ct.
24 988, 2017 West Law 1234151 (March 22, 2017), the Supreme Court reiterated the *Rowley* standard, adding
25 that a school “must offer an IEP that is reasonably calculated to enable a child to make progress appropriate
26 in light of the child’s circumstances,” but the Court declined to elaborate on what “appropriate progress”
27 would look like case to case (*i.e.*, in light of a child’s circumstances).

28 ⁷⁷ *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ (2017).

29 ⁷⁸ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

30 ⁷⁹ *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006) (citing *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995)).

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

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

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

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

1 “procedural safeguards,” informing them of their rights as parents of a student with a
2 disability.⁸⁴

3 6. The IEP team must consider the concerns of a student’s parents when
4 developing an IEP.⁸⁵ In fact, the IDEA requires that parents be members of any group
5 that makes decisions about the educational placement of a student.⁸⁶

6 DECISION

7 7. On January 14, 2020, Parents filed the underlying Complaint in this matter;
8 two years prior, Student was in the second semester of his 8th grade year. Therefore,
9 any actions or inactions that occurred before that time are beyond the limitations period.

10 8. To prevail in the case at bar, Petitioners must establish by a preponderance
11 of the evidence that Student is a child with a disability who needs specialized instruction
12 to access his education, thereby making him entitled to an evaluation, and IEP, and
13 reimbursement for his IEE and the unilateral decision to place Student at an out-of-state
14 RTC.

15 9. The evidence of record established the following:

16 ***Allegation #1 – Respondent’s Alleged Child Find Violation***

- 17 a. 34 C.F.R. § 300.111(a)(i) requires, in pertinent part, that school districts
18 must ensure that “[a]ll children with disabilities residing in the State . . .
19 regardless of the severity of their disability, and who are in need of special
20 education and related services, are identified, located, and evaluated.”
21 b. Here, Student’s grades and test scores earned during his 9th grade year
22 evinced his average intellect and academic achievement. Student’s 504
23 Plan offered preferential seating and assignment extensions upon request,
24 which helped to support Student’s in-school success. Parents’ unartful
25 request on August 05, 2019, to “have an IEP meeting” was an evaluation
26 request Respondent accepted as such. When Respondent convened a

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28 ⁸⁴ 20 U.S.C. § 1415(d); 34 C.F.R. § 300.503. Safeguards may also be posted on the Internet.
29 20 U.S.C. § 1415(d)(B).

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

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

1 meeting on August 21, 2019, to review Student's academic file and [REDACTED]
2 [REDACTED] records, it was determined that Respondent would not evaluate
3 Student for special education and related services because his overall
4 grades, test scores, and in-class behavior did not indicate that he was
5 "struggling," despite the fact that Student did not consistently utilize
6 supports provided in his 504 Plan. Student was not truant, nor did he have
7 a documented history of emotional or disciplinary problems at school.
8 Student's in-home conduct, as attested to by Parent, was never observed
9 by Respondent at school or reported to Respondent prior to August 2019.
10 At the close of the hearing, Petitioners argued that Respondent should have
11 found Student eligible for special education instruction as either
12 "emotionally" qualifying or as having an "other health impairment." However,
13 no evidence was presented to establish that Student had a serious
14 emotional disturbance over a long period of time that adversely affected his
15 educational performance or that he required specially designed instruction
16 due to complications related to his ADHD. Notably, Clinical Psychologist's
17 post-evaluation recommendations were therapeutic, not educational, and
18 Petitioners agree that Student's academic needs are being met at [REDACTED]
19 even though [REDACTED] is not providing special education and related services.
20 Respondent did not wrongfully deny Parents' request to have Student
21 evaluated for special education and related services. Additionally,
22 Petitioners' argument that Parents were denied the right to "meaningfully
23 participate in the decision-making process" is incorrect. The FAPE
24 provisions of the IDEA are only extended after a student is determined to
25 be eligible to receive special education and related services. Here, Student
26 was not determined to be eligible for special education services so no such
27 rights or privileges were extended to Petitioners. Therefore, insufficient
28 evidence exists in the record to find that Respondent committed a Child
29 Find violation or denied Student a FAPE.

- 30 i. Petitioners failed to sustain their burden of proof as to this allegation.

1 ***Allegation #2 – Respondent’s Alleged Failure to Evaluate***

- 2 c. 34 C.F.R. § 300.304(c)(4) provides, in pertinent part, that an LEA must
3 ensure that students are “assessed in all areas related to the suspected
4 disability including, if appropriate, health, vision, hearing, social and
5 emotional status, general intelligence, academic performance,
6 communicative status, and motor abilities.”
7 d. As set forth, *supra*, in August of 2019 Respondent did not have a reason to
8 suspect that Student was a child with a disability.
9 i. Petitioners failed to sustain their burden of proof as to this allegation.

10 ***Allegation #4 & #5 – Respondent’s Alleged Failure to Respond to Parents’ IEE***
11 ***Request and Parents’ Right to Reimbursement***

- 12 e. 34 C.F.R. § 300.502(b)(1) provides, in pertinent part, that “A parent has the
13 right to an independent educational evaluation at public expense if the
14 parent disagrees with an evaluation obtained by the public agency.”
15 f. Here, Parents did not ask for an IEE, rather they asked for a clarification
16 regarding their rights. To the extent that their second unartful request is
17 recognized for what it was intended to be, Petitioners would not be entitled
18 to an IEE because Respondent did not evaluate Student. The law clearly
19 provides that IEE privileges are triggered only after a district has evaluated
20 a student and his guardians are dissatisfied with the result and desire an
21 independent evaluation. Therefore, a reimbursement request may only be
22 considered after a district has completed a special education evaluation of
23 a student and a subsequent private evaluation has also been completed at
24 the student’s parents’ expense. Moreover, Petitioners’ assertion that
25 Respondent failed to respond to their request “without unnecessary delay”
26 is irrelevant.
27 g. Because Respondent never evaluated Student for special education and
28 related services, Petitioners are not entitled to an IEE as a matter of law.
29 No grounds exist to award Parents reimbursement of fees related to their
30 privately funded educational evaluation.

- i. Petitioners failed to sustain their burden of proof as to these allegations.

Allegations #6 & #7 – Appropriateness of Student’s placement at an RTC, specifically [REDACTED]

- h. 34 C.F.R § 300.104 provides that “If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.”
- i. In a situation where parents have unilaterally placed a student in a RTC, placement is deemed appropriate only if it necessary to provide special education and related services.⁸⁷ Here, since the time of his placement at [REDACTED], Student has not been receiving special education and related services. Education and academics are not [REDACTED]’s primary focus. By its own admission, [REDACTED] notes that “helping students learn to regulate their emotions and their behavior in a classroom” is its primary academic goal. On its face, Student’s Treatment Plan at [REDACTED] is not specifically and individually tailored to Student’s academic needs and/or emotional-behavioral needs as they impact/affect his academic success(es). Student’s Treatment Plan at [REDACTED] does not discuss academics at all, but lists Student’s behavioral issues at home and his diagnoses from [REDACTED] in great detail. Additionally, Student’s Treatment Plan comments never changed from intake goals to discharge goals, evincing the fact that Student has not make any progress toward his discharge goals since his placement.⁸⁸ Moreover, upon review of Student’s 9th and 10th grade academic records, it is clear that his grades remain substantially similar between the public and private institutions. Per Student’s 9th and 10th grade disciplinary records, it is clear that Student exhibits the same behaviors at [REDACTED] that he did in public school, even more so. Insufficient evidence

⁸⁷ *Ashland Sch. Dist. V. Parents of Student R.J.*, 588 F.3d 1004, 1009 (9th Cir. 2009).

⁸⁸ See Respondent Exhibit 21, page 260; see also Petitioners Exhibit G, page 418.

exists in the record to find that Student requires placement at a RTC to receive an educational benefit, or that [REDACTED] is an appropriate educational location for Student to receive educational benefit.

i. Petitioners failed to sustain their burden of proof as to these allegations.

Allegation #8 – Respondent’s Prayer for Compensatory Education

j. Compensatory education and related services are available as remedies for violations of the IDEA.

k. Given that Petitioners failed to establish that Respondent committed any violations of the IDEA as set forth, *supra*, Petitioners did not prove by a preponderance of the evidence that Student was entitled to compensatory education or related services.

i. Petitioners failed to sustain their burden of proof as to this allegation.

10. From August 05, 2019, when Parents submitted their special education evaluation request to Respondent, through and up until Student was withdrawn as a student on September 20, 2019, Student was not eligible for special education and related service because his disability did not adversely affect his academic performance or ability to access the general education curriculum.

11. Because the evidentiary record does not demonstrate any violation of the IDEA by CFSD, the undersigned ALJ concludes that Petitioners’ Complaint shall be dismissed. Notwithstanding his ADHD diagnosis, Respondent did not have a basis to reasonably suspect Student of being a “child with a disability” who was unable to access the general education curriculum because of a disability.

RULING

Based on the foregoing,

IT IS ORDERED that that Allegations #1-2 and 4-8 in Petitioners’ due process complaint, and related relief requested, are **denied**.

ORDERED this day, October 02, 2020.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Jenna Clark
Administrative Law Judge

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and ARIZ. REV. STAT. § 15-766(E)(3), this DECISION AND ORDER is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a district court of the United States. Pursuant to ARIZ. REV. CODE R7-2-405(H)(8), any party may appeal the decision to a court of competent jurisdiction within thirty-five (35) days of receipt of the decision.

Copy mailed/e-mailed October 02, 2020 to:

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