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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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

No. 25C-DP-077-ADE

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: October 01, 2025, at 9:00 a.m., followed by review of Closing Arguments and official hearing transcripts, both received on October 17, 2025.

APPEARANCES: Justin Fernstrom, Esq. of LEX TECNICA appeared on behalf of █ (“Student”) and █ (collectively as “Petitioners”). Lisa Anne Smith, Esq. of DECONCINI McDONALD YETWIN & LACY appeared on behalf of Tucson Unified School District (“Respondent” and “District”).

WITNESSES:

█ – Parent
Jennifer Figueroa – **Principal**, and
Teresa “Terry” Leonard – **SpEd Teacher**

OBSERVERS:

Maria Martinez
Dr. Sabrina Salmon, and
Andriana Brandon

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

HEARING RECORD:

Certified Court Reporter Cori Brickey (CCR No. 51030) of COLVILLE & DIPPEL LLC transcribed the proceedings as the official record of the hearing.¹

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, June 02, 2025, Special Education Due Process Complaint (“COMPLAINT”), June 13, 2025, PreHEARING ORDER, Petitioners Exhibits 1-10, Respondent Exhibits A-W, and June 26, 2025, July 28, 2025, August 04, 2025, August 06, 2025, and October 10, 2025, ORDERS GRANTING CONTINUANCE were admitted into the evidentiary record.

¹ The parties stipulated that the court reporter’s transcript would be the official record of the proceedings. The hearing record was held open until October 09, 2025, for the receipt of transcripts. However, transcripts were not received by the Tribunal until October 17, 2025.

1 Petitioners bring this due process action on behalf of Student, alleging that Respondent
2 violated the Individuals with Disabilities Education Act (“IDEA”), constituting both
3 procedural and substantive errors.

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

10 **PROCEDURAL HISTORY**

11 On or about June 02, 2025, Petitioners filed their COMPLAINT with the Arizona
12 Department of Education (“Department”) that alleged two (2) violations of the IDEA
13 against Respondent. On June 06, 2025, the Department issued a NOTICE OF HEARING
14 setting the matter for hearing at 9:00 a.m. on July 18, 2025, before the Office of
15 Administrative Hearings (“OAH”), an independent state agency in Phoenix, Arizona.³

16 **ISSUES AT HEARING**

17 Based on a review of the COMPLAINT, the Administrative Law Judge (“ALJ”)
18 determined the following issues were raised for determination at the due process hearing:

- 19 **(1) Failure of the Local Educational Agency (“LEA”) to implement the**
20 **Individualized Education Program (“IEP”) under 34 C.F.R. § 300.322(c),**
21 **resulting in a denial of a Free Appropriate Public Education (“FAPE”).**

22 Specifically, Petitioners allege that the LEA failed to implement all specified
23 components of Student’s IEP, including 200 service minutes per month for
24 social/emotional support, 200 service minutes per month for behavior
25 management, 200 service minutes per month for written expression, 200

26 ² By Public Law 108-446, known as the “Individuals with Disabilities Education Improvement Act of 2004,”
27 IDEA 2004 became effective on July 01, 2005.

28 ³ On June 26, 2025, the matter was continued and set for hearing September 05, 2025. On July 28, 2025,
29 the matter was continued for hearing on September 25, 2025. On August 04, 2025, the matter was
30 continued and set for a Status Update on September 05, 2025. On September 05, 2025, the matter was
continued for hearing on October 01, 2025, whereby it was heard. However, because there was an
insufficient amount of time for the parties to present their Closing Arguments, an Order as issued on October
02, 2025, setting Oral Argument for October 17, 2025, whereby the parties were permitted to present their
Closing Arguments.

1 service minutes per month for basic reading skills, and 200 service minutes per
2 month for math calculation, because data reflects that Student has not made
3 any academic progress as the LEA only provided a fraction of required
4 services. Petitioners also allege that the LEA failed to implement Student's
5 Behavior Intervention Plan ("BIP"), designed for a general education setting,
6 because he was placed in a cross-categorical special education classroom.

7 **(2) Placement is not in the least restrictive environment ("LRE") under 20**
8 **U.S.C. § 1412(5)(A).** Specifically, Petitioners allege that Student should have
9 been placed in a more appropriate contained environment, such as an
10 emotional disability ("ED") classroom with a 1:1 aide, because his placement in
11 a classroom with a dozen other student with significant needs triggered stimuli
12 and behaviors that exacerbated Student's challenges. Petitioners further allege
13 that Student's placement in a conference room with 1:1 support was wholly
14 inappropriate.

15 a. **Placing Student in a general education classroom with appropriate**
16 **aids and services offers greater educational benefit(s) than a self-**
17 **contained special education classroom.** Specifically, Petitioners argue
18 that Student's placement in a general education classroom would allow him
19 to access rigorous, grade-level curriculum, have daily interactions with non-
20 disabled peers, foster critical social and behavioral skills, and build Student'
21 resilience and adaptability for future for real-world integration. Petitioners
22 further argue that Student's isolation in a self-contained classroom could
23 have been prevented had the District supported a trial 1:1 support within the
24 general education setting to determine if Student could succeed in an LRE
25 with appropriate accommodations.

26 b. **Placing Student in a general education classroom offers non-academic**
27 **benefits.** Specifically, Petitioners argue that Student's interactions with
28 non-disabled peers in a general education promote social, emotional, and
29 behavioral development essential for his grown and future independence.
30 Petitioners further argue that Student could practice communication,

1 collaboration, and conflict resolution with non-disabled peers, which could
2 foster his confidence and give him a sense of belonging.

3 c. **Student’s presence in a general education classroom, supported by a**
4 **properly implemented BIP, could positively impact his teacher and**
5 **fellow student.** Specifically, Petitioners argue that Student’s inclusion in a
6 general education setting could enhance his teacher’s instructional and
7 management skills, and foster empathy, patience, and appreciation for
8 diversity amongst his non-disabled classmates.

9 d. **Mainstreaming Student in a general education classroom, with**
10 **appropriate aids and services, is cost-neutral and potentially less**
11 **expensive than placing him in a self-contained special education**
12 **classroom.** Specifically, Petitioners argue that per Student’s IEP, supports
13 are already funded within the LEA’s existing special education budget,
14 whereas a self-contained classroom would incur additional expenses
15 related to specialized facilities, customized materials, and extra staffing.
16 Petitioners further argue that the District must ensure that Student has
17 access to an appropriate educational environment that supports his long-
18 term success, and in doing so, must establish a plan that promotes the
19 stability of his educational trajectory.

20 **REQUESTED REMEDIES**

- 21 • The LEA shall fund an Independent Educational Evaluation (“IEE”) in all suspected
22 areas of disability, including an academic achievement assessment, functional
23 behavioral assessment, an assistive technology assessment, a mental health
24 assessment, and any other assessment(s) deemed necessary.
- 25 • The LEA shall convene an IEP meeting within thirty (30) days of the completed
26 IEE assessment, with the evaluator(s) in attendance.
- 27 • The LEA shall fund or provide compensatory education in all areas of need,
28 including but not limited to: applied behavior analysis (“ABA”) therapy, 1:1
29 academic instruction, extended school year (“ESY”) services, counseling, and any
30 other compensatory education services deemed necessary to address the alleged
denial of FAPE.

- 1 • The LEA shall provide all assistive technology services and devices needed to
2 provide Student with FAPE.
- 3 • Unless the IEE and Parent agree otherwise, Petitioners are seeking placement for
4 Student in the LRE.
- 5 • The LEA shall ensure that all personnel are trained in the IDEA and its procedural
6 safeguards. Training must include, but is not limited to: the delivery of special
7 education and related services, proper implementation of IEPs, and the conduct of
8 comprehensive evaluations in all areas of suspected disability. The LEA shall
9 provide evidence-based trauma-informed training for all school personnel, with a
10 specific emphasis on de-escalation strategies beyond standard Crisis Prevention
11 Intervention techniques.
- 12 • The LEA shall fund attorney fees and all other costs incurred through the filing of
13 this complaint pursuant to 20 U.S.C. §1415(i)(3)(B).
- 14 • Petitioners request that OAH deems them the prevailing party on all plead issues.

15
16 The Tribunal has considered the entire hearing record, including witness testimony
17 and admitted exhibits, and now makes the following Findings of Fact, Conclusions of Law,
18 and Ruling finding that Petitioners have demonstrated that Respondent procedurally
19 and/or substantively violated the IDEA through the aforementioned allegation(s) set forth
20 in the Complaint. Petitioners' requested remedies are granted in part, the remainder are
21 denied. The credible and material evidence of record is as follows:

22 **FINDINGS OF FACT**

23 **BACKGROUND**

24 1. On May 03, 2018, Student was home-birthed at thirty-six (36) weeks by his
25 biological mother. He was born with fetal alcohol syndrome and cocaine-based narcotics
26 in his system. He was placed in a neonatal intensive care unit for eight (8) days to assist
27 with withdrawals. On or about May 11, 2018, Parent, a Licensed Clinical Social Worker,
28 took Student home as a foster placement. On or about August 26, 2019, Parent and
29 legally adopted Student. He has lived in Arizona his entire life, and resides with Parent
30 and two (2) siblings.

1 could be enrolled in Flowing Wells Elementary School, a school within his home district.¹²
2 Per the PWN, Student had been enrolled on a trial basis, as his sibling also attended the
3 school, and was determined to have a great need for support due to daily behavior
4 disruptions in the classroom.¹³ It was noted that the Desert Sky Community School IEP
5 indicated that Student required targeted adult support for the duration of the school day,
6 and that the multidisciplinary evaluation team (“MET”) also indicated that Student had
7 significant need for behavioral support in the general education setting.¹⁴ Continued
8 enrollment was rejected as an option, as the District opined that additional staff would be
9 needed in order to ensure the safety of Student.¹⁵

10 6. On December 19, 2023, a PWN was issued by the District to advise that it
11 would accept Student’s enrollment and adopt the incoming IEP, including goals for
12 reading, writing, math, and behavior, but would change the service delivery from the
13 resource room to a self-contained classroom.¹⁶ It was noted that all team members agreed
14 that Student’s push-in to the general education classroom was the best placement for
15 him.¹⁷

16 7. On March 08, 2024, and March 15, 2024, Student underwent a
17 neuropsychological examination.¹⁸ Student was identified as having “significant
18 behaviors” starting at age 3, including extreme emotional and behavioral outbursts that
19 involve arguing, defiance, yelling, punching, hitting, kicking, and flipping over furniture.
20 These behaviors occur towards peers and adults, lasting 30mins to 2hrs. Student had
21 threatened to set a fire and “kill everyone,” and is an elopement risk. Student is triggered
22 by settings and loud sounds, changes in his routing, and switching from preferred to no-
23 preferred activities. Student is more impulsive during unstructured times and displays
24 social deficits. A variety of psychometric tests were administered to assess intellectual
25 function, memory, attention and concentration, language, visual perception, fine motor
26 function, and mood. The following scores were reported for Student:

27 ¹² See Respondent Exhibit A.

28 ¹³ *Id.*

29 ¹⁴ *Id.*

30 ¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Petitioners Exhibit 10.

- 1 • SB-V Full Scale IQ standard score of 88 (21st percentile), which is in the low
- 2 average range of cognitive functioning and intelligence;
- 3 • Nonverbal IQ standard score of 81 (10th percentile), which is in the low average
- 4 range;
- 5 • Verbal IQ standard score of 97 (42nd percentile), which is in the average range;
- 6 • Fluid Reasoning factor index standard score of 85 (16th percentile), which is in the
- 7 low average range;
- 8 • Knowledge factor index standard score of 97 (42nd percentile), which is in the
- 9 average range;
- 10 • Quantitative Reasoning factor index standard score of 86 (18th percentile), which
- 11 is within the low average range;
- 12 • Visual-Spatial Processing factor index standard score of 91 (27th percentile), which
- 13 is in the average range;
- 14 • CMS standardized test of memory function revealed severely impaired range for
- 15 general memory performance (1st percentile), immediate recall of auditory
- 16 information was moderately impaired (3rd percentile), mildly impaired recall after
- 17 delay (7th percentile), immediate recall of visual information in moderately impaired
- 18 range (2nd percentile), delayed recognition performance average (50th percentile),
- 19 overall learning moderately impaired (2nd percentile), verbal memory low average
- 20 (16th percentile), low average delayed recall (16th percentile), recognition of story
- 21 detail after 30mins average (25th percentile), immediate recall of word pairs in
- 22 moderately impaired range (2nd percentile), and moderately impaired learning
- 23 curve (5th percentile);
- 24 • Motor persistence and inhibition performed in moderately impaired range (2nd
- 25 percentile);
- 26 • Confrontation naming task performed in average range (32nd percentile); express
- 27 vocabulary knowledge average (63rd percentile), ability to identify vocabulary
- 28 words from pictures average (55th percentile);
- 29 • Visual processing and construction severely impaired (<1st percentile);
- 30 • Fine motor function performed in average range with dominant hand (55th
- percentile), and moderately impaired range with non-dominant hand (4th
- percentile);
- Special testing performed in average range (63rd percentile)

Parent's behavior assessment score was reliable and valid. Student's general education teacher's behavior assessment score was inconsistent but otherwise reliable. Ultimately, Student was additionally diagnosed with Unspecified Symptoms and Signs Involving Cognitive Functions and Awareness (R41.89), Other Toxic Encephalopathy (G92.8), Newborn Affected by Maternal Use of Other Drugs of Addiction (P04.49), Neurodevelopmental Disorder Related to In Utero Exposures (F88), and Disruptive Mood Dysregulation Disorder (F34.8). A 16-point list of recommendations was included at the

1 end of the assessment summary, including consistent behavioral intervention, a behavior
2 plan, and routine exercise.

3 8. The start of the 2024-25 academic term commenced Student's 1st grade
4 year at Whitmore Elementary School.¹⁹

5 9. Beginning October 01, 2024, Student was restrained for behavioral
6 incidents by Whitmore staff, as follows:

- 7 a. On October 01, 2024, Student threw classroom items and swiped his
8 teacher's desk clear, including her laptop.²⁰ He was briefly restrained.
- 9 b. On October 28, 2024, after returning from a break outside, Student threw
10 classroom materials and struck an aide and teacher.²¹ Student refused to
11 stop his violent, destructive behavior.²² He was briefly restrained.
- 12 c. On December 11, 2024, picked up a chair and threw it across his classroom,
13 barely missing another child.²³ He was briefly restrained.
- 14 d. On December 12, 2024, Student and another child got into a physical
15 altercation.²⁴ While they were being separated by aides, Student struck the
16 other child while he was being pulled away.²⁵ He was briefly restrained.
- 17 e. On December 19, 2024, Student charged at another child who made a
18 remark.²⁶ Student hit the child and threw furniture once separated.²⁷ He was
19 briefly restrained.
- 20 f. On February 10, 2025, Student flipped over all of the chairs and desks in
21 his classroom.²⁸ He threw furniture at Principal and other staff. Despite
22 receiving repeated reassurances that he was safe, Student continued to
23 throw classroom materials at staff.²⁹ He was briefly restrained.

24
25 ¹⁹ See Respondent Exhibit A.

26 ²⁰ See Respondent Exhibits R-S; see also Petitioners Exhibit 7.

27 ²¹ *Id.*

28 ²² *Id.*

29 ²³ *Id.*

30 ²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

1 g. On March 19, 2025, Student refused to wait his turn to utilize a classroom
2 tool, and pushed the child next in line.³⁰ Student kicked the intervening aide
3 and teacher, and pushed classroom furniture.³¹ He was briefly restrained.

4 10. On October 31, 2024, towards the beginning of Student's 1st grade term,
5 Parent electronically request that the District conduct a functional behavior assessment
6 ("FBA") of Student to address behaviors perceived to be impacting his ability to access
7 his educational curriculum.³²

8 11. On November 05, 2024, a PWN was issued by the District to provide notice
9 that it would conduct a FBA of Student to determine if additions or modifications of his
10 special education program were required.³³

11 12. On November 12, 2024, a PWN was issued by the District to provide notice
12 that Student would be assessed to collect additional data and (a) help determine if
13 Student continued to have a disability, (b) help determine if Student continued to need
14 special education, and (c) help determine if additions or modifications to Student's special
15 education program were needed.³⁴

16 13. On December 15, 2024, Student was suspended for one (1) day due to
17 aggression.³⁵

18 14. On January 07, 2025, Parent notified Principal that Student had been
19 admitted to Connections Health Solutions – Crisis Response Center ("CRC") for
20 stabilization.³⁶

21 15. On January 07, 2025, Parent notified Principal that CRC recommended
22 Student be transferred to a Level 1 facility.³⁷

23 16. On January 11, 2025, Student was admitted into Phoenix Children's
24 Hospital's ("PCH") psychiatric ward.³⁸ Parent informed Principal that she completed a
25

26 ³⁰ *Id.*

27 ³¹ *Id.*

28 ³² See Respondent Exhibit B.

29 ³³ *Id.*

30 ³⁴ See Respondent Exhibit C.

³⁵ See Petitioners Exhibit 10.

³⁶ See Respondent Exhibit T.

³⁷ *Id.*

³⁸ See Respondent Exhibits J and T.

1 release of information form so that Whitmore and PHC could discuss Student, and that
2 PCH had academic instruction by a “Masters level teacher.”³⁹

3 a. On January 29, 2025, Parent informed Principal that Student was not
4 stabilizing on the medications prescribed by PCH, and that he was
5 exhibiting the same behaviors at PCH that he had exhibited at Whitmore.⁴⁰
6 Per Parent, Student was often sedated by PCH.⁴¹ Parent shared that PCH’s
7 psychologist inquired whether Whitmore could accommodate Student with
8 a 30-minute nap once he returned to school, but Parent declined, opining
9 that such a request was not acceptable.⁴²

10 b. On January 30, 2025, PCH informed the District psychologist that Student
11 had been “so difficult to stabilize,” and opined that upon reentry he would
12 “do best in a self-contained classroom for Emotional Handicap.”⁴³

13 17. On January 17, 2025, Student’s MET convened to review existing data to
14 determine whether additional information was needed to determine eligibility or special
15 education services in Student’s ED educational category.⁴⁴ Ultimately, the MET
16 recommended that a BIP be developed to proactively address Student’s target behaviors
17 analyzed in the FBA, with corresponding positive behavior goals and objectives.⁴⁵ That
18 same date, a PWN was issued by the District to provide notice that Student was
19 determined to be eligible for special education and related services in the ED and other
20 health impairment (“OHI”) educational categories.⁴⁶

21 a. This evaluation was not completed due to Student’s psychiatric
22 hospitalization.

23 18. On February 04, 2025, Student was discharged from PCH.⁴⁷

26 ³⁹ See Respondent Exhibit T.

27 ⁴⁰ *Id.*

28 ⁴¹ *Id.*

29 ⁴² *Id.*

30 ⁴³ See Petitioners Exhibit 5.

⁴⁴ See Respondent Exhibit D; see *a/so* Petitioners Exhibit 10.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

1 19. On February 04, 2025, a BIP & Safety Plan was drafted for Student that
2 targeted aggression and elopement concerns in both classroom settings.⁴⁸ Both teachers
3 and Principal were responsible for monitoring and collecting data for review at Student's
4 IEP meeting(s).⁴⁹

5 20. On February 11, 2025, a PWN was issued by the District to schedule an
6 IEP and review of existing data ("RED") meeting.⁵⁰

7 21. On February 17, 2025, the District's psychologist asked PCH for feedback
8 on Student's BIP, noting that he was still struggling and had caused a number of
9 classroom destructions.⁵¹ On February 18, 2025, PCH's teacher and reentry specialist
10 replied that Student might need to be placed at an alternative school, like Austin Centers
11 for Exceptional Students ("ACES").⁵²

12 22. On February 18, 2025, an IEP meeting was held.⁵³ A new IEP was drafted
13 for Student whereby his service minutes were modified to include an additional 30 daily
14 service minutes for a paraprofessional to assist with safety monitoring throughout
15 campus, the classroom, and recess.⁵⁴ Student's LRE was not modified.⁵⁵

16 23. On February 19, 2025, a PWN was issued by the District to revise Student's
17 IEP goals and objectives in reading, writing, and math.⁵⁶

18 24. On March 24, 2025, Student was suspended for two (2) days due to
19 aggression.⁵⁷

20 25. In or around March 2025, Student was readmitted into Phoenix Children's
21 Hospital's psychiatric ward.⁵⁸

22 26. On March 21, 2025, an IEP Amendment was finalized to correct non-
23 substantive clerical errors.⁵⁹

24 ⁴⁸ See Respondent Exhibit E.

25 ⁴⁹ *Id.*

26 ⁵⁰ See Respondent Exhibit F.

27 ⁵¹ See Respondent Exhibit T.

28 ⁵² *Id.*

29 ⁵³ See Respondent Exhibit G; *see also* Petitioners Exhibit 6.

30 ⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See Respondent Exhibit R; *see also* Petitioners Exhibits 7 and 10.

⁵⁸ See Respondent Exhibit J.

⁵⁹ See Respondent Exhibit H; *see also* Petitioners Exhibit 10.

1 27. From March 31, 2025, through April 11, 2025, Student underwent
2 assessments using the Primary Test of Nonverbal Intelligence, Wechsler Abbreviated
3 Scale of Intelligence, and Kaufman Test of Educational Achievement to identify his
4 learning strengths and needs relevant to his instructional program.⁶⁰ Student tested well
5 below average in reading and math, and significantly below average in written
6 expression.⁶¹ Ultimately, assessment results revealed that Student had considerable
7 challenges in cognitive processing, requiring additional support to improve those skills.⁶²

8 a. Assessment results were provided to Student's MET so that a final
9 determination regarding his eligibility and service needs could be made.

10 28. On April 24, 2025, a PWN was issued by the District to revise Student's IEP
11 goals and objectives regarding behavior.⁶³ Specifically, it proposed for Student to stay in
12 his classroom added adult support, clarified where Student would spending most of his
13 day, and included the addition of instructional strategies from the most recent evaluation
14 to be added to the Specially Designed Instruction section of the IEP.⁶⁴

15 29. On or about April 25, 2025, Student was discharged from Phoenix
16 Children's Hospital's psychiatric ward.⁶⁵

17 30. On May 07, 2025, an IEP team meeting was held, resulting in the issuance
18 of a new IEP for Student.⁶⁶ The team noted that ED children, like Student, were prone to
19 miss significant instructional time due to discipline issues and/or hospitalizations, affecting
20 their ability to maintain academic progress.⁶⁷ Student was scheduled to be pulled-out of
21 the classroom fifty (50) minutes per week to receive social/emotional, behavior
22 management, written expression, basic reading skills, and math calculation services.⁶⁸
23 Student's IEP also included 30 daily service minutes for a paraprofessional to assist with
24 safety monitoring throughout campus, the classroom, and recess.⁶⁹ Supplementary aids

25 ⁶⁰ See Petitioners Exhibit 10.

26 ⁶¹ *Id.*

27 ⁶² *Id.*

28 ⁶³ *Id.*

29 ⁶⁴ *Id.*

30 ⁶⁵ See Respondent Exhibit J.

⁶⁶ See Respondent Exhibit I.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

1 included use of proactive interventions by Student’s paraprofessional, as well as training
2 on best practices and de-escalation strategies for Student’s paraprofessional.⁷⁰ In
3 addition, Student was found eligible for extended school year (“ESY”) services to prevent
4 loss of educational retention due to absences during the academic term.⁷¹ Student was
5 placed in a general education classroom for less than 40% of the day.⁷² The IEP team
6 noted the basis for their LRE decision(s) as follows, in pertinent parts:

7 The team has decided tha[t] [Student] will be best served in a program for students
8 with emotional disabilities because the structure of the classroom and the support
9 staff are aligned to meet his specific disability to help him access the general
10 education curriculum. He will attend specials with the general education classroom
11 as appropriate.

12 [Student] has been identified with an emotional disability that significantly impacts
13 his ability to regulate his emotions and behavior in atypical classroom setting. He
14 frequently becomes dysregulated, exhibiting behaviors such as loud vocalizations,
15 hitting, swearing, kicking, and eloping from the classroom. These behaviors pose
16 a safety concern and significantly interfere with his ability to access instruction in
17 the general education setting.

18 Due to the intensity and frequency of these behaviors, [Student] requires a highly
19 structures and supportive environment with consistent routines, behavior
20 interventions, and adult support throughout the day. A self-contained special
21 education classroom provides the appropriate level of support and structure to
22 address his behavioral and emotional needs, while still allowing for access to a
23 modified curriculum aligned with grade-level standards.

24 Although [Student] is currently unable to participate in the general education
25 classroom for academic instruction, he will be provided opportunities for integration
26 with non-disabled peers during non-academic activities (e.g. lunch, recess,
27 school-wide events) to the maximum extent appropriate. The IEP team will
28 regularly review his progress and determine if increased participation in the
29 general education environment becomes appropriate.

30 This placement is considered the least restrictive environment at this time because
it allows [Student] to receive the specialized support he needs in order to make
progress on his IEP goals, while ensuring his safety and the safety of others.

(Error in original.)

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

1 31. On May 09, 2025, a PWN was issued by the District to provide notice of its
2 intention to implement the May 07, 2025, IEP.⁷³

3 32. On May 22, 2025, a PWN was issued by the District which rejected Parent's
4 request for compensatory services.⁷⁴ Specifically, the District reasoned that a change in
5 location of services from a cross-categorical program to a program designed for ED
6 students was recommended to help improve Student's time on-task and reduce the
7 amount of time he spent outside of the classroom. The District provided the following
8 explanation, in pertinent parts:

9 When [Student] was present at school he had access to a certified teacher and to
10 specially designed instruction. [Student] often chose to be outside of the classroom
11 during which time he was supervised by a teaching assistant who prompted the
12 student to complete his work and would provide breaks and preferred activities as
13 needed. The teaching assistant worked with the student at the direction of the
14 certified teacher.

15 The student had a behavior plan which was implemented and adjusted including
16 offering sensory items to help self-regulate, offering quiet spaces spate from
17 students, choices of work and learning. The classroom teacher provided the aide
18 with student centered instruction – based on [Student's] interests and followed the
19 state standards in reading and learning letter sounds and in basic math facts. Work
20 was offered in small chunks paired with preferred activities.

21 The behavior plan was reviewed by the district behavior team and the staff were
22 trained on the student's behavior plan.

23 [Student] was making growth on his goals. He met his goals from the last year,
24 counting to 20 and identifying letters and sounds. He was able to mainstream all
25 of kindergarten for most of the day with the exception of the last hour of the day to
26 receive his services. This year (first grade), [Student] mainstreamed with a first
27 grade class from August – December and a little in January. There was a
28 noticeable difference in his behaviors after winter break. He was admitted to a
29 psychiatric children's hospital in January and again in March and has continued to
30 struggle significantly with self-regulation at school.

31 Ultimately, the District noted that Parent's compensatory services request was rejected
32 because a certified teacher was "ready, willing, and able" to work with Student.⁷⁵ The

33 ⁷³ *Id.*

34 ⁷⁴ See Respondent Exhibit J; see also Petitioners Exhibit 10.

35 ⁷⁵ *Id.*

1 District argued that Student chose to leave the classroom and preferred to work in the
2 school's front office conference room, despite its attempts to lure him back to class.⁷⁶

3 33. In July 2025, Parent enrolled Student in Flowing Wells School District, just
4 north of the City of Tucson in Pima County, Arizona.

5 34. On August 20, 2025, Respondent emailed Parent to advise that it was
6 "holding [Student's] spot" in the District.⁷⁷

7 **ADDITIONAL EVIDENCE**

8 35. Per Student's 2024-25 Report Card, during the academic term Student was
9 absent on forty (40) occasions, tardy on ten (10) occasions, and suspended from school
10 on two (2) occasions due to behaviors.⁷⁸ Broken down by quarter, Student was present
11 for 100% of Q1, 87% of Q2, 40% of Q3, and 78% of Q4.⁷⁹ It was specifically noted in Q3
12 that Student academic data for him was insufficient due to his absences, and that when
13 he was present, Student only wants to play on the computer."⁸⁰ In Q4, it was specifically
14 noted that being in the self-contained classroom was difficult for Student because it is
15 often loud, rendering Student "unable to focus on any kind of work."⁸¹

16 36. Per Parent's request, Whitmore logs dated March 28, 2025, through May
17 16, 2025, capture timelines of Student's school days.⁸² Records illustrate difficulties in
18 obtaining academic data for Student because he was often granted leave to decline
19 formal instruction and play computer games or watch YouTube videos instead.⁸³ Records
20 reflect that Student participated in lessons sporadically, but often times refused to
21 participate.⁸⁴ On a number of occasions Student was transitioned out of the classroom
22 and into a conference room due to his behaviors, including use of obscene language,
23 acts of violence towards others, and attempting to pull the fire alarm.⁸⁵ Student was often
24 able to articulate becoming overwhelmed by classroom noise levels and asked to take

25 ⁷⁶ *Id.*

26 ⁷⁷ *Id.*

27 ⁷⁸ See Petitioners Exhibits 2 and 10.

28 ⁷⁹ See Petitioners Exhibit 10.

29 ⁸⁰ *Id.*

30 ⁸¹ *Id.*

⁸² See Petitioners Exhibits 3 and 10.

⁸³ See Petitioners Exhibit 10.

⁸⁴ *Id.*

⁸⁵ *Id.*

1 sensory breaks outside, which were granted.⁸⁶ During this time, staff also commenced
2 the administration of a number of tests with Student, most of which were not able to be
3 completed due to Student's refusal to participate.⁸⁷ The following was specially noted by
4 Principal regarding Student's structured instruction:

5 We are offering academics, but not pushing. We are working on the focused and
6 successful student behaviors to keep that in routine as much as possible so it
7 becomes routine. He is using his words and communicates his needs very well,
8 such as space, and we respect that.

9 37. On April 24, 2025, the District's psychologist informed Principal that,
10 notwithstanding scheduled additional cognitive and academic testing, an Occupational
11 Therapy evaluation was not warranted for Student.⁸⁸

12 38. On May 13, 2025, Respondent issued correspondence to Parent to provide
13 notice that Petitioners' residential address was not within the District's boundaries.⁸⁹

14 **ADDITIONAL CONSIDERATIONS**

15 39. Both parties agree that Respondent did not provide Student with
16 educational instruction of any kind during either of his psychiatric hospitalizations, and
17 that no attempts were made by Respondent to do so. It is unclear, however, whether such
18 would have been feasible or permissible.

19 40. Parent testified that Respondent owed Student between 110 and 118 IEP
20 service hours due to his elopements, classroom removals, and restraints. Per Parent, an
21 exact total was difficult to quantify due to a lack of data provided by Respondent.

22 **CLOSING ARGUMENTS**

23 41. In closing, Respondent argued that Petitioners failed to sustain their
24 evidentiary burden as to issues 1 and 2, as the evidence of record established that
25 Student's behaviors disrupted IEP implementation, though services always available, and
26 opined that Student's educational needs were met in the least restrictive setting.
27 Respondent argued that Petitioners' neither argued nor plead that the underlying IEP at
28 issue was deficient, only that it had not been properly implemented. To that end,

29 ⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Petitioners Exhibit 5.

⁸⁹ See Respondent Exhibit W; see also Petitioner Exhibit 1.

1 Respondent also argued that all IEP services had been made available to Student, and
2 opined that Student did not avail himself or otherwise take advantage of said services
3 because of his behavioral issues. Per Respondent, the LEA and its staff made every
4 attempt to keep Student in class, but Student refused. Respondent further argued that
5 each incident of restraint was to ensure the safety of Student, staff, and other children.
6 Respondent opined that Petitioners' LRE argument as confusing, because they argued
7 that a self-contained classroom was too restrictive, but all data reflected that Student's
8 behavior in a general education setting with a 1:1 aide was not successful – which is
9 supported by PCH data that establishes medical professional chose to sedate Student
10 because he was ungovernable during his hospitalization. Respondent asserted that
11 Petitioners' request for compensatory education should be denied because their "110 to
12 118 IEP service hours" were unfounded.

13 42. In closing, Petitioners argued that they had sustained their burden of proof
14 on both issues, as the evidence of record established that Respondent failed to implement
15 Student's IEP "as written," and that Student was not placed in the appropriate LRE.
16 Petitioners opined that Respondent essentially "gave up" on Student and merely
17 attempted to "get through the day" by letting Student dictate his level of participation in
18 academic studies, if any – which was entirely inappropriate and amounted to a denial of
19 FAPE. The record is devoid of any data to the contrary. Any data denoting progress
20 towards goals is irrespective of whether the IEP was properly implemented by
21 Respondent. Petitioners argued that Respondent committed procedural IDEA violations
22 by denying Student educational opportunities, including Parent's right to participate in
23 those decisions, as well as having substantively violated the IDEA by materially failing to
24 implement Student's IEP. Per Petitioners', Respondent's constant or otherwise open IEP
25 offer was not analogous to an implementation thereof. Likewise, Respondent argued that
26 Student's loss of educational opportunity stemming therefrom, amounted to both
27 substantive and procedural IDEA violations. Petitioners opined that Respondent knew
28 Student had undergone a neuropsychological evaluation, and argued that its receipt of
29 evaluation results triggered a duty to consider the document when developing Student's
30 BIP. To that end, Petitioners also argued that the use of restraint(s) on Student violated
his BIP, amounting to yet another IDEA violation. In addition, Petitioners argue that

1 Respondent's failure to provide Student with specialized instruction during his
2 hospitalizations, particularly where no IEP amendment or PWN was issued, constituted
3 an additional IDEA violation. Petitioners concluded that their calculation for compensatory
4 education only asks for what Student was entitled to per the terms of his IEP, during the
5 relevant time period.

6 **CONCLUSIONS OF LAW**

7 **APPLICABLE LAW**

8 1. Congress enacted the IDEA to ensure that all students with disabilities are
9 offered a FAPE that meets their individual needs.⁹⁰ The IDEA does not define the level of
10 education that must be provided, except that it must be "reasonably calculated to enable
11 the student to receive educational benefits."⁹¹ Through the IDEA, Congress has sought
12 to ensure that all students with disabilities are offered a FAPE that meets their individual
13 needs.⁹² These needs include academic, social, health, emotional, communicative,
14 physical, and vocational needs.⁹³ To do this, school districts must identify and evaluate
15 all students within their geographical boundaries who may be in need of special education
16 and services. The IDEA sets forth requirements for the identification, assessment and
17 placement of students who need special education, and seeks to ensure that they receive
18 a free appropriate public education. The IDEA mandates that school districts provide a
19 "basic floor of opportunity."⁹⁴

20 2. A FAPE consists of "personalized instruction with sufficient support services
21 to permit the child to benefit educationally from that instruction."⁹⁵ The FAPE standard is
22 satisfied if the student's IEP sets forth his or her individualized educational program that
23 is "reasonably calculated to enable the child to receive educational benefit."⁹⁶ Therefore,
24

25 ⁹⁰ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

26 ⁹¹ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 201 (1982)

27 ⁹² 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

28 ⁹³ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983
29 U.S.C.C.A.N. 2088, 2106).

30 ⁹⁴ *Rowley*, 458 U.S. at 200.

⁹⁵ *Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

⁹⁶ *Id.*, 485 U.S. at 207. In 2017, in *Endrew F. v. Douglas Cnty. 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).

1 a school offers a FAPE by offering and implementing an IEP “reasonably calculated to
2 enable [a student] to make progress appropriate in light of [the student’s]
3 circumstances.”⁹⁷ The IDEA does not require that each student’s potential be
4 maximized.⁹⁸ A student receives a FAPE if a program of instruction “(1) addresses his
5 unique needs, (2) provides adequate support services so he can take advantage of the
6 educational opportunities and (3) is in accord with an individualized educational
7 program.”⁹⁹

8 3. 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 student to make progress in the
12 general education curriculum.¹⁰⁰ The IEP tells how the student will be educated,
13 especially with regard to the student’s needs that result from the student’s disability, and
14 what services will be provided to aid the student. The student’s parents have a right to
15 participate in the formulation of an IEP.¹⁰¹ The IEP team must consider the strengths of
16 the student, concerns of the parents, evaluation results, and the academic,
17 developmental, and functional needs of the student.¹⁰² To foster full parent participation,
18 in addition to being a required member of the team making educational decisions about
19 the student, school districts are required to give parents written notice when proposing
20 any changes to the IEP,¹⁰³ and are required to give parents, at least once a year, a copy
21 of the parents’ “procedural safeguards,” informing them of their rights as parents of a
22 student with a disability.¹⁰⁴

25 _____
26 ⁹⁷ *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ (2017).

27 ⁹⁸ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

28 ⁹⁹ *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)).

29 ¹⁰⁰ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

30 ¹⁰¹ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

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

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

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

1 4. The IEP team must consider the concerns of a student’s parents when
2 developing an IEP.¹⁰⁵ In fact, the IDEA requires that parents be members of any group
3 that makes decisions about the educational placement of a student.¹⁰⁶

4 5. A parent who requests a due process hearing alleging non-compliance with
5 the IDEA must bear the burden of proving that claim.¹⁰⁷ The standard of proof is
6 “preponderance of the evidence,” meaning evidence showing that a particular fact is “more
7 probable than not.”¹⁰⁸

8 6. The IDEA’s statute of limitations requires courts to bar claims made more
9 than two years after the parents “knew or should have known” about the actions forming
10 the basis of the complaints.¹⁰⁹

11 7. Statutes should be interpreted to provide a fair and sensible result.¹¹⁰ “In
12 applying a statute its words are to be given their ordinary meaning unless the legislature
13 has offered its own definition of the words or it appears from the context that a special
14 meaning was intended.”¹¹¹

15 8. The Tribunal is required to apply equitable principles when rendering
16 decisions.¹¹² The application of equity entails offering a remedy to avoid an
17 unconscionable or unjust result.¹¹³

18 9. This Tribunal’s determination of whether Student received a FAPE must be
19 based on substantive grounds.¹¹⁴ A FAPE consists of “personalized instruction with

20 ¹⁰⁵ 20 U.S.C. § 1414(d)(3)(A)(ii); 34 C.F.R. §§ 300.324(a)(1)(ii).

21 ¹⁰⁶ 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c)(1).

22 ¹⁰⁷ *Schaffer v. Weast*, 546 U.S. 49, 56 (2005).

23 ¹⁰⁸ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
24 (1993) (quoting *In re Winship*, 397 U.S. 358, 371-72 (1970)); see also ARIZ. REV. STAT. § 41-1092.07(G)(2);
ARIZ. ADMIN. CODE R2-19-119(B)(1); *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).

25 ¹⁰⁹ 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
26 Cir. 2018).

27 ¹¹⁰ See *Gutierrez v. Industrial Commission of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011)(citation omitted);
State v. McFall, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and
28 unreasonable construction on statutes.”).

29 ¹¹¹ *Mid Kansas Federal Savings and Loan Ass’n of Wichita v. Dynamic Development Corp.*, 167 Ariz. 122,
128, 804 P.2d 1310, 1316 (1991).

30 ¹¹² *Seitz v. Industrial Commission of Arizona*, 184 Ariz. 599, 603 (Ariz. Ct. App., Div. 1, 1995).

¹¹³ *Sanders v. Folsom*, 104 Ariz. 283, 289, 451 P.2d 612 (Ariz. 1969)(quoting *Merrick v. Stephens*, 337
S.W.2d 713, 719 (Mo. App. 1960)).

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

1 sufficient support services to permit the child to benefit educationally from that
2 instruction.”¹¹⁵ Courts do not “substitute their own notions of sound educational policy for
3 those of the school authorities which they review.”¹¹⁶ In addition, the appropriateness of
4 an offer of FAPE must be judged in light of the circumstances at the “snapshot in time”
5 when the IEP was developed, not with the benefit of hindsight.¹¹⁷

6 10. Procedural violations in and of themselves do not necessarily deny a student
7 a FAPE. If a procedural violation is alleged and found, it must be determined whether the
8 procedural violation either (1) impeded the student’s right to a FAPE; (2) significantly
9 impeded the parents’ opportunity to participate in the decision-making process; or (3)
10 caused a deprivation of educational benefit.¹¹⁸ If one of the three impediments listed has
11 occurred, the student has been denied a FAPE due to the procedural violation.

12 11. [W]hen a school district does not perform exactly as called for by the IEP,
13 the district does not violate the IDEA unless it is shown to have materially failed to
14 implement the child’s IEP.”¹¹⁹ “There is no statutory requirement of perfect adherence to
15 the IEP, nor any reason rooted in the statutory text to view minor implementation failures
16 as denials of a free appropriate public education.”¹²⁰

17 ANALYSIS & DECISION

18 12. Petitioners filed the DUE PROCESS COMPLAINT in this matter on June 02,
19 2025; thus, the relevant period of time for the issues at bar run between Student’s
20 Kindergarten and 1st grade academic terms. Therefore, any actions or inactions that
21 occurred before March 22, 2021, are beyond the limitations period.

22 13. To prevail in the case at bar, Petitioners must establish by a preponderance
23 of the evidence that Respondent procedurally and/or substantively violated the IDEA as
24 alleged in the COMPLAINT. The Tribunal finds as follows:

25 ***Issue #1 – Respondent’s alleged failure to implement Student’s IEP***

26
27
28 ¹¹⁵ *Rowley*, 458 U.S. at 203.

¹¹⁶ *Id.* at 206.

¹¹⁷ *J.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010).

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

¹¹⁹ *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 815 (9th Cir. 2007).

¹²⁰ *Id.* at 821.

1 a. 34 C.F.R. § 300.101 provides, in pertinent part, that a FAPE must be
2 available to all children residing in the State between the ages of 3 and 21,
3 including children with disabilities. Each State must ensure that FAPE is
4 available to any individual child with a disability who needs special education
5 and related services, even though the child has not failed or been retained in a
6 course or grade, and is advancing from grade to grade.

7 b. 34 CFR § 300.39(a)(1) provides that special education means specially
8 designed instruction, at no cost to parent(s), to meet the unique needs of a child
9 with a disability, including instruction conducted in the classroom and hospitals.

10 c. 34 CFR § 300.39(b)(3) specially designed instruction means adapting the
11 content, methodology, or delivery of instruction to address the unique needs of
12 the student that result from the student's disability, and ensure access of the
13 student to the general curriculum so that the student can meet the educational
14 standards within the jurisdiction of the LEA that apply to all students.

15 d. 34 C.F.R. § 300.323(c)(2) provides that as soon as possible following
16 development of an IEP, special education and related services are made
17 available to the child in accordance with the child's IEP.

18 e. An IEP is a legally binding contract until changed or otherwise modified by
19 the IEP team.

20 f. Desert Sky Community School's October 20, 2023, IEP was adopted by
21 Respondent on December 19, 2023. Thus, it was in full force and effect during
22 Student's first hospitalization, January 07, 2025, through February 04, 2025, -
23 about nineteen (19) school days. Respondent's first IEP for Student was issued
24 on February 18, 2025. Thus, it was in full force and effect during Student's
25 second hospitalization, March 2025 through April 25, 2025, - approximately
26 thirty (30) school days. It is uncontested that Respondent did not provide
27 Student with general or specialized educational instruction for approximately
28 fifty (50) days during his hospitalizations in 2025. It is also uncontested that
29 Student was restrained on two (2) occasions after his BIP & Safety Plan was
30 issued; on February 10, 2025, and March 19, 2025, respectively. It is also
uncontested that none of Student's specific IEP components were fully

1 implemented during the 2024-25 academic term partly due to his absences, but
2 largely because the LEA was unable to broach them due to its inability to
3 address Student's elopements and behavioral issues.

4 g. Respondent issued its second and last IEP for Student on May 07, 2025.
5 Thus, it was in full force and effect through the end of the academic term, and
6 when Student was enrolled in Flowing Wells School July 2025.

7 h. Respondent's argument that it provided FAPE and implemented Student's
8 IEP by making all service components available, but that he did not avail
9 himself by volitionally participating in said service due of his underlying
10 behavioral issues, is egregiously misplaced. "Offering academics, but not
11 pushing," is not IEP implementation. Respondent had a duty to convene an IEP
12 meeting to review what related service(s), if any, could be utilized to keep
13 Student in his designated classroom setting for the receipt of specialized
14 instruction, or in the alternative, make a determination regarding a change in
15 placement to ensure the proper delivery of all service components.

16 i. Students are entitled to FAPE regardless of hospitalization. Parent's notice
17 that PCH had an instructor on staff did not obfuscate or absolve Respondent's
18 duty to provide Student with specialized academic instruction. Respondent
19 should have convened an IEP meeting to determine whether Student's IEP
20 required revision to address his hospitalization(s), and to coordinate with
21 hospital administration to determine whether any service components could be
22 provided to Student during his stay. Here, Parent advised Respondent as soon
23 as Student was admitted to CRC, days later when Student was initially admitted
24 to PCH, where he stayed for three (3) weeks, and was also notified when he
25 was readmitted to PHC, where he stayed for about thirty (30) days –
26 cumulatively amounting to a 60% absence due to hospitalization. While it is
27 plausible that due to Student's psychosis academic instruction of any kind was
28 not feasible, the crux of the issue is Respondent's failure to discern whether
29 specialized instruction and/or general education integration was permissible or
30 feasible.

1 j. Petitioners have sustained their burden of proof as to this allegation.
2 Respondent's breach of IEP implementation is both a procedural and
3 substantive due process violation.

4 ***Issue #2 – Student's placement not in LRE***

5 k. 34 C.F.R. § 300.115(B)(1) provides that each public agency must ensure a
6 continuum of alternative placements available to meet the needs of children
7 with disabilities for special education and related services, including regular
8 education classrooms, special education classrooms, and specialized
9 instruction in hospitals and institutions.

10 l. 34 CFR § 300.107 provides that a LEA must take steps to provide
11 supplementary aids, services, and nonacademic services; including health
12 services, in a manner necessary to afford students with disabilities an equal
13 opportunity for participation in those services and activities.

14 m. 20 U.S.C. § 1412(a)(5)(A) provides that to the maximum extent appropriate,
15 children with disabilities, including children in public or private institutions or
16 other care facilities, are educated with children who are not disabled, and
17 special classes, separate schooling, or other removal of children with
18 disabilities from the regular educational environment occurs only when the
19 nature or severity of the disability of a child is such that education in regular
20 classes with the use of supplementary aids and services cannot be achieved
21 satisfactorily.

22 n. LRE must not be conflated with placement. LRE is a legal principle that
23 requires students with disabilities to be educated alongside their non-disabled
24 peers, with additional support services as needed, unless the severity of a
25 disruption to either's educational experience outweighs the intended benefit.
26 Placement is the service delivery model and specific setting where a disabled
27 student receives their services.

28 o. Student's LRE in the February 18, 2025, IEP was not modified from the prior
29 December 19, 2023, IEP where Student was placed in a self-contained
30 classroom and received push-in to the general education classroom.

1 p. It is uncontested that the LEA could not managed Student's near-daily
2 emotional outbursts, elopements, or abject refusals to participate in classroom
3 instruction during the 2024-25 academic term. The record is rife with instances
4 of Student being permitted to essentially craft his own curriculum by playing
5 computer-based games and watching online videos, including choosing where
6 to do so.

7 q. It is apparent from the record that due to the litany of Student's emotional
8 issues, he has significant difficulty with behavior regulation and interacting with
9 his peers and staff, and that he becomes triggered by loud noises and
10 transitions into different tasks. It is also clear that increased interventions, such
11 as BIPs and paraprofessional support, failed to eliminate or reduce the
12 problematic behaviors.

13 r. While LRE principles warrant that a student with disabilities be educated
14 alongside their non-disabled peers, to the maximum extent possible,
15 considerations regarding the severity of a student's disability allow for removal
16 from the general education classroom if the student cannot be safely and
17 successfully education in that setting with supplementary aids and services.

18 s. Per LEA records, it was apparent from the beginning of the school year that
19 Student's specially designed instruction, with supplementary aids and services,
20 did not ensure access to the general curriculum so that he could meet the
21 educational standards. Examples include triggers due to noise, ineffectiveness
22 of de-escalation and redirection techniques, and the inability of any instructor
23 to substantively educate Student beyond his own use of electronic equipment.

24 t. It is uncontested that Student's behaviors did not improve after his first
25 psychiatric hospitalization. After his return to the LEA, once staff had a
26 reasonable amount of time to make observations and collect data, an IEP
27 meeting should have been convened to determine a more appropriate
28 contained learning environment for Student with more appropriate support(s).

29 u. Respondent's goal achievement argument, however slight, is a red-herring.
30 So too, Petitioners arguments in favor of Student having been placed in a
general education classroom with a 1:1 aide is not supported by the record.

1 v. Notably, on May 07, 2025, Student's LRE was reclassified as a self-
2 contained classroom for ED students.

3 w. Petitioners have sustained their burden of proof as to this allegation.
4 Respondent's failure to place Student in the most appropriate LRE is a
5 substantive due process violation.

6 **RULING**

7 14. The credible and substantive evidence of record establishes procedural due
8 process violations by a preponderance of the evidence regarding Complaint issue #1, and
9 substantive due process violations regarding Complaint issues #1 and #2. Both of which
10 resulted in a denial of FAPE.

11 Based on the foregoing,

12 **IT IS ORDERED** that claims #1 and #2 are **granted**. Petitioners' corresponding
13 requests for relief are **granted in part, and denied in part** as follows:

- 14 • Respondent shall fund an IEE in all suspected areas of disability.
- 15 • Respondent shall fund or provide 118 IEP service hours to Student in
16 compensatory education, including no less than 1,416 service minutes (i.e.
17 23.6 hours) for social/emotional support, 1,416 service minutes (i.e. 23.6 hours)
18 for behavior management, 1,416 service minutes (i.e. 23.6 hours) for written
19 expression, 1,416 service minutes (i.e. 23.6 hours) for basic reading skills, and
20 1,416 service minutes (i.e. 23.6 hours) for math calculation, to address the
21 underlying denial of FAPE.
- 22 • Respondent shall ensure that all LEA personnel are trained in the IDEA and its
23 procedural safeguards.

24 **IT IS FURTHER ORDERED** that the remainder of Petitioners' requested remedies,
25 not explicitly identified above, are **denied** as inapplicable, outside of this Tribunal's
26 jurisdiction, or otherwise unenforceable as Student is no longer enrolled in the District.

27 Done this day, November 10, 2025.

28 **Office of Administrative Hearings**

29 /s/ Jenna Clark
30 Administrative Law Judge

1
2 **NOTICE OF RIGHT TO SEEK JUDICIAL REVIEW**

3 Pursuant to 20 U.S.C. § 1415(i)(1)(A), 34 C.F.R. §§ 300.514(b) and
4 300.516, and ARIZ. REV. STAT. § 15-766(E)(3), this DECISION AND ORDER is
5 the final decision at the administrative level. Furthermore, any party
6 aggrieved by the findings and decisions made herein has the right to bring
7 a civil action, with respect to the complaint presented, in any State court of
8 competent jurisdiction or in a district court of the United States. Pursuant to
9 ARIZ. REV. CODE R7-2-405(H)(8), any party may appeal the decision to a
10 court of competent jurisdiction within thirty-five (35) days of receipt of the
11 decision.

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

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