

STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

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

No. 14C-DP-018-ADE

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: Hearing sessions conducted on December 11, 2013, December 12, 2013 and February 19, 2014, followed by the post-hearing submission period ending on March 27, 2014; the 45th day calculated as April 17, 2014.

APPEARANCES: Amy G. Langerman, Esq., appeared on behalf of Petitioners, accompanied by Student's Mother, ██████ ("Parent") and assisted by legal assistant Kristina Blackledge (who is also Parent's Advocate, "Advocate"). Robert D. Haws, Esq., appeared on behalf of the Deer Valley Unified School District ("Respondent" or "DVUSD"), accompanied by Richard L. Gray, Ph.D., DVUSD School Psychologist ("Dr. Gray").

Certified Court Reporter Diane Donoho, GRIFFON & ASSOCIATES, CERTIFIED COURT REPORTERS, recorded the proceedings as the official record of the hearing.

WITNESSES:¹ Lori Bird, Esq., Attorney specializing in special education law; Kristina Blackledge, the Director and Owner of the Breakthrough Academy and Special Education Consultant and Parent's Advocate ("Advocate"); Kendra Buringard, Speech-Language Pathologist at DVUSD; Petitioner ██████ ("Mother" or "Parent"); Lisa Crain, Principal at Desert Sage Elementary School; Sara Garner, Special Education Teacher at Desert Sage Elementary ("**IEP Team Service Coordinator**"); Richard L. Gray, Ph.D., School Psychologist; Theresa Kasher, Special Education Teacher at Desert Sage Elementary ("**Special Ed. Teacher**"); Michael Remus, Director of Special Education at DVUSD; and Pamela Rupprecht, Ed. D., the Director and Owner of The Reading & Math Clinic.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

Parent brings this due process action, on behalf of Student, seeking compensatory education for Student for alleged procedural violations and failure to provide a free and appropriate public education ("FAPE") by DVUSD. The law

¹ Throughout this Decision, proper names of Parent and Student's teachers are not used in order to protect confidentiality of Student and to promote ease of redaction. Pseudonyms (appearing above in bold

governing these proceedings is the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),² and its implementing regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code ("A.A.C.") R7-2-401 through R7-2-406.

Procedural History

Petitioners filed this due process complaint on October 23, 2013. Petitioners' Complaint alleges that the DVUSD: (1) refused to set the September 25, 2013 individualized education program ("IEP") meeting at a mutually-agreed upon, and neutral, location so that Parent's Advocate, a parentally-chosen member of Student's IEP team, could attend in person (DVUSD having recently issued a ban on that Advocate's presence on DVUSD's property); and (2) in doing so, (a) has prevented Student's IEP from being completed, (b) has prevented Parent's meaningful participation in the IEP process, and (c) has resulted in delay in implementation of relevant amendments to Student's IEP for the provision of FAPE to Student.

Petitioners' Complaint requests the following relief:

1. An Order compelling DVUSD to cease unilaterally setting IEP meetings at non-mutually agreeable locations which exclude Parent's Advocate from participation in the IEP meeting.
2. An Order compelling DVUSD to convene the IEP meeting at a mutually agreed upon location such that Parent's Advocate may physically attend and meaningfully participate.
3. Compensatory education for harm caused by a delay in completing Student's IEP on September 25, 2013.³
4. Other relief as determined appropriate by the Tribunal.

type) will be used instead. Proper names of administrative personnel, service providers, and expert witnesses are used.

² By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004," IDEA 2004 became effective on July 1, 2005.

³ At hearing, Counsel for Petitioner noted that, in the Administrative Law Judge's pre-hearing order dated November 22, 2013, the stated date of the IEP meeting had been incorrect; the date is corrected herein.

1 DVUSD disagrees with the Complaint, responding that DVUSD deemed it
2 appropriate to limit Parent's Advocate's access to DVUSD property due to the
3 Advocate's behavior in IEP meetings allegedly being "disruptive and counterproductive"
4 and "unprofessional," and due to Advocate "failing to check in as a visitor, conducting
5 unannounced observations and interview of staff, [and] belittling staff, etc."⁴ DVUSD
6 argued that the limitation Advocate's access to DVUSD property "has not impacted the
7 provisions [*sic*] of FAPE to [Student] or prevented his parents from participating in the
8 IEP process." DVUSD argued that it is offering and continuing to offer FAPE to Student
9 who is also alleged to be receiving meaningful educational benefit.

10 Based on the Complaint, the DVUSD response, and the discussion at the
11 November 21, 2013 telephonic pre-hearing conference, the Administrative Law Judge
12 noted the following issues for due process hearing:

- 13 (1) Whether DVUSD violated IDEA, 20 U.S.C. § 1414(d)(1)(B)(vi) and 34 C.F.R.
14 § 300.321(a)(6), when DVUSD refused to set the scheduled September 25,
15 2013 IEP meeting in a mutually-agreeable location that would allow Parent's
16 Advocate, a parentally-chosen member of the IEP team, to attend in person.
- 17 (2) Whether DVUSD violated IDEA, 20 USC §§ 1414(d)(3) and 1414(d)(4) and
18 34 C.F.R. §§ 300.324(a)(6) and 300.324(b)(1), when DVUSD failed to
19 complete, or failed to complete revisions to, Student's February 13, 2013
20 IEP.⁵
- 21 (3) Whether DVUSD's failure to complete or complete revisions to Student's
22 February 13, 2013 IEP resulted in a failure to provide FAPE to Student, in
23 violation of the IDEA.

24 Evidence and Issues at Hearing

25 The parties presented testimony and exhibits at a formal evidentiary hearing held
26 over three hearing sessions: December 11, 2013; December 12, 2013; and February
27

28 ⁴ No specific meetings, events or dates were stated in the DVUSD response to Complaint. The hearing
29 record evidences that DVUSD made no statements about alleged misconduct at any IEP meetings in its
30 September 11, 2013 "suspension" letter to Advocate. Exhibit C.

⁵ The IEP date was clarified through the hearing process as being the February 13, 2013 IEP that was
being "reviewed" or "revised" in the series of IEP meetings preceding the scheduled September 25, 2013
IEP meeting.

19, 2014. The parties presented testimony from the witnesses listed above⁶ and offered into evidence Petitioners' Exhibits 1 through 16, with the exception of Exhibit 8 which was not admitted,⁷ and DVUSD's Exhibits A, B and C.⁸ Additionally, public and/or judicial notice was taken of two items: (a) Arizona State Standards for reading (a copy of which was provided to the hearing record); and (b) the What Works Clearinghouse website (a copy of a summary of "Reading Naturally®" was presented to the hearing record on February 19, 2014; additional summary information was presented to the hearing record and to DVUSD on February 21, 2014 as was discussed at the hearing on February 19, 2014).

The parties presented legal arguments to the Tribunal in post-hearing memoranda. Additionally, on March 19, 2014, Petitioners filed a motion to supplement the record with "newly discovered evidence" offered to impeach testimony given by Respondent's witnesses.⁹ On March 24, 2014, Respondent filed its Response objecting to supplementation of the hearing record. On March 27, 2014, the Administrative Law Judge allowed the additional evidence and response.

Introduction

The Administrative Law Judge has considered the entire record, including the testimony and Exhibits,¹⁰ and now makes the following Findings of Fact, Conclusions of Law, and Order finding that DVUSD failed to offer Student FAPE due to its failure to

⁶ Court reporter transcripts of the hearing sessions have been added to the record. By stipulation of the parties, the transcripts are the official record of this due process hearing. By law, the Tribunal also created an audio record of the due process hearing.

⁷ Petitioners' exhibits are numbered and bates-stamped. The exhibits also contain one disc of the August IEP meetings.

⁸ DVUSD's exhibits consist of 94 bates-stamped pages, 87 pages of which are various educational records dating from January 30, 2013. While the index indicated that the first 18 pages were an IEP Addendum from November 2013, all the pages are dated as the March 21, 2013 IEP Addendum; apparently the entire November 2013 IEP Addendum is not presented in the exhibits. However, pages 5 through 9 are Progress Reports noting Student's goals and his mastery levels from March 2013, May 2013 and October 2013.

⁹ Petitioners offered evidence to impeach Dr. Gray's testimony that DVUSD had "access" to the LIPS program. Petitioner argued that the DVUSD Move On Reading Literacy Plan filed with the State Department of Education for DVUSD demonstrated that DVUSD does not have access to LIPS at any of its sites. However, Dr. Gray testified that he "believed" that DVUSD had access to the program. Hearing Transcript at 701.

¹⁰ The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if the witness is not specifically mentioned in this Decision.

complete revisions to Student's February 13, 2013 IEP following re-evaluation and changes in Student's primary, and addition of a secondary, disability category. Therefore, Petitioners' request for compensatory services is granted as described below.

FINDINGS OF FACT

1. Student, born in September 2006, was determined to have developmental delays in September 2009.

2. Student attended developmental pre-school and Kindergarten in DVUSD. While in Kindergarten (academic year 2011-2012), the DVUSD multidisciplinary evaluation team ("MET") determined that there was no need at that time for additional evaluation because the available data supported Student's continued special education eligibility as a child with developmental delays.¹¹

3. In February 2013, while Student was in First grade, the IEP team met to revise and update Student's annual IEP.¹² Student's eligibility category did not change from developmental delays. According to the present levels of academic and functional performance ("PLAAFP") noted on the February 13, 2013 IEP, Student had met 10 of the 11 goals on the (prior) February 2012 IEP.¹³ At that time, Student was receiving specialized instruction in small groups in the learning center for reading, writing and math, and was with typical peers for other subjects. At that time, Parent expressed her dissatisfaction with Student's academic level because Student was not at grade level.¹⁴ Parent also indicated that Student was starting to dislike school, and that his dyslexia caused him stress and anxiety.¹⁵

¹¹ Exhibit A, bates-pages 30-31.

¹² Student's complete February 2012 IEP is not a part of the hearing record. However, progress reports relating to the February 2012 IEP are found at Exhibit A, bates-pages 60 through 64. These documents reflect Student's progress as of March 2012, May 2012, October 2012 and December 2012. The goals set forth therein are not the same as the goals set forth in the February 2013 IEP (found at Exhibit A, bates-pages 5 through 9). While some 2013 goals are extensions of the same capabilities expressed in the 2012 goals, with the exception of one communication skill goal set for achievement of the same standard (AC050011) for improving expressive language, the remainder of the 2013 goals are set on different education standards.

¹³ Exhibit A, bates-page 69. It is specifically noted that Student did not meet one of his math goals "because it was implemented at the end of October." *Id.* at bates-page 69; see also *Id.* at bates-page 54.

¹⁴ *Id.* at bates-page 70.

¹⁵ *Id.* at bates-page 70.

1 4. In March 2013, Parent requested that Student be moved from the learning
2 center to general education setting for reading and writing, and while the IEP team
3 agreed to do so, a majority of the team believed that Student should continue to receive
4 the specialized instruction in a pull-out setting due to his "current academic progress."¹⁶
5 The IEP team determined that Student's current goals would remain the same but
6 added a new goal "for sight words, beginning and ending sounds" at Parent's request.¹⁷
7 The IEP team also determined that Student would be eligible for ESY for summer of
8 2013 as a child at a critical stage of development.¹⁸

9 5. In March 2013, Parent sought an outside assessment of Student's
10 reading skills through Tim Jordan, M.D.¹⁹ Based on the assessments conducted on
11 March 25, 2013, Dr. Jordan summarized as follows:

12 To summarize, [Student] is still having difficulty with reading. Dyslexia is
13 likely especially given his inconsistency in phonological awareness. He
14 certainly should be reading at a higher grade level given his normal
15 intelligence.

16 [Student's] mother was referred to our reading tutors; they use the Barton
17 reading and spelling system. Most children need at least 2 hours a week
18 of intensive multisensory explicit phonics instruction such as provided by
19 the Barton system. ...

20 As a result of Dr. Jordan's advice, Parent facilitated outside reading tutoring once a
21 week, for 30-minute sessions, through the end of the academic school year.²⁰

22 6. By letter dated May 22, 2013, Parent notified DVUSD that she disagreed
23 with Student's February 2013 IEP, stating her belief that the IEP was not "reasonably
24 calculated" to provide FAPE and that DVUSD had failed to perform a "comprehensive
25 re-evaluation" to have the necessary information to write an appropriate IEP.²¹ Parent
26 indicated that the IEP "lacks the peer-reviewed, research-based multisensory structured
27 language interventions provided with fidelity" that is effective for children with learning

28 ¹⁶ *Id.* at bates-page 54.

29 ¹⁷ *Id.* at bates-page 54..

30 ¹⁸ *Id.* at bates-pages 54-55 and 56-57.

¹⁹ Exhibit 1.

²⁰ Hearing Transcript, Parent testimony, pages 474-475.

²¹ Exhibit 2.

disabilities.²² Parent requested a "complete re-evaluation in the areas of academics, speech/language and fine motor/sensory" and requested to be apprised of the specific tests and assessments that DVUSD would use.

7. Student's MET team performed a re-evaluation on July 25, 2013 at which time they reviewed existing data and discussed the various assessments that had been conducted.²³ As a result, the IEP team determined to change Student's special education category to a primary category of specific learning disability in six of seven learning disability areas and a secondary category of speech/language impairment.²⁴ Additionally, the IEP team determined to write a new IEP to take into account the new eligibility categories in order to provide individualized instructional services to meet Student's needs.²⁵

8. The February 2013 IEP did not contain specially designed instruction in each of the newly identified learning disability areas and contained a goal related to math calculation (which the MET team had determined on July 25, 2013 was no longer a learning disability area for Student). The February 2013 IEP contained the following goals (summarized herein):

- (a) Regarding phonics and decoding, to increase sight word recognition nearly fourfold from 22 to 100;
- (b) regarding phonics and decoding of one syllable words, to increase reading (word recognition) to a 92% accuracy level;
- (c) correctly punctuate a fact sentence to an 80% accuracy level;
- (d) with regard to math, independently write out numbers from 1 to 70 in the correct order 2 out of 4 times;
- (e) with regard to math, in two-digit addition, to correctly add the figures to a 90% accuracy level;

²² Advocate indicated that she wrote this language. Hearing transcript, Advocate testimony, page 300.

²³ Exhibit A, at bates-pages 29 and 30-49.

²⁴ Exhibit A, at bates-page 28 (Prior Written Notice). The MET team identified the following six learning disabilities: listening comprehension; oral expression; written expression; math problem solving; basic reading skills; reading comprehension; and reading fluency. *Id.* at bates-page 25; *see also Id.* at bates-pages 29-47 (Evaluation Report).

²⁵ Hearing Transcript, IEP Team Service Coordinator testimony, page 201.

- 1 (f) with regard to expressive communication, to correctly produce I-blends
2 "independently" with visual or verbal cues to a 75% accuracy level three
3 sessions in a row;
- 4 (g) with regard to expressive communication, to correctly use plurals independently
5 to a 60% accuracy level three sessions in a row;
- 6 (h) with regard to expressive communication, with visual supports, to increase his
7 correct use of "is/are + verb + ing" to an 80% accuracy level three sessions in a
8 row; and,
- 9 (i) with regard to receptive communication, with visual or verbal cues, after listening
10 to verbal information, to "independently" answer questions to an 80% accuracy
11 level three sessions in a row.

12 9. The IEP team met on August 20, 2013 to develop a new IEP based on the
13 July 25, 2013 re-evaluation.²⁶ At that meeting, Parent and Advocate requested that
14 specific assessment data for Student be added to each academic area of the PLAAFP
15 and also requested that a new curriculum emphasizing reading and language be
16 provided for Student. Parent and Advocate requested that DVUSD provide a
17 multisensory structured language ("MSL") teaching approach implemented with fidelity
18 for Student.²⁷ The IEP team agreed to implement an MSL program.²⁸ Advocate
19 offered up the International Dyslexia Association Matrix of MSL programs as
20 suggestions for programs she believed to be suited for Student's needs and further
21 indicated to the IEP team that DVUSD could pick the one they wanted as long as it was
22 on the list of thirteen suggested programs.²⁹ Because she was advocating for
23 individualized performance information to be recorded and present in the PLAAFP,
24 Advocate wanted "MSL program" to be written into the PLAAFP while members of the
25 IEP team indicated that it was against DVUSD policy to designate a "program" in the

26 ²⁶ *Id.* at bates-pages 20-24.

27 ²⁷ Exhibit 5; see also Exhibit 15. disc at 12:17 through 15:35; Hearing Transcript, Advocate testimony at
28 323; and Exhibit A at bates-page 24. The February 2013 IEP does not contain an offer of an "MSL
program." Hearing Transcript at 638-629.

29 ²⁸ Hearing Transcript, Advocate testimony at 323; see also IEP team Service Coordinator testimony at
155.

30 ²⁹ Exhibit 5; see also Hearing Transcript, Special Ed. Teacher testimony at 652-653 and Advocate
testimony at 325. The Matrix referenced in Exhibit 5 is not a part of the hearing record.

1 IEP.³⁰ However, the IEP team Service Coordinator was apparently willing to note the
2 Parent's request for that phrase in the PLAAFP as "parental input."³¹

3 10. Student's IEP was not completed on August 20, 2013 and the IEP team
4 agreed to a second meeting date of August 29, 2013.

5 11. Student's IEP was not completed on August 29, 2013 and, by notice
6 dated September 6, 2013, another IEP meeting was scheduled for September 25,
7 2013.³² By the end of the August 2013 meetings, the IEP team had discussed
8 Student's PLAAFP in reading and had started to discuss writing, but had not yet begun
9 to discuss any changes to Student's goals and objectives.³³

10 12. Based on the August IEP meetings, Parent did not understand, or was not
11 told, exactly what "program" that DVUSD intended to implement for Student.³⁴ Parent
12 was under the impression, after the August 2013 IEP meetings, that Student's reading
13 program was "Reading Street®."³⁵ At hearing, Parent testified that she had no
14 knowledge, until the first day of the due process hearing, of Student being a participant
15 in the Read Naturally® program.³⁶

16 13. On September 11, 2013, DVUSD's Director of Special Education, Michael
17 Remus, notified Advocate that her visitation privileges/access to all DVUSD campuses
18 and facilities was "suspended" for the remainder of the academic year, 2013-2014.³⁷
19 DVUSD alleged that on or about April 1, 2013, Advocate had violated well established

20 ³⁰ Exhibit 15, disc at 12:17 through 15:35; see also Hearing Transcript, IEP Team Service Coordinator
21 testimony, page 148. Advocate requested that DVUSD issue a prior written notice ("PWN") to document
22 the IEP team's agreement to use an "MSL program" but the refusal to include the "program" in the IEP.
23 Hearing Transcript at 328. Petitioners later argued that in the past, in 2009, DVUSD had allowed specific
24 "programs" to be written into IEPs. Proffered documentary evidence of such was not admitted to the
25 hearing record in the instant case for the reason that there was no written consent from that parent and
26 the document was not sufficiently redacted; that confidential educational record is sealed in the hearing
27 record as not being admitted. Hearing Transcript at 724-732. Dr. Gray testified that DVUSD had "advised
28 our people not to list specific programs by name or specific providers by name in the IEP" due to it
29 possibly being "unnecessarily limiting." Hearing Transcript at 702.

30 ³¹ Exhibit 15, disc at 12:17 through 15:35.

³² Exhibit A at bates-page 18.

³³ Hearing Transcript, Principal Lisa Crain testimony at 529.

³⁴ Hearing Transcript, Parent testimony at 447-448.

³⁵ Hearing Transcript at 741-742.

³⁶ Hearing Transcript at 742. At hearing, Advocate testified that there was no discussion at the August
2013 IEP meetings regarding the Read Naturally® program. Hearing Transcript at 744.

³⁷ Exhibit C; see also Exhibit 9, Attachment A at bates-pages 74-75 and Attachment B at bates-pages 76-
78. Advocate's visitation access was not "suspended" with regard to her own children, who attend
DVUSD campuses.

DVUSD procedures³⁸ when Advocate had allegedly gained improper and unauthorized access to a particular DVUSD campus by knowingly providing false information to the staff and, unescorted, accessed campus and a classroom where during a 1.5 hour period she engaged the teacher and staff members in conversation without authorization or approval of that campus' Principal.³⁹ None of these alleged actions had occurred with respect to the Student involved in the instant case. DVUSD further advised Advocate that while her participation as an advocate for parents was guaranteed under the IDEA, the parents would need to contact DVUSD in advance of meetings and DVUSD would make arrangements for Advocate to participate by alternative means.

14. As a result of being informed of such suspension for her Advocate, Parent e-mailed the IEP Team Service Coordinator on September 23, 2013 regarding the matter, who advised Parent that Advocate could participate by phone.⁴⁰ Parent then requested that the IEP meeting be held at an off-campus location, suggesting the public library. DVUSD Psychologist, Dr. Richard Gray, responded to Parent indicating that Advocate could participate in the IEP process "through alternative means" but denied Parent's request for an IEP meeting at an off-campus location as it would "disrupt schedules of too many staff members and incur additional costs needlessly."

15. On September 24, 2013, Parent e-mailed Dr. Gray regarding her continued concerns with regard to Student's reading skills and lack of progress and that she had sought the assistance of the Advocate to help her obtain the help that Student needed. Parent indicated that she was "[not] comfortable attending these meetings unrepresented." Parent further stated:

And by not allowing my advocate to attend the IEP meeting tomorrow morning is in direct violation of my right to invite (physically) anyone of my choosing to the meeting. Requiring my invitee to attend by phone limits my right to "parent participation."

³⁸ At hearing, DVUSD provided a copy of several policies: (a) K-1700, Public Conduct on School Property; (b) K-2450, Visitors to Schools; and (c) K-2461 (regulation). Exhibit B, bates-pages 88-90, 91 and 92, respectively. No testimony was presented regarding these policies.

³⁹ At hearing, Advocate testified that she had permission from the parent and the teacher to observe that student. Exhibit 9, Attachment D at bates-pages 80 and 81.

⁴⁰ Exhibit 9, Attachment B at bates-pages 76-78.

Therefore, [I] feel that I am being forced to cancel the meeting since you are limiting my rights and I intend to file a state complaint.⁴¹

16. On September 24, 2013, Dr Gray responded to Parent, explaining that DVUSD was "not refusing to allow your advocate to participate in IEP meetings" but was "simply refusing to allow her to come on campus." Dr. Gray also wrote "no restraints of any kind have been placed on your participation in the IEP meeting process." Dr. Gray signed this letter as District Forensic Psychologist and Manager of Student Support Services.

17. In response to Parent's e-mail inquiry on September 26, 2013, IEP Team Service Coordinator indicated that the IEP team meeting had not been held on September 25, 2013 due to Parent's cancellation of the meeting.⁴²

18. On September 26, 2013, Parent responded explaining that she wanted her request and position to be "clear."⁴³ Parent requested that the IEP meeting be rescheduled "to a location that will allow the entire IEP team to participate together in person." Parent indicated that Advocate was a member of the IEP team, that all members of the team were entitled to be treated equally and that no member could be excused from the team unless both the school and parent agree. Parent indicated that she would not be able to participate "until all team members are permitted to participate equally" citing *Doug C. v. State of Hawaii*.⁴⁴ Parent emphasized that she had "not refused to participate but am requesting that the IEP meeting be rescheduled to a location where the full team can meet."

19. On October 4, 2013, Dr. Gray responded, indicating that he wanted to address inaccuracies in Parent's e-mail.⁴⁵ Dr. Gray indicated that the IDEA only guarantees the right to have a person participate as a member but that there is no right to have a person "physically attend" an IEP meeting. Dr. Gray indicated that alternative means of participation were provided for in the IDEA and that the District would be

⁴¹ On September 25, 2013, Advocate filed a state administrative complaint with the Arizona Department of Education. See Exhibit 9. Pursuant to 34 C.F.R. § 300.152(c), administrative complaints, or issues therein, which are also the subject of, or being addressed in a due process hearing, are set aside by the State agency until the conclusion of the due process hearing.

⁴² Exhibit 6, at bates-page 51.

⁴³ Exhibit 6, at bates-page 50.

⁴⁴ 720 F.3rd 1038 (9th Cir., 2013).

1 happy to arrange for Advocate's "full" participation by alternative means. Dr. Gray
2 further indicated that it would not agree to the request for an off-campus location "given
3 that the sole purpose of such a request, as stated by you, is to subvert a legal
4 administrative decision of the District." Finally, Dr. Gray indicated that DVUSD would
5 agree to change the location of the meeting to a different location on its campuses but
6 would not allow Advocate to be in physical attendance.

7 20. On November 4, 2013, in another student's due process matter, DVUSD
8 offered that parent the opportunity to have Advocate present "for this meeting only," at a
9 MET and IEP meeting scheduled to take place at the DVUSD District offices.⁴⁶ Cheryl
10 Parker signed that letter as DVUSD Manager of Student Support Services.

11 21. After Dr. Gray's October 4, 2013 response and between October 4, 2013
12 and December 11, 2013, DVUSD did not reschedule or give notice to reconvene an IEP
13 meeting for Student.⁴⁷ At hearing, Advocate testified that, after September 25, 2013,
14 she was not given an opportunity for a suspension of the DVUSD campus visitation ban
15 in order to complete Student's IEP.⁴⁸ Advocate also indicated that she herself had not
16 followed up with anyone at DVUSD requesting to have an IEP meeting for Student at
17 the District offices.⁴⁹

18 22. Between October 4, 2013 and December 11, 2013, DVUSD did not give
19 notice of its intent to implement an MSL program for Student.

20 23. On October 11, 2013, DVUSD sent home with Student a letter from a
21 DVUSD Reading Specialist.⁵⁰ The letter states:

22 [DVUSD] offers a comprehensive reading curriculum to all K-3 students in
23 which the academic achievement of each student is monitored throughout
24 the school year. The district core reading program, Reading Street[,]

25 ⁴⁵ Exhibit 6, at bates-page 48-49.

26 ⁴⁶ Exhibit 7. Advocate presented testimony, to which no objection was raised, regarding Exhibit 7;
27 therefore, Exhibit 7 is admitted to the hearing record pursuant to the provided written parental consent.

28 ⁴⁷ As of October 22, 2013 (the day before Petitioners' Complaint was filed), the IEP team had not
29 completed the review process for revising Student's February 13, 2013 IEP. Hearing Transcript, Dr.
30 Gray's testimony at 707. Dr. Gray indicated that until the IEP is finalized and decisions have been made,
no prior written notice would be sent regarding "any one piece" of an IEP. *Id.* at 708 and 716.

⁴⁸ Hearing Transcript at 362-362.

⁴⁹ Hearing Transcript at 409.

⁵⁰ Exhibit 6, at bates-page 60. Dr. Gray testified that this letter was a form letter created by the Move On
When Reading Arizona Initiative and that "all underperforming readers who may be at risk of being
retained under Move On When Reading." Hearing Transcript at 705-706.

includes all of the components of early literacy skills: Phonemic Awareness, Phonics, Vocabulary, Fluency, and Comprehension.

[DVUSD] monitors reading achievement through state, district, and reading program assessments in the primary grades, while adjusting instruction to meet each student's needs. This letter is to inform you that your child's current reading level is:

✓ Falls Far Below Reading Proficiency (At Risk)

Students who are demonstrating difficulty in reading receive additional assistance and intervention to meet their individual needs. DIBELS Next progress monitoring measures are administered to inform instruction and monitor progress. In addition, the following supports are being provided to assist your child in obtaining mastery of targeted skill areas:

- ✓ Small Group Instruction during the 90 minute reading block
- ✓ Additional Small Group Reading Interventions provided by:

✓ Other Support Staff

The second page of this letter asks Parent to sign off on the interventions and supports. In this case, Parent did not sign off on these interventions, because it had been acknowledged by Student's prior teacher at an IEP meeting that Reading Street had been tried and did/would not work for Student.⁵¹

24. Regarding the goals set forth in the February 2013 IEP, Student made progress as indicated in the October 2013 progress reports.⁵² Regarding increasing sight word recognition, Student progressed from 26 words to 38 words. Regarding phonics and decoding of one syllable words, Student started at 52% accuracy and rose to 84% accuracy, nearly mastering this skill.⁵³ Regarding correctly punctuating fact sentences, Student started at 10 % accuracy and rose to 100% accuracy, mastering this skill. Regarding writing out sequential numbers, Student was initially able to write up to 30 and mastered this skill to write the numbers 1 to 100 consistently. Regarding two-digit addition, Student was initially unable to perform this task and was able to

⁵¹ Hearing Transcript, Parent testimony at 451; see also Advocate testimony at 336 and Special Ed. Teacher testimony at 659.

⁵² Exhibit A, bates-pages 5-9.

1 master this skill to a 100% accuracy level. Regard correctly produce l-blends
2 "independently" with visual or verbal cues, Student started at 35% and mastered this
3 skill to an 80% accuracy level. Regarding correct use of plurals, Student started at 10%
4 accuracy and mastered this skill to an 80% accuracy level. Regarding increasing use of
5 "is/are + verb + ing," this was a new skill for Student and he mastered this skill to an
6 80% accuracy. Finally, regarding "independently" answering questions after listening to
7 verbal information, this was a new skill for Student, who started at 38% and rose to a
8 60% accuracy level.

9 25. At the hearing session on February 19, 2014, the record reflected that an
10 IEP meeting was held "two weeks ago" at which time DVUSD disclosed to Parent that
11 DVUSD had been using a new reading program for Student and had collected data
12 thereon, which DVUSD subsequently supplied to Parent.⁵⁴ Although the hearing record
13 presented such information, neither party indicated that any of the issues raised in the
14 Complaint had been resolved.

15 **CONCLUSIONS OF LAW**

16 **APPLICABLE LAW**

17 **Free and Appropriate Public Education - FAPE**

18 1. Through the IDEA, Congress has sought to ensure that all children with
19 disabilities are offered a free appropriate public education that meets their individual
20 needs.⁵⁵ These needs include academic, social, health, emotional, communicative,
21 physical, and vocational needs.⁵⁶ To do this, school districts must identify and evaluate
22 all children within their geographical boundaries who may be in need of special
23 education and services. The IDEA sets forth requirements for the identification,
24 assessment and placement of students who need special education, and seeks to
25 ensure that they receive a free appropriate public education. A FAPE consists of

26 ⁵³ The progress report itself contains an error in the October 2013 mastery number according to the
27 comments. Exhibit A, bates-page 5; see also Hearing Transcript, Special Ed. Teacher testimony at 598.
Special Ed. Teacher prepared the October 2013 progress reports. *Id.*, at 596.

28 ⁵⁴ Hearing Transcript at 618 – 622; see also Hearing Transcript at 644 (regarding an IEP meeting on
29 February 4, 2014). Special Ed. Teacher testified that she had not made any unilateral changes to the
February 2013 IEP. Hearing Transcript at 677.

30 ⁵⁵ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

⁵⁶ *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).

1 “personalized instruction with sufficient support services to permit the child to benefit
2 educationally from that instruction.”⁵⁷ The IDEA mandates that school districts provide
3 a “basic floor of opportunity,” nothing more.⁵⁸ It does not require that each child’s
4 potential be maximized.⁵⁹ A child receives a FAPE if a program of instruction “(1)
5 addresses his unique needs, (2) provides adequate support services so he can take
6 advantage of the educational opportunities and (3) is in accord with an individualized
7 educational program.”⁶⁰

8 The Individualized Education Program - IEP

9 2. Once a child is determined eligible for special education services, a team
10 composed of the child’s parents, teachers, and others formulate an IEP that, generally,
11 sets forth the child’s current levels of educational performance and sets annual goals
12 that the IEP team believes will enable the child to make progress in the general
13 education curriculum.⁶¹ The IEP tells how the child will be educated, especially with
14 regard to the child’s needs that result from the child’s disability, and what services will
15 be provided to aid the child. The child’s parents have a right to participate in the
16 formulation of an IEP.⁶² The IEP team must consider the strengths of the child,
17 concerns of the parents, evaluation results, and the academic, developmental, and
18 functional needs of the child.⁶³ Annually, the IEP team must review the student’s IEP to
19 determine whether the annual goals are being achieved and to revise the IEP as
20 appropriate to address the lack of progress toward the annual goals, the results of any
21 re-evaluation, information about the child provided by parents, the child’s anticipated
22 needs and any other relevant matters.⁶⁴ To foster full parent participation, in addition to
23 being a required member of the team making educational decisions about the child,
24 school districts are required to give parents written notice when proposing any changes
25

26 ⁵⁷ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

27 ⁵⁸ *Id.*, 458 U.S. at 200.

28 ⁵⁹ *Id.* at 198.

29 ⁶⁰ *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)).

30 ⁶¹ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

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

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

⁶⁴ 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.324(b)(1).

to the IEP,⁶⁵ and are required to give parents, at least once a year, a copy of the "procedural safeguards," informing them of their rights as parents of a child with a disability.⁶⁶

Prior Written Notice- PWN

3. The IDEA process for making changes to an IEP, including identification, eligibility and changing educational placements, requires a school district to give parents written notice before taking the proposed action.⁶⁷ Designated as the Prior Written Notice (or PWN), that notice must contain certain information specified by the IDEA, such as an explanation of why that decision is being made, the documentation used to make the decision, and a reminder of parents' procedural rights. Of particular note is the requirement that the PWN contain "[a] description of other options that the IEP Team considered and the reasons why those options were rejected. . . ."⁶⁸ Thus, the PWN is issued after an IEP team decision with regard to identification, eligibility or educational placement has been made, not before.

Extended School Year Services - ESY

4. Students with disabilities are eligible for extended school year ("ESY") services if those services are necessary so that (1) the student will not severely or substantially regress in skills during recesses or the summer break, and (2) if the benefits gained by the student during the regular school year would be significantly jeopardized during school breaks without extended services.⁶⁹ ESY is not appropriate to provide daycare or respite services to caregivers, for summer recreation, or to maximize academic potential.⁷⁰ ESY is to be determined by the IEP team typically using retrospective data unless it is not available, in which case predictive data can be used.⁷¹

The IEP Team

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

⁶⁶ 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).

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

⁶⁸ 20 U.S.C. § 1415(c)(1)(E); 34 C.F.R. § 300.503(b)(6).

⁶⁹ A.R.S. § 15-881(A).

⁷⁰ A.R.S. § 15-881(D).

⁷¹ A.R.S. § 15-881(B).

5. The IDEA provides that the public agency, the school, must “ensure” that the IEP team includes certain persons, typically those with specific and/or particular knowledge of the student and the types of resources and services available for a child with that student’s disabilities.⁷² Additionally, a parent has the discretion to include other persons “who have knowledge or special expertise regarding the child, including related services personnel as appropriate.”⁷³ The determination of knowledge and expertise is made by the party who invited the other person to be a member of the IEP team.⁷⁴ When conducting MET and IEP meetings, and other administrative matters regarding the IDEA procedural safeguards, the parties “may agree to use alternative means of meeting participation, such as video conferences and conference calls.”⁷⁵ Finally, an IEP meeting may take place in the absence of parents if the public agency/school is unable to convince the parents to attend; the public agency/school must keep a record of its efforts to arrange “a mutually agreed time and place” for the meeting.

DECISION

6. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.⁷⁶ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”⁷⁷ Therefore, in this case, Petitioners bear the burden of proving by a preponderance of evidence that DVUSD failed to provide Student FAPE under the February 2013 IEP.

7. Here, Parent seeks a determination that her parental participation rights under the IDEA were violated due to DVUSD's refusal to set the scheduled September 25, 2013 IEP meeting at a mutually agreeable location that would accommodate Parent's Advocate, a person with knowledge and or special expertise regarding Student, being

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

⁷³ 20 U.S.C. § 1414(d)(1)(B)(vi); 34 C.F.R. § 300.321(a)(6).

⁷⁴ 34 C.F.R. § 300.321(c).

⁷⁵ 20 U.S.C. § 1414(f); 34 C.F.R. § 300.322(c); *see also* 34 C.F.R. § 300.328.

⁷⁶ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

⁷⁷ *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).

able to physically attend the IEP meeting with Parent. This is an allegation of a procedural violation. Additionally, Parent seeks a determination that DVUSD violated the IDEA when it failed to complete, or failed to complete necessary revisions to Student's IEP. This is also an allegation of a procedural violation. Based on the circumstances in this case, the Administrative Law Judge concludes that these two issues are inextricably linked. And finally, Parent seeks a determination that the DVUSD failure to complete or complete revisions to Student's IEP resulted in a failure to provide FAPE to Student in violation of the IDEA and requests an award of compensatory education. A determination of whether or not Student received a FAPE must be based on substantive grounds.⁷⁸ However, when a procedural violation is alleged and found, it must further be determined whether the procedural violation either (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefit.⁷⁹ If one of the three impediments listed has occurred, the child has been denied a FAPE due to the procedural violation.

8. As one remedy, Parent seeks an Order compelling DVUSD to convene IEP meetings at mutually agreeable locations accommodating Parent's Advocate, so that she may physically attend the meetings.⁸⁰ Parent's requested solution was for DVUSD to convene the IEP meetings in an off-campus location. While the IDEA requires that schools ensure the constitution of an IEP team and give parents the discretion to bring other knowledgeable persons to the IEP table, the IDEA does not specify the manner in which IEP meetings must occur. The IDEA mandates that the public agency take steps to ensure that parents are "present ... *or are afforded the opportunity to participate...*" at each IEP meeting by providing sufficient lead time and notification and by "scheduling the meeting at a mutually agreed on time and place."⁸¹ Therefore, the Administrative Law Judge concludes that the IDEA prefers that parents be present at IEP meetings.

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

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

⁸⁰ When Parent filed her Complaint in October of 2013, this was an urgent issue because the DVUSD ban is in place until the end of the 2013-2014 academic year, until May of 2014.

⁸¹ 34 C.F.R. § 300.322(a)(2).

1 9. The IDEA requirement for participation is for the purpose of facilitating the
2 requisite collaborative process of an IEP team both to ascertain a child's individualized
3 needs and to determine requisite services to address those specific needs. The IDEA
4 discusses alternative participation methods for parents who are unable to physically
5 attend meetings.⁸² A reasonable extension of this provision would allow the possibility
6 that "alternative participation" should, therefore, be available or allowed to all IEP team
7 participants. The hearing record demonstrates no effort by DVUSD to ascertain, or offer,
8 any alternative participation for Advocate other than telephonic.⁸³ Although multiple
9 alternatives and suggestions were proffered by DVUSD during the hearing process, the
10 hearing record does not document any efforts to find a solution to these circumstances in
11 September 2013, or in the time frame before the due process hearing began. DVUSD's
12 arguments that the Advocate was attempting to veto the location of an IEP meeting or
13 that Parent was seeking "immunity" for allowing an advocate's "bad" behavior on District
14 property are simply without support in the record. In this case, DVUSD took the position
15 that holding the IEP meeting off campus would inconvenience its personnel by
16 "disrupting" staff schedules and that it would entail incurring additional costs. Later,
17 DVUSD took the extreme position that Parent was asking for an off-campus location
18 solely "to subvert a legal administrative decision of the District." Finally, DVUSD indicated
19 that, even if it changed the location of the meeting to a different District location, DVUSD
20 would not allow Parent's Advocate to be physically present. In this case, Parent's e-mails
21 requesting a mutually agreeable and neutral location contained no language to the effect
22 that Parent intended to "subvert" the DVUSD ban.⁸⁴ Parent specified that she was not
23 refusing to participate in an IEP meeting.⁸⁵ The Administrative Law Judge concludes that
24 Parent's efforts to have the meeting held off campus demonstrate that she was

25 ⁸² 34 C.F.R. § 300.328 and 34 C.F.R. § 300.321(a).

26 ⁸³ Sadly, the facts play out simply as the parties being unable to conceive other participation possibilities
27 and how to effect those so that the IEP meeting could take place, each having apparently dug into their
28 respective positions. DVUSD kept offering the same telephonic appearance for Advocate and Parent kept
29 asking for a location where the full team could be present. The end result of the stalemate was that
30 Student's IEP was not completed, as is required by the IDEA.

⁸⁴ The record showed that Parent was overwhelmed and felt that she alone could not bring specialized or
necessary knowledge to the table or achieve results for her child by herself. Any parent with such concerns
may simply need more assistance through what she perceives as a stressful process and, within her rights,
sought the assurance of having a spokesperson to assist her in the process.

⁸⁵ Exhibit 6, at bates-page 50.

attempting to work with DVUSD despite the DVUSD ban for Advocate's presence on its properties.

10. The hearing record demonstrates that DVUSD allowed two exceptions to the visitation ban, one for Advocate's own children and another for an unrelated child's IEP meeting for which Advocate was acting as an advocate. Therefore, the Administrative Law Judge concludes that despite allowing two exceptions to the visitation ban for others, DVUSD refused to allow any such exception to Parent. This resulted in Student's IEP not being completely revised to address the results of the July 25, 2013 re-evaluation, to address the new information about Student provided by parent and the outside assessment, or to address Student's anticipated specialized instructional needs. The Administrative Law Judge concludes that the circumstances in this case demonstrate not only DVUSD's bad faith as to this Student's IEP process, but also a procedural failure by DVUSD to convene the required IEP meeting at a mutually agreed upon location. But for the ban on Advocate's presence on campus and DVUSD's flat-out refusals in September 2013 to compromise on the location for the IEP meeting, this issue likely would have been resolved and the remaining issues regarding Student's IEP completion would likely not have been brought to due process.

11. Additionally, given the DVUSD position that Parent was refusing to participate in an IEP meeting, DVUSD could have convened an IEP meeting, created the necessary IEP and then provided PWN to Parent regarding the changes to Student's IEP and her procedural rights.⁸⁶ The hearing record demonstrates that DVUSD refused to mutually agree to a neutral location. Therefore, the Administrative Law Judge concludes that DVUSD violated the IDEA, 20 U.S.C. § 1414(d)(1)(B)(vi) and 34 C.F.R. § 300.321(a)(6), when DVUSD refused to set the scheduled September 25, 2013 IEP meeting in a mutually-agreeable location that would allow Parent's Advocate, a parentally-chosen member of the IEP team, to attend in person and as a result DVUSD violated IDEA, 20 U.S.C. § 1414(d)(3), 20 U.S.C. § 1414(d)(4); 34 C.F.R. § 300.324(a)(6); and 34 C.F.R. § 300.324(b)(1) when DVUSD failed to complete a

⁸⁶ 34 C.F.R. § 300.322(d).

revised IEP for Student to take into account Student's newly identified multiple learning disabilities.

12. The hearing record reflects that Parent watched her child struggle with his reading, homework and overall education opportunity and sought outside evaluation; Parent saw that her child was not accessing the instruction. In finding outside support for her concerns, Parent with the assistance of an Advocate then requested re-evaluation so that her child would obtain the individualized and specialized instruction he likely needed. The hearing record evidences that Advocate was prevented from attending the scheduled September 25, 2013 IEP meeting due to two factors: (a) DVUSD had previously issued a ban on her presence on DVUSD campuses and facilities with regard to students other than her own children; and (b) DVUSD refused to consider the alternative of an off-campus mutually agreeable location. While the first factor is not at issue in this case, the result of the DVUSD action banning Advocate from its properties affected Parent's ability to meaningfully and effectively participate in an IEP meeting without Advocate. While DVUSD began the process to revise Student's IEP, as mandated by the IDEA, DVUSD failed to complete that task. Therefore, the Administrative Law Judge concludes that DVUSD failed to complete, *i.e.*, failed to revise, Student's IEP after the July 25, 2013 re-evaluation.

13. Based on the foregoing, the Administrative Law Judge concludes that DVUSD failed to offer Student a FAPE after September 25, 2013 when it failed to complete, or complete revisions to, Student's IEP. The implementation of Student's February 2013 IEP after July 25, 2013 cannot be determined to be reasonably calculated to provide meaningful educational benefit to Student, a child whose multiple learning disabilities were, for the most part, not addressed in any way in the goals and objectives set forth in the February 2013 IEP. An IEP is typically viewed as a snapshot and typically reviewed in the context of the information that the IEP team knew or should have known at the time the IEP was drafted.⁸⁷ An IEP provides a FAPE if it is appropriately designed and implemented so as to convey meaningful benefit.⁸⁸ Here, Student's February 2013

⁸⁷ *Adams*, 195 F.3d at 1149.

⁸⁸ *Aaron P. v. Dept. of Educ., State of Hawaii*, No. 10-00574, 2011 U.S. Dist. LEXIS 126450, at *50 (D. Haw. Oct. 31, 2011).

1 IEP as implemented prior to the Complaint is not at issue. The consideration at hand is
2 whether, after September 25, 2013, Student had an IEP containing appropriate specially
3 designed instruction addressing his determined multiple learning disabilities. The
4 Administrative Law Judge concludes that, by virtue of the failure to complete the IEP to
5 address his determined multiple learning disabilities, he did not. Therefore, because
6 DVUSD has implemented, in some manner, the February 2013 IEP since that time and
7 because it does not address each of Student's determined multiple learning disabilities,
8 the Feb 2013 IEP being implemented by DVUSD fails to offer FAPE to Student.

9 14. DVUSD's arguments fail that the February 2013 IEP was stay-put and
10 DVUSD was obligated to implement that IEP as the current IEP. The IDEA required
11 DVUSD to complete an annual IEP, and failing to do so resulted in DVUSD providing
12 services under an IEP that fails to address Student's individualized needs. DVUSD
13 having determined new disabilities and failing to complete revisions to an IEP that did not
14 address the newly determined disabilities, the end result is that DVUSD is offering and/or
15 providing services that cannot be truly considered to offer FAPE to Student. Whether
16 Student continued to receive the same number of minutes for some services and,
17 arguably, continued to access educational benefit from the goals and objectives in the
18 February 2013 IEP, is not a measure of an appropriate offer of FAPE. Whether DVUSD
19 proposed to offer additional minutes to Student in its August 2013 draft IEPs does not
20 change the fact that Student's IEP is not yet revised, and the fact that his annual IEP
21 period has passed and his IEP is not yet revised to address his determined learning
22 disabilities.⁸⁹ For the 2013-2014 academic year, Student has been offered and/or
23 provided services that are not set forth in his IEP and are not specially designed to meet
24 his individualized educational needs of the determined learning disabilities. The hearing
25 record indicated that DVUSD has made changes to Student's curriculum and has
26 selected certain of the February 2013 goals to target.⁹⁰ However, irrespective of the
27 progress Student made on the outdated goals (outdated because they were not

28 ⁸⁹ The Administrative Law Judge is unaware of the outcome of the February 5, 2014 IPE meeting.

29 ⁹⁰ Hearing Transcript, Special Ed. Teacher testimony, at 576 - 679. This teacher indicated that she is
30 providing a multisensory structured teaching approach and that she used a program called Reading
Naturally® since October. *Id.*, at 620 and 635-636. This teacher indicated that she has been working on

objectives and goals designed to measure his progress regarding the newly determined learning disabilities), the February 2013 goals were not specially designed in Feb 2013 to remediate and/or improve his newly determined disabilities which, thus, have essentially gone unremediated since July of 2013.

15. Parent's argument regarding requesting and never receiving a PWN for a request to place certain language in an IEP are not persuasive. A request to add language to an IEP does not fall within the circumstances for which the IDEA mandates a PWN. School districts are only required to issue a PWN to parents whenever the school district proposes to initiate or change the identification, evaluation and/or educational placement of a disabled student.⁹¹ A PWN informs parents about what action is being taken, explains why the action is being taken, explains what other options were considered, informs parents that they have procedural rights, and provides sources for assistance in understanding those rights.⁹² Parent's argument also fails that she was entitled to a PWN for an alleged DVUSD policy of not allowing the statement of a specific program in the IEP. The hearing record demonstrates that DVUSD had agreed to implement a "multisensory structured language," MSL, program for Student and, apparently, DVUSD also agreed to place Parent's request for such in the PLAAFP in the parental input area. There were certainly larger issues on the table for this IEP team regarding the next steps - Student's individualized needs and goals regarding those needs - rather than whether certain language could or could not be placed in Student's IEP.

16. As a second remedy, Petitioners request compensatory education services in the form of a MSL teaching program, arguing that DVUSD only has two MSL programs, neither of which they argue are suited to the Student's demonstrated reading deficiencies. Petitioners' expert, Dr. Pam Rupprecht testified that, based on the July 25, 2013 MET report and the identified individualized needs therein, Student requires two 45-minute sessions, each day, in a quiet low-distraction environment, of individualized 1:1

goals for reading and phonic skills that were set forth in Student's February 2013 IEP and indicated that Student is showing gains in his assessments and demonstrates increased skills.

⁹¹ 20 U.S.C. § 1415(b)(3).

⁹² 20 U.S.C. § 1415(c)(1).

1 intervention in order to make meaningful educational progress.⁹³ Petitioners requested
2 provision of the Lindamood Bell LIPS program privately provided, but at the District's
3 expense, in the form of 2 hours per day of 1:1 LIPS program reading interventions until
4 Student is reading at grade level, and transportation thereto. Petitioners argue that a
5 prospective remedy is necessary until an IEP is written that includes the "appropriate,
6 individualized LIPS instruction prospectively" due to lost educational opportunity.
7 Petitioners indicate that 176 school days will have passed this academic year (to April 21,
8 2014) for which Student has not received FAPE, and that a minimum award for
9 compensatory education would entail 2 hours each day of LIPS program reading
10 interventions.

11 ORDER

12 Based on the findings and conclusions above,

13 IT IS ORDERED despite the procedural violation found herein regarding DVUSD
14 failing to convene the requisite IEP meeting at a mutually agreed upon location in this
15 case and under these circumstances, Petitioners' request for an order compelling
16 DVUSD to schedule IEP meetings in an off-campus location so that Advocate may
17 physically attend is denied as other alternative participation methods are available
18 under the IDEA and, specific to this case, Advocate's campus visitation ban expires in
19 May 2014, and

20 IT IS ORDERED Petitioners' Complaint is partially granted as follows:

21 IT IS FURTHER ORDERED that Student is awarded 2 hours a day, at District
22 expense, of private reading intervention services of Parent's choice until the IEP Team
23 meets and finalizes Student's IEP with MSL program interventions to address Student's
24 multiple learning disabilities,

25 IT IS FURTHER ORDERED that the parties shall complete the IEP for Student
26 as soon as possible but no later than two weeks before the first day of the DVUSD
27 2014-2015 academic year,
28
29
30

⁹³ Hearing Transcript at 227 and 229.

1 IT IS FURTHER ORDERED that Student is awarded compensatory education, at
2 District expense, in the form of 250 hours of Lindamood Bell LIPS program reading
3 intervention services for which Parent may select a private provider, and

4 IT IS FURTHER ORDERED that transportation and/or transportation cost, is not
5 awarded.

6 ORDERED this 17th day of April, 2014.

7 OFFICE OF ADMINISTRATIVE HEARINGS

8
9 /s/ Kay A. Abramsohn
10 Administrative Law Judge
11

12 **RIGHT TO SEEK JUDICIAL REVIEW**

13 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this
14 Decision and Order is the final decision at the administrative level.
15 Furthermore, any party aggrieved by the findings and decisions made
16 herein has the right to bring a civil action, with respect to the complaint
17 presented, in any State court of competent jurisdiction or in a district court
18 of the United States. Pursuant to Arizona Administrative Code § R7-2-
19 405(H)(8), any party may appeal the decision to a court of competent
20 jurisdiction within thirty-five (35) days of receipt of the decision.
21
22
23
24
25
26
27
28
29
30

Copy sent by **electronic mail** and regular mail this 17th day
of April, 2014 to:

Amy G. Langerman, Esq.
951 Coronado Avenue
Coronado, CA. 92118
alangermanlaw@aol.com
Counsel for Petitioners

Robert D. Haws Esq.
Gust Rosenfeld, P.L.C.
201 E. Washington St., Ste. 800
Phoenix, AZ 85004-2327
rhaws@gustlaw.com
Counsel for Respondent

Arizona Department of Education
ATTN: Kacey Gregson, Dispute Resolution
1535 West Jefferson Street
Phoenix, AZ 85007
kacey.gregson@azed.gov

By: Cruz Serrano