

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

■, a Student, by and through Parent

Petitioners,

v.

Sedona-Oak Creek Joint Unified School
District,
Respondent

No. 14C-DP-006-ADE

No. 14C-DP-012-ADE

No. 14C-DP-021-ADE

No. 14C-DP-031-ADE

**ADMINISTRATIVE
LAW JUDGE DECISION**

HEARING: November 18, 2013, November 19, 2013, November 20, 2013, and April 2, 2014, with the record left open to receive transcripts.¹

APPEARANCES: Petitioner Parent ■ appeared on his own behalf and was accompanied by Parent ■; attorneys Patrice M. Horstman and Eve A. Parnell, HUFFORD, HORSTMAN, MONGINI, PARNELL & TUCKER, P.C., appeared on behalf of Sedona Oak Creek Unified School District No. 9 ("School"), accompanied by school representative Scott Keller, Special Education Director. Certified Court Reporters Lerryn Horton Roberds, Michelle K. Seymour, and Annette Satterlee, PERFORMANCE REPORTERS, INC., were present and recorded the proceedings as the official record of the hearing.

WITNESSES:² Petitioner ■ ("Parent ■"), Parent ■ ("Parent ■"); Ken Baumgartner, **Special Education Teacher**; **Dr. Trina Spencer**, Behavior Analyst; **Scott Keller**, Special Education Director; Traci Parry, **Student's Paraprofessional**.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

Parents bring these due process actions, on behalf of Student, challenging the implementation of an Individualized Educational Program ("IEP") adopted by Respondent School for the 2012 – 2013 school year, maintaining that Parents were not allowed to meaningfully participate in the IEP meetings during the development of the

¹ Following the hearing, the parties agreed to an extension of the 45th day to August 4, 2014.

² Throughout this Decision, proper names of parents 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 type) will be used instead. Proper names of administrative personnel, service providers, and expert witnesses are used.

1 IEP for the 2013 – 2014 school year, and alleging various procedural violations. The
2 law governing these proceedings is the Individuals with Disabilities Education Act
3 (“IDEA”), 20 United States Code (“U.S.C.”) §§ 1400-1482 (as re-authorized and
4 amended in 2004),³ and its implementing regulations, 34 Code of Federal Regulations
5 (“C.F.R.”) Part 300, as well as the Arizona Special Education statutes, Arizona Revised
6 Statutes (“A.R.S.”) §§ 15-761 through 15-774, and implementing rules, Arizona
7 Administrative Code (“A.A.C.”) R7-2-401 through R7-2-406.

8 Procedural History

9 Petitioners filed the Due Process Complaint in 14C-DP-006-ADE on July 12,
10 2013. The complaint alleged that Respondent School failed to substantially implement
11 Student’s August 2012 IEP, which resulted in the denial of a free appropriate public
12 education (“FAPE”) for Student. Specifically, Petitioners alleged that when Student
13 would achieve a Short Term Objective (“STO”) in his IEP, Respondent School failed to
14 timely advance Student to the next STO. Petitioners sought compensatory education of
15 351 hours and “the assignment of a recognized independent, third-party to provide
16 supervisory [sic] and oversight of [Student’s] educational program on a continual basis
17 until such time that [Respondent School] can provide evidence of the capability to
18 manage [Student’s] IEP on their own.”

19 Petitioners filed the Due Process Complaint in 14C-DP-012-ADE on September
20 3, 2013. That complaint alleged that Respondent School failed to provide a complete
21 set of Student’s educational records upon Petitioners’ request, that an occupational
22 therapist and a speech therapist were not present at the May 9, 2013 Multidisciplinary
23 Evaluation Team (“MET”) meeting as required, that Parents were denied an opportunity
24 to meaningfully participate in the August 14, 2013, and August 15, 2013 IEP meetings,
25 and that the Prior Written Notice (“PWN”) issued to Parents following the August 15,
26 2013 IEP meeting was flawed. Petitioners sought an order stating that a new annual
27 IEP created by Student’s IEP team, with the team holding at least three two-hour
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30 ³ By Public Law 108-446, known as the “Individuals with Disabilities Education Improvement Act of
2004,” IDEA 2004 became effective on July 1, 2005.

1 meetings with a specific agenda to be followed in sequence and an independent third-
2 party trained facilitator.

3 Hearing was held on the issues raised in Case Numbers 14C-DP-006-ADE and
4 14C-DP-012-ADE on November 18, 2013, November 19, 2013, and November 20,
5 2013. When the hearing convened, the issue remaining for hearing in Case Number
6 14C-DP-006-ADE was identified as whether Respondent School failed to substantially
7 implement the August 2012 IEP, specifically: Once Student mastered an STO, was he
8 timely moved to the next STO? When the hearing convened, the issues remaining for
9 hearing in Case Number 14C-DP-012-ADE were identified as whether parents were
10 afforded an opportunity for meaningful participation in the IEP process and whether a
11 clerical error of placing the wrong date on the PWN and referring to a report that was
12 not presented during a meeting constituted a procedural violation that impeded
13 Student's right to a FAPE.

14 While these cases were under advisement, Petitioners filed the Due Process
15 Complaint in 14C-DP-021-ADE on November 26, 2013. This third complaint alleged
16 that Respondent School failed to substantially implement the August 2012 IEP, which
17 resulted in a denial of a FAPE for Student. Specifically, Petitioners alleged that
18 Respondent School failed to provide 1200 special education service minutes as
19 detailed in the August 2012 IEP and that Student did not receive from the Occupational
20 Therapist the 200 minutes of Sensory Diet required by the August 2012 IEP.
21 Petitioners sought compensatory education of 350 hours, compensatory occupational
22 therapy of 117 hours, and "the assignment of a recognized independent, third-party to
23 provide supervisory [sic] and oversight of [Student's] educational program on a
24 continual basis until such time that [Respondent School] can provide evidence of the
25 capability to manage [Student's] IEP on their own."

26 Because the issues raised in 14C-DP-021-ADE were substantially related to
27 those presented 14C-DP-006-ADE and 14C-DP-012-ADE, the three cases were
28 consolidated and the record reopened to receive further evidence.

29 Petitioners subsequently filed the Due Process Complaint in 14C-DP-031-ADE
30 on January 8, 2014. This fourth complaint alleged that Respondent School failed to

1 provide PWN of changes to Student's IEP and/or failed to comply with issued PWNs.
2 Petitioners sought "the assignment of a recognized independent, third-party expert to
3 serve as a 'designated neutral' who advocates for a fair process in regards to
4 [Student's] educational program on a continual basis until such time that the District
5 can provide compelling evidence of the capability to consistently manage [Student's]
6 IEP on their own and comply with IDEA regulations."

7 Again, because the issues raised in 14C-DP-031-ADE were substantially related
8 to those presented 14C-DP-006-ADE, 14C-DP-012-ADE, and 14C-DP-021-ADE, the
9 four cases were consolidated.

10 Evidence and Issues at Hearing

11 The parties presented testimony and exhibits at a formal evidentiary hearing
12 sessions held on November 18, 2013, November 19, 2013, November 20, 2013, and
13 April 2, 2014. The parties presented testimony from the witnesses listed above⁴ and
14 offered into evidence Petitioners' Exhibits A, I through O, R through U, X, Z, AAA
15 through SSS, BO, and BZ and Respondent School's Exhibits 1 through 42.

16 The Administrative Law Judge has considered the entire record, including the
17 testimony and Exhibits,⁵ and now makes the following Findings of Fact, Conclusions of
18 Law, and Order.

19 FINDINGS OF FACT

20 1. Student began attending Respondent School in [REDACTED] at the end of
21 the 2009 – 2010 school year. Student has Autism, Moderate Intellectual Disability, and
22 non-verbal speech. During the 2012 – 2013 school year, Student received special
23 education services in a self-contained setting for most of the day, but was included with
24 his general education peers for part of the day.

25 Implementation of the August 2012 IEP

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28 ⁴ Transcripts of the testimony have been added to the record. The transcripts are the official record of
the hearing.

29 ⁵ The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in
30 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.

1 2. In August 2012, IEP meetings were held to create a new annual IEP for
2 Student. The IEP was completed on August 20, 2012, and a PWN was sent to Parents
3 on August 27, 2012, recognizing the August 2012 IEP as the operant IEP for the 2012
4 – 2013 school year.⁶ During the course of the school year, nine amendments to the
5 IEP were made.

6 3. The August 2012 IEP outlined 15 goals with three STOs per goal. In the
7 final version of the IEP,⁷ the goals and STOs were as follows:

8 Goal 1 – [Student] will match 8 color words (red, blue, green, yellow,
9 orange, purple, brown, black) in black type with a corresponding color
10 swatch in a field of 8, with 80% accuracy across 3 consecutive
11 instructional sessions as measured using a trial-by-trial data sheet. Data
12 will be collected for each instructional session.

13 STO 1: By 10/12/2012, [Student] will match 8 color words printed in
14 the corresponding color, to an identical color word printed in the
15 corresponding color, out of a field of 8 with 80% accuracy across 3
16 consecutive instructional sessions.

17 STO 2: By 12/21/2012, [Student] will match 8 color words printed in
18 the corresponding color to corresponding color swatches, out of field
19 of 8 with 80% accuracy across 3 consecutive instructional sessions.

20 STO 3: By 3/8/2013, [Student] will match 8 color words in the
21 corresponding color to corresponding color words in black type, out of
22 field of 8 with 80% accuracy across 3 consecutive instructional
23 sessions.

24 Goal 2 – Given 6 photos of familiar people (E.g. Traci, Mary, Ken, Nancy,
25 and two peers) in an array of [6,] [Student] will match the correct photo to
26 the corresponding printed word with 80% accuracy across 3 consecutive
27 instructional sessions, using a trial by trial data sheet. Data will be
28 collected for each instructional session.

29 STO 1: By 10/12/2012, Given 2 photos of familiar people (e.g. Traci,
30 Mary) in array of six, [Student] will match the correct photo to a photo
with the corresponding printed word, with 80% accuracy over 3
consecutive instructional sessions.

STO 2: By 12/21/2012, Given 2 photos of familiar people (e.g. Traci,
Mary) in array of six, [Student] will match the correct photo to the
corresponding printed word with 80% accuracy over 3 consecutive
instructional sessions. Given 2 additional photos of familiar people
(e.g. Ken, Nancy) in an array of six, [Student] will match the correct

⁶ Throughout this decision, the IEP created on August 20, 2012, will be referred to as the August 2012 IEP.

⁷ During the course of the 2012 – 2013 school year, the IEP was amended multiple times, the goals and STOs set forth in this Finding of Fact detail the goals and STOs after the amendments.

photo to a photo with the corresponding printed word, with 80% accuracy over 3 consecutive sessions.

STO 3: By 3/8/2013, Given 4 photos of familiar people (e.g. Traci, Mary, Ken, Nancy) in array of six, [Student] will match the correct photo to the corresponding printed word with 80% accuracy over 3 consecutive instructional sessions. Given 2 additional photos of familiar people (two familiar peers) in array of six, [Student] will match the correct photo to the corresponding photo with the printed word, with 80% accuracy over 3 consecutive instructional sessions.

Goal 3 – [Student] will match 10 shapes (circle, square, triangle, star, diamond, hexagon, octagon, rectangle, heart, oval) in an array of 3, with 80% accuracy across 3 consecutive instructional sessions, recorded using a trial-by-trial data sheet. Data will be collected for each instructional session.

STO 1: By 10/12/2012, [Student] will match 4 shapes (circle, square, triangle, star) in an array of 3, with 80% accuracy across 3 consecutive instructional sessions.

STO 2: By 12/21/2012, [Student] will match 6 shapes (circle, square, triangle, star, diamond, hexagon) in an array of 3, with 80% accuracy across 3 consecutive instructional sessions.

STO 3: By 3/8/2013, [Student] will match 8 shapes (circle, square, triangle, star, diamond, hexagon, octagon, rectangle) in an array of 3, with 80% accuracy across 3 consecutive instructional sessions.

Goal 4 – When provided with set up [Student] will independently brush all surfaces of his teeth with 100% accuracy across 3 consecutive instructional sessions. He will be evaluated using duration recording. Data will be collected for each instructional session.

STO 1: When provided with set up [Student] will allow staff to put the toothbrush on all surfaces of his teeth with 100% accuracy across 3 consecutive instructional sessions.

STO 2: When provided with set up [Student] will allow staff to provide full physical prompts and put the toothbrush on all surfaces of his teeth with 100% accuracy across 3 consecutive instructional sessions.

STO 3: When provided with set up [Student] will allow staff to provide partial physical prompts and put the toothbrush on all surfaces of his teeth with 100% accuracy across 3 consecutive sessions.

Goal 5 – Given the classroom computer, [Student] will independently open 2 different web browsers in 2 different locations and click on the bookmark to a desired website in more than one location, with 80% accuracy across 3 consecutive instructional sessions, recorded using a task analysis data sheet. Data will be collected for each instructional session.

1 STO 1: By 10/12/2012, Given the classroom computer, [Student] will
2 open a web browser in 2 different locations on the screen with 80%
3 accuracy across 3 consecutive instructional sessions.

4 STO 2: By 12/21/2012, Given the classroom computer, [Student] will
5 open a web browser in 2 different locations on the screen and access
6 a desired bookmark in more than one location with 80% accuracy
7 across 3 consecutive instructional sessions.

8 STO 3: By 3/8/2013, Given the classroom computer, [Student] will
9 open a web browser and access a desired bookmark in more than one
10 location with 80% accuracy across 3 consecutive instructional
11 sessions.

12 Goal 6 – [Student] will develop his social interaction/communication skills
13 by participating in a reciprocal turn-taking activity of up to 3 exchanges on
14 3/5 opportunities over 2 days with decreasing physical cues (full
15 prompting, partial prompting, visual supports only) as measured by trial-
16 by-trial data collection. Data will be collected for each instructional
17 session.

18 STO 1: By 10/12/2012, [Student] will participate in a turn taking
19 activity with an adult for 3 exchanges with full physical prompting on
20 5/5 opportunities.

21 STO 2: By 12/21/2012, [Student] will participate in a turn taking
22 activity with another peer for 2 exchanges with partial physical
23 prompting on 5/5 opportunities.

24 STO 3: By 3/8/2013, [redacted] will participate in a turn taking activity
25 with another peer for 3 exchanges with partial prompting on 3/5
26 opportunities.

27 Goal 7: Given his PECS book,⁸ [Student] will move the “I want” picture to
28 the left side of the sentence strip and remove the reinforcer picture from
29 the communication book and place it on the sentence strip, hand it to his
30 communication partner and point to each icon in the correct order, for 12
new vocabulary words, with 80% accuracy across 3 consecutive
instructional sessions as measured using trial-by-trial data sheets during
each instructional session. Data will be collected using SLP made
assessments, a minimum of 1 time per week by SLP.

STO 1: By 10/12/2012, [Student] will request 6 new vocabulary
words by moving the “I want” picture to the left side of the sentence
strip and removing the reinforcer picture from the communication book
and placing it on the sentence strip, handing it to his communication
partner and pointing to each icon in the correct order, with 80%
accuracy across 3 consecutive instructional sessions.

STO 2: By 12/21/2012, [Student] will request 9 new vocabulary
words by moving the “I want” picture to the left side of the sentence
strip and removing the reinforcer picture from the communication book

⁸ PECS is the acronym for Picture Exchange Communication System.

1 and placing it on the sentence strip, handing it to his communication
2 partner and pointing to each icon in the correct order, with 80%
3 accuracy across 3 consecutive instructional sessions.

4 STO 3: By 3/8/2013, [Student] will request 12 new vocabulary words
5 by moving the "I want" picture to the left side of the sentence strip and
6 removing the reinforcer picture from the communication book and
7 placing it on the sentence strip, handing it to his communication
8 partner and pointing to each icon in the correct order, with 80%
9 accuracy across 3 consecutive instructional sessions.

10 Goal 8 – Given photos of six 3-step actions, [Student] will complete the
11 action described with 100% accuracy across 3 consecutive sessions,
12 recorded using a trial-by-trial data sheet. Data will be collected for each
13 instructional session.

14 STO 1: By 10/12/2012, Given photos of two 3-step actions and
15 partial physical prompting, [Student] will complete the action described
16 with 100% accuracy across 3 consecutive instructional sessions.

17 STO 2: By 12/21/2012, Given photos of two 3-step actions,
18 [Student] will complete the action described with 100% accuracy
19 across 3 consecutive instructional sessions.

20 STO 3: By 3/8/2013, Given photos of four 3-step actions, [Student]
21 will complete the action described with 100% accuracy across 3
22 consecutive instructional sessions.

23 Goal 9 – Given 13 objects (e.g. cow, horse, dog, duck, cat, car, truck,
24 school bus, fire truck, motorcycle, jeep, ambulance, police car) and mats
25 or story boards representing 2 categories (animals and vehicles),
26 [Student] will sort objects into the appropriate categories with 80%
27 accuracy across 3 consecutive instructional sessions, recorded using a
28 trial by trial data sheet. Data will be collected for each instructional
29 session.

30 STO 1: By 10/12/2012, Given 5 objects (e.g. cow, horse, car, truck,
school bus), mats or story boards representing 2 categories (animals
and vehicles) and gestural prompts, [Student] will sort objects into the
appropriate categories 4 out of 5 trials on 3 consecutive instructional
sessions.

STO 2: By 12/21/2012, Given 5 objects (e.g. cow, horse, car, truck,
school bus) and mats or story boards representing 2 categories
(animals and vehicles), [Student] will sort objects into the appropriate
categories 4 out of 5 trials on 3 consecutive instructional sessions.
Given 10 objects (e.g. cow, horse, dog, duck, car, truck, school bus,
fire truck, motorcycle, jeep), mats or story boards representing 2
categories (animals and vehicles), and gestural prompts, [Student] will
sort objects into the appropriate categories 4 out of 5 trials on 3
consecutive instructional sessions.

STO 3: By 3/8/2013, Given 10 objects (e.g. cow, horse, dog, duck,
car, truck, school bus, fire truck, motorcycle, jeep), and mats or story

boards representing 2 categories (animals and vehicles), [Student] will sort objects into the appropriate categories 4 out of 5 trials on 3 consecutive instructional sessions. By 3/8/2013, Given 13 objects (e.g. cow, horse, dog, duck, cat, car, truck, school bus, fire truck, motorcycle, jeep, ambulance, police car), mats or story boards representing 2 categories (animals and vehicles), and gestural prompts, [Student] will sort objects into the appropriate categories 4 out of 5 trials on 3 consecutive instructional sessions.

Goal 10 – Using motivational/reinforcing materials, in structured and unstructured environments, [Student] will engage in developmental age appropriate parallel play near peers, for 10 minutes, with no prompts, across 3 consecutive instructional sessions, as measured by teacher data collection/notations. Data will be collected for each instructional session.

STO 1: By 10/12/2012, using motivational/reinforcing materials, in structured and unstructured environments, [Student] will engage in parallel play near peers for 7 minutes, with 2 prompts, over 3 consecutive instructional sessions.

STO 2: By 12/21/2012, using motivational/reinforcing materials, in structured and unstructured environments, [Student] will engage in parallel play near peers for 8 minutes, with 1 prompt, over 3 consecutive instructional sessions.

STO 3: By 3/8/2013, using motivational/reinforcing materials, in structured and unstructured environments, [Student] will engage in parallel play near peers for 9 minutes, with no prompts, over 3 consecutive instructional sessions.

Goal 11 – Given an outline of 3 different shapes on a half sheet of letter-size paper (e.g. square, circle, triangle), [Student] will color in the area of the shape with 80% coverage, on 8 of 10 opportunities over 3 consecutive instructional sessions, as measured by a worksheet permanent product to record data, Data will be collected for each instructional session.

STO 1: By 10/12/2012, Given an outline of 3 different shapes (e.g. square, circle, triangle) on a half sheet of letter-size paper, [Student] will color in the 3 shapes with 35% coverage, on 8 out of 10 opportunities over 3 consecutive instructional sessions.

STO 2: By 12/21/2012, Given an outline of 3 different shapes (e.g. square, circle, triangle) on a half sheet of letter-size paper, [Student] will color in the 3 shapes with 50% coverage, on 8 out of 10 opportunities over 3 consecutive instructional sessions.

STO 3: By 3/8/2013, Given an outline of 3 different shapes (e.g. square, circle, triangle) on a half sheet of letter-size paper, [Student] will color in the 3 shapes with 75% coverage, on 8 out of 10 opportunities over 3 consecutive instructional sessions.

Goal 12 – Given 6 simple oral instructions (e.g. hands up, pick it up, push, pull, give me, take) from 2 people and in 2 different settings, [Student] will follow instructions with 80% accuracy across 3 consecutive instructional

1 sessions, recorded using a trial-by-trial data sheet. Data will be collected
2 for each instructional session.

3 STO 1: By 10/12/2012, [Student] will follow 1 simple oral instruction
4 (e.g. hands up) with 80% accuracy across 3 consecutive instructional
5 sessions.

6 STO 2: By 12/21/2012, [Student] will follow 3 simple oral
7 instructions (e.g. hands up, pick it up, push) from 2 people and in 2
8 different settings, with 80% accuracy across 3 consecutive
9 instructional sessions.

10 STO 3: By 3/8/2013, [Student] will follow 4 simple oral instructions
11 (e.g. hands up, pick it up, push, pull) from 2 people and in 2 different
12 settings, with 80% accuracy across 3 consecutive instructional
13 sessions.

14 Goal 13 – Given models of 6 object motor actions (e.g. shake a maraca,
15 roll a ball, push a car on a track, fly a plane, wave a bubble wand, put a
16 piece into a Mr. Potato Head), and a direction to “do this,” [Student] will
17 independently imitate the object motor action with 80% accuracy across 3
18 consecutive instructional sessions, recorded using a trial by trial data
19 sheet. Data will be collected for each instructional session.

20 STO 1: By 10/12/2012, Given models of 2 motor actions (e.g. shake
21 a maraca, roll a ball), a direction to “do this,” and partial physical
22 prompting, [Student] will imitate the object motor action with 80%
23 accuracy across 3 consecutive instructional sessions.

24 STO 2: By 12/21/2012, Given models of 2 motor actions (e.g. shake
25 a maraca, roll a ball), [and] a direction to “do this,” [Student] will
26 independently imitate the object motor action with 80% accuracy
27 across 3 consecutive instructional sessions. Given models of 2 motor
28 actions (e.g. push a car on a track, fly a plane), a direction to “do this”
29 and partial physical prompting, [Student] will imitate the object motor
30 action with 80% accuracy across 3 consecutive instructional sessions.

STO 3: By 3/8/2013, Given models of 4 motor actions (e.g. shake a
maraca, roll a ball, push a car on a track, fly a plane) and a direction to
“do this,” [Student] will independently imitate the object motor action
with 80% accuracy across 3 consecutive instructional sessions. Given
models of 2 motor actions (e.g. wave a bubble wand, put a piece into a
Mr. Potato Head), a direction to “do this,” and partial physical
prompting, [Student] will imitate the object motor action with 80%
accuracy across 3 consecutive instructional sessions.

Goal 14 – [Student] will independently rise to a stand from the floor using
a half-kneel position, with only one hand for support, 2 times in one
session, on 3 different sessions, measured using staff logs. Data will be
collected for each instructional session.

STO 1: By 10/12/2012, [Student] will rise to stand via a half-kneel
position, with one hand for support, once.

1 STO 2: By 12/21/2012, [Student] will rise to stand via a half-kneel
2 position, with one hand for support, 2 times in one session.

3 STO 3: By 3/8/2013, [Student] will rise to stand via a half-kneel
4 position, with one hand for support, 2 times in one session, over 3
5 sessions.

6 Goal 15 – When seated on a playground swing and after being given a
7 push to start, [Student] will pump the swing by actively moving his arms,
8 trunk, and/or legs 12 times in a row, twice in one session, over 3 different
9 sessions, measured using staff logs. Data will be collected for each
10 session.

11 STO 1: By 10/12/2012, [Student] will pump a swing 6 times in a row,
12 2 times in one session.

13 STO 2: By 12/21/2012, [Student] will pump a swing 12 times in a
14 row, 2 times in one session.

15 STO 3: By 3/8/2013, [Student] will pump a swing 12 times in a row,
16 2 times in one session, over 3 sessions.⁹

17 The August 2012 IEP specified that “[s]pecial education staff will take data daily” and
18 “[d]ata format will be utilized as determined by mediation agreement.”¹⁰ The operant
19 mediation agreement was not offered into evidence at the hearing.

20 4. The August 2012 IEP also set forth the number of service minutes to be
21 provided to Student.¹¹ The minutes were set forth as follows:

22 A. Special Education Services to be Provided

23 1. Activities of Daily Living	100 minutes per week
24 2. Basic Reading Skills	200 minutes per week
25 3. Math	180 minutes per week
26 4. Written Expression	200 minutes per week
27 5. Interper./Soc. Skills	200 minutes per week
28 6. Oral Expression	100 minutes per week
29 7. Listening Compreh.	100 minutes per week

30 B. Related Services

1. Occupational Therapy	120 minutes per month
2. Speech	240 minutes per month

⁹ Exhibit 8 at p. 16-31.

¹⁰ *Id.* at p. 35.

¹¹ *Id.*

3. Special Education Transportation 2 times daily

C. Supplementary Aids/Assistive Technology and Services for Students

1. Picture Exchange Communication System 1200 minutes/week
2. Paraprofessional 1200 minutes/week
3. Sensory Diet 200 minutes/week

5. Parents agreed that the August 2012 IEP was adequate and was reasonably calculated to provide an educational benefit to Student.¹²

6. Student engaged in Discrete Trial Training (DTT) to implement many of his goals. During the course of the 2012 – 2013 school year, staff collected data during the DTTs to track Student's performance and progress with respect to the STOs and annual goals.¹³

7. Upon review of Exhibit 23, the DTT data sheets for the 2012 – 2013 school year, the following relevant information was gathered:

A. Annual Goal 1 – Color Matching

1. Student mastered STO 1 on September 18, 2012, after three sessions.
2. STO 2 was initiated on November 14, 2012. Student mastered STO 2 on December 13, 2012.
3. STO 3 was initiated on May 2, 2013. Student mastered STO 3 on May 20, 2013.
4. After May 20, 2013, Respondent School did not provide Student the opportunity to demonstrate mastery of Annual Goal 1.

B. Annual Goal 2 – Photo Matching

1. Student mastered STO 1 on September 17, 2012, after three sessions.
2. STO 2 was initiated on November 13, 2012. Student mastered STO 2 on December 13, 2012.

¹² Petitioner's Pretrial Memorandum at p. 9.

¹³ Exhibit 23.

- 1 3. After December 13, 2012, Respondent School did not provide
2 Student the opportunity to demonstrate master of STO 3.

3 C. Annual Goal 3 – Shape Matching

- 4 1. Student mastered STO 1 on September 28, 2012.
5 2. STO 2 was initiated on November 26, 2012. Student mastered
6 STO 2 on November 28, 2012, after three sessions.
7 3. STO 3 was initiated on January 14, 2013. Student mastered STO
8 3 on January 16, 2013, after three sessions.
9 4. After January 16, 2013, Respondent School did not provide
10 Student the opportunity to demonstrate mastery of Annual Goal 3.

11 D. Annual Goal 7 – PECS Book

- 12 1. Student never mastered STO 1 with any consistency.

13 E. Annual Goal 8 – 3-Step Actions

- 14 1. Student mastered STO 1 on October 25, 2012.
15 2. STO 2 was initiated on November 8, 2012. Student never
16 mastered STO 2.

17 F. Annual Goal 9 – Object Sorting

- 18 1. Student never mastered STO 1 and STO 2 with any consistency.
19 2. STO 3 was not initiated.

20 G. Annual Goal 12 – Simple Oral Instruction

- 21 1. Student never mastered STO 1. Student did show some mastery
22 of the “hands up” instruction, but was inconsistent with all other
23 instructions.

24 H. Annual Goal 13 – Object Motor Actions

- 25 1. Student was rarely given multiple instructions on the same day to
26 allow him to demonstrate mastery of STO 1.

27 8. Dr. Trina Spencer, Behavior Analyst for Respondent School, testified
28 there were a variety of reasons Student may not have moved to the next STO shortly
29
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1 after demonstrating mastery of an STO.¹⁴ Some of those reasons included
2 maintenance of a skill, ensuring a mix of new and older skills, and training of staff and
3 curriculum development.

4 9. During the 2012 – 2013 school year, Respondent School also maintained
5 a “Buddy Book” in which Respondent School provided Parents with daily updates as to
6 Student’s daily activities and daily schedule. On the “About My Day” sheets, Parents
7 and Respondent School staff could communicate to each other daily about general
8 issues and about Student’s day, including Student’s mornings before school, goals
9 worked on during the day, and toileting tracking.¹⁵ On the “Daily Schedule” sheets,
10 Respondent School staff noted the goals Student worked on during the day, including
11 during lunch, specials, and therapies.¹⁶

12 10. During the 2012 – 2013 school year, Parent [REDACTED] had pre-scheduled
13 meetings with the Special Education Teacher every other week. These meetings were
14 scheduled to last approximately 30 minutes, but could last as long as three hours.¹⁷

15 11. Student’s Paraprofessional testified that her days with Student were
16 always busy during the 2012 – 2013 school year. Student’s Paraprofessional stated
17 that if she and Student ever had any downtime, she knew there was another goal she
18 could be working on.¹⁸

19 12. Dr. Spencer testified that a variety of instruction can be provided outside
20 of the DTTs, especially in the areas of language and social interaction.¹⁹ Dr. Spencer
21 stated that it was “not proper treatment of a child” to have him or her continually doing
22 DTTs throughout the day.²⁰

23 13. Parent [REDACTED] testified to his assumption that an individual DTT would take,
24 on average, 33 seconds.²¹ Parent [REDACTED] described a variety of methods he used to
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26 ¹⁴ TR 2 at 230:20-234:3.

27 ¹⁵ Exhibit 22, tab 3.

28 ¹⁶ Exhibit 22, tab 4.

29 ¹⁷ TR. 2 at 108:23-109:2.

30 ¹⁸ TR. 4 at 83:16-84:5.

¹⁹ TR. 2 at 267:23-268:7.

²⁰ TR. 2 at 267:15-22.

²¹ At one point, Parent [REDACTED] testified the average time used in his calculations was 30 seconds, see TR. 4 at 183:20-22, but at others, he testified it was 33 seconds, see TR. 4 at 191:20-192:4.

1 reach the 33 second figure. Based on this assumption, Parent [REDACTED] multiplying the
2 number of DTTs recorded in Exhibit 23 by 33 seconds each²² and determined that
3 Student did not receive the 1200 service minutes per week required under the August
4 2012 IEP.

5 14. Parent [REDACTED] acknowledged that his assumption of 33 seconds
6 encompassed the time that it took to execute a DTT. Parent [REDACTED] testified that he
7 "surmise[d]" that the 33 seconds would include the time it would take to motivate
8 Student to engage in the DTT, the time to perform the DTT, and the time for any reward
9 following the execution of the DTT.²³ Parent [REDACTED] admitted that he had never observed
10 Student perform any DTTs in class.²⁴

11 15. Parent [REDACTED] asserted that, because the August 2012 IEP stated for each
12 goal that "[d]ata will be collected for each instructional session" and the comprehensive
13 data sheets recording the DTTs represented the data that was to be collected, the
14 comprehensive data sheets included in Exhibit 23 "would reflect the bulk, if not all, of
15 [Student's] instruction" with respect to his goals and objectives.²⁵

16 16. While Parent [REDACTED] stated that it was not his desire that Student sit at a
17 table all day and do nothing but trials for 300 minutes a day,²⁶ he asserted that without
18 a DTT data sheet to document that Student was receiving the required minutes, he
19 believed Student was not receiving any special education instruction for one-third to
20 two-thirds of his day.²⁷

21 17. Parents also argued that the August 2012 IEP specified that the 200
22 minutes per week Student was to receive the Sensory Diet was to be provided by the
23 Occupational Therapist. Based on that interpretation, Parents argued the fact that the
24 Occupational Therapist did not administer the Sensory Diet in the classroom
25 constituted a failure of Respondent School to implement the August 2012 IEP.

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28 ²² TR. 4 at 183:20-184:11.

29 ²³ TR. 4 at 194:3-19.

30 ²⁴ TR. 4 at 195:5-10.

²⁵ TR. 4 at 196:18-197:4.

²⁶ TR. 4 at 209:13-16.

²⁷ TR. 4 at 217:13-19.

1 18. Respondent School argued that the identification of the Occupational
2 Therapist was merely a notation of who was responsible for creating, overseeing, and
3 implementing that service.

4 19. It is noted that Parents did not assert that the August 2012 IEP required
5 only the Special Education Teacher to administer the PECS book for 1200 minutes per
6 week simply because that is the professional identified in relation to that service.

7 Procedural issues

8 20. On November 15, 2012, the IEP team met and agreed that an amendment
9 to Goal 7, use of the PECS book, in the August 2012 IEP was proper. Respondent
10 School did not send a PWN memorializing the agreed upon change until February 19,
11 2013.²⁸

12 21. During her testimony, Parent [REDACTED] testified that, while she disagreed with
13 the change to Goal 7 and expressed that opinion in the IEP meeting, receiving the
14 PWN in a timely fashion would not have changed her actions after November 15, 2012,
15 with respect to Student's education.²⁹

16 22. In April 2013, Parents obtained an Independent Education Evaluation by
17 Joseph A. Gentry, Ph.D., BCBA-D. In his report, Dr. Gentry commented on the Verbal
18 Behavior Milestones Assessment and Placement Program (VB-MAPP) evaluations that
19 Student had been given in May 2009, October 2009, May 2012, and March 2013.³⁰ Dr.
20 Gentry concluded that "[w]hile the VB-MAPPS is a wonderful assessment and planning
21 guide, most of the skills that [Student] needs to work on will be better assessed using
22 the ABLLS-R."³¹

23 23. Dr. Gentry's report was presented to the IEP team during a May 9, 2013
24 meeting. Parent [REDACTED],³² Special Education Teacher, Mr. Keller, Dr. Gentry, the
25 principal, the school psychologist, and a general education teacher were present for
26 the meeting.³³ At that meeting, everyone, including Parent, was in agreement that

27 ²⁸ Exhibit 6.

28 ²⁹ TR. 4 163:16-24.

29 ³⁰ Exhibit 16 p. 8.

30 ³¹ Exhibit 16 p. 10.

³² Parent [REDACTED] did not sign the attendance sheet, so it is unclear if she attended the meeting.

³³ Exhibit 10 p. 2.

1 going forward, Student would be evaluated using the ABLLS-R evaluation instead of
2 the VB-MAPP evaluation to better formulate goals for future IEPs. After the meeting,
3 Respondent School did not issue a PWN memorializing the change in evaluation tools.

4 24. During her testimony, Parent [REDACTED] testified that she did not have a specific
5 objection to the May 2013 change from the VB-MAPP evaluation to the ABLLS-R
6 evaluation, but felt that an evaluation should have been done prior to the 2013 – 2014
7 school year to help with the development of the IEP goals.³⁴

8 2013 – 2014 IEP

9 25. At a May 14, 2013 meeting, the IEP team began developing the annual
10 IEP for the 2013 – 2014 school year. Parents were one hour late to the meeting, so the
11 meeting began at 3:30 p.m. instead of 2:30 p.m. The meeting adjourned shortly after
12 5:15 p.m. because the teachers had to prepare for parent-teacher conferences.³⁵

13 26. At a May 23, 2013 meeting, the IEP team again met to continue
14 developing the annual IEP for the 2013 – 2014 school year. During the meeting,
15 Parent [REDACTED] “continually questioned teacher on specifics of the goals and how they will
16 be implemented.”³⁶ As the meeting concluded, Parent [REDACTED] stated that “the bulk of the
17 IEP is . . . accomplished with Goals created.”³⁷

18 27. On August 14, 2013, the IEP team met again to begin finalizing the
19 annual IEP for the 2013 – 2014 school year. Prior to the meeting, Respondent School
20 provided Parents with a draft IEP to review. During the meeting, Respondent School
21 recommended 10 annual goals for Student based on the ABLLS-R testing. Parent
22 [REDACTED] expressed concern that the number of annual goals had been decreasing since
23 Student started attending Respondent School.³⁸

24 28. On August 15, 2013, the IEP team met a final time to complete the annual
25 IEP for the 2013 – 2014 school year. Prior to the meeting, Respondent School
26 provided Parents with an updated draft IEP to review. During the meeting, Parents
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28 ³⁴ TR. 4 at 168:11-169:5.

29 ³⁵ Exhibit 14 at p. 7.

30 ³⁶ Exhibit 14 at p. 5.

³⁷ *Id.* at p. 6.

³⁸ *Id.* at p. 3.

1 were shown some of the facilities in which Student would receive services. Following
2 that, the discussions from the previous day continued, and Mr. Keller asked for Parents'
3 input regarding the PLAFFP section of the IEP. Parents did not provide any input, but
4 indicated they would rather provide a written summary after the IEP had been adopted.
5 Mr. Keller indicated that the IEP meeting was the appropriate time for the Parents to
6 give their input.³⁹

7 29. As the meeting concluded, Mr. Keller asked if the IEP team had reached a
8 consensus. No one indicated they disagreed with the IEP that was created.⁴⁰

9 30. Parents argued that they felt they were not allowed to ask questions
10 during the IEP meetings and that their input was not considered. Parents asserted that
11 the meeting agenda provided an opportunity for parental input at the end of the
12 meeting, but that the meetings were ended abruptly and they were not given enough
13 time to express their concerns.

14 31. Parents further argued that the different draft versions of the IEP provided
15 to them just prior to the meetings prevented them from being able to fully participate
16 because they did not have an opportunity to review the documents thoroughly and
17 compare them to other documents they had previously received.

18 **CONCLUSIONS OF LAW**

19 1. A parent who requests a due process hearing alleging non-compliance
20 with the IDEA must bear the burden of proving that claim.⁴¹ The standard of proof is
21 "preponderance of the evidence," meaning evidence showing that a particular fact is
22 "more probable than not."⁴² Therefore, Petitioners bear the burden of proving their
23 claims and complaints by a preponderance of evidence.
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27 ³⁹ *Id.* at p. 1-2.

28 ⁴⁰ *Id.* at p. 2.

29 ⁴¹ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

30 ⁴² *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

1 2. This tribunal's determination of whether or not Student received a FAPE
2 must be based on substantive grounds.⁴³ If a procedural violation is alleged and found,
3 it must be determined whether the procedural violation either (1) impeded the child's
4 right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the
5 decision-making process; or (3) caused a deprivation of educational benefit.⁴⁴ If one of
6 the three impediments listed has occurred, the child has been denied a FAPE due to
7 the procedural violation.

8 FAPE

9 3. Through the IDEA, Congress has sought to ensure that all children with
10 disabilities are offered a FAPE that meets their individual needs.⁴⁵ These needs
11 include academic, social, health, emotional, communicative, physical, and vocational
12 needs.⁴⁶ To do this, school districts must identify and evaluate all children within their
13 geographical boundaries who may be in need of special education and services. The
14 IDEA sets forth requirements for the identification, assessment, and placement of
15 students who need special education, and seeks to ensure that they receive a free
16 appropriate public education. A FAPE consists of "personalized instruction with
17 sufficient support services to permit the child to benefit educationally from that
18 instruction."⁴⁷ The IDEA mandates that school districts provide a "basic floor of
19 opportunity," nothing more.⁴⁸ It does not require that each child's potential be
20 maximized.⁴⁹ A child receives a FAPE if a program of instruction "(1) addresses his
21 unique needs, (2) provides adequate support services so he can take advantage of the
22 educational opportunities and (3) is in accord with an individualized educational
23 program."⁵⁰

24 Implementation of the August 2012 IEP

25 ⁴³ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

26 ⁴⁴ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

27 ⁴⁵ 20 U.S.C. § 1400(d); 34 C.F.R. § 300.1.

28 ⁴⁶ *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).

29 ⁴⁷ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

30 ⁴⁸ *Id.* at 200.

⁴⁹ *Id.* at 198.

1 4. The Ninth Circuit has held that "a material failure to implement an IEP
2 violates the IDEA. A material failure occurs when there is more than a minor
3 discrepancy between the services a school provides to a disabled child and the
4 services required by the child's IEP."⁵¹ This standard "does not require that the child
5 suffer demonstrable educational harm in order to prevail."⁵² The Court noted that "the
6 child's educational progress, or lack of it, may be probative of whether there has been
7 more than a minor shortfall in the services provided."⁵³

8 5. Petitioners alleged that because the STOs were written with a date
9 included by which Student would master that STO, Respondent School had an
10 obligation to ensure Student met that STO by that date or to amend the STOs and
11 annual goals if Student did not.

12 6. Petitioners acknowledged that failure to achieve an annual goal did not
13 establish that Respondent School failed to implement the IEP and/or provide FAPE.

14 7. Annual goals are written with the expectation that a student will be able to
15 achieve that annual goal by the end of the school year or the IEP period. Thus, there is
16 an anticipated completion date in every annual goal. However, there is no guaranteed
17 completion date, as acknowledged by Petitioners. Therefore, because the failure of a
18 student to achieve an annual goal is not, in and of itself, evidence that a school failed
19 to implement the IEP and/or provide FAPE, the failure of Student to master an STO by
20 the date identified in the August 2012 IEP does not necessitate a finding that
21 Respondent School failed to implement the IEP and/or provide a FAPE.

22 8. Petitioners also argued that Respondent School failed to properly
23 implement the August 2012 IEP because, when Student mastered one STO, he was not
24 advanced to the next STO within a reasonable time.

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28 ⁵⁰ *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 ⁵¹ *Van Duyn v. Baker School District 5J*, 502 F.3d 811, 815 (9th Cir. 2007).

30 ⁵² *Id.*

⁵³ *Id.*

1 9. As detailed above, there were instances when Student demonstrated
2 mastery of an STO and Respondent School waited a prolonged period of time to initiate
3 the next STO. The most notable examples of these are as follows:

4 A. With respect to Annual Goal 1, Color Matching, Student demonstrated
5 mastery of STO 1 on September 18, 2012, but STO 2 was not
6 implemented until November 14, 2012, almost two months later.
7 Student demonstrated mastery of STO 2 on December 13, 2012, but
8 STO 3 was not implemented until May 2, 2013, almost five months
9 later.

10 B. With respect to Annual Goal 2, Photo Matching, Student demonstrated
11 mastery of STO 1 on September 17, 2012, but STO 2 was not
12 implemented until November 13, 2012, almost two months later.
13 Student demonstrated mastery of STO 2 on December 13, 2012, but
14 STO 3 was never implemented.

15 C. With respect to Annual Goal 3, Shape Matching, Student
16 demonstrated mastery of STO 1 on September 28, 2012, but STO 2
17 was not implemented until November 26, 2012, almost two months
18 later. Student demonstrated mastery of STO 2 on November 28,
19 2012, but STO 3 was not implemented until January 14, 2013, almost
20 two months later. Student demonstrated mastery of STO 3 on January
21 16, 2013, but the annual goal was never implemented.

22 D. With respect to Annual Goal 13, Object Motor Action, Student was
23 rarely given multiple instructions on the same day to allow him to
24 demonstrate mastery of STO 1.

25 10. While the reasons proposed by Respondent School for a delay in the
26 implementation of the next STO may be appropriate in some circumstances, nothing in
27 the record supports repeated instances of two-month-long delays in the implementation
28 of the next STO, or in the case of Annual Goal 13, the failure to properly implement the
29 first STO. This is especially true in those instances in which Student demonstrated
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1 mastery of an STO in three sessions, the minimum number of sessions necessary to
2 demonstrate mastery under the August 2012 IEP.

3 11. Therefore, the Administrative Law Judge concludes that these above-
4 noted failures to advance Student to the next STO within a reasonable time once he
5 had demonstrated mastery of the previous STO was a material failure to implement the
6 IEP and resulted in a denial of a FAPE to Student.

7 12. Petitioners further argued that Respondent School failed to provide the
8 service minutes provided for in the August 2012 IEP. Petitioners' argument is flawed
9 on many levels.

10 13. Petitioners' argument seems to be largely based on their conclusion that
11 the IEP requires that data be collected for each instructional session for each annual
12 goal and that the *only* data relevant to determining the time of the services provided
13 was the DTT data sheets. Parent [REDACTED] appeared unwilling to acknowledge that
14 Student may have received instruction that was not documented in a DTT data sheet
15 despite the testimony from Dr. Spencer and Respondent School staff to the contrary.

16 14. The Administrative Law Judge concludes that the evidence established
17 that there were numerous instructional sessions throughout Student's day that could
18 not have been reduced to a DTT data sheet.

19 15. Even assuming that the DTT data sheets were the only data relevant to
20 determining the time of the services provided to Student, Parent [REDACTED] based his
21 calculations on an assumption that each trial would take an average of 33 seconds.
22 Parent [REDACTED] was unwilling to acknowledge that breaks between trials and time of
23 reward was a part of the "instruction" given to Student. Further, Parent [REDACTED] admitted
24 that he had never observed Student do a trial in the classroom. Without any first-hand
25 knowledge of Student's performance in the classroom, Parent [REDACTED] concluded Student
26 was receiving approximately one-third of the service minutes provided for in the August
27 2012 IEP.

28 16. Petitioners failed to sustain their burden of proof establishing that Student
29 did not receive the required service minutes as outlined in the August 2012 IEP.
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1 Whatever time Student spent participating in DTTs, Student also received other
2 instruction throughout the day that was not reduced to a DTT data sheet.

3 17. With respect to the Sensory Diet that Petitioners alleged was required to
4 be provided by the Occupational Therapist, Petitioners offered nothing in support of
5 their interpretation other than their reading of the IEP.

6 18. Respondent School argued that the identification of the Occupational
7 Therapist with respect to the Sensory Diet services meant only that the Occupational
8 Therapist was responsible for creating, overseeing, and implementing the Sensory
9 Diet. As the Sensory Diet was accessed by Student throughout the day, it was not
10 expected that the Occupational Therapist would constantly be present in the classroom
11 to provide the services.

12 19. Reviewing the IEP as a whole, that section of the IEP also provides that
13 the Special Education Teacher was responsible for utilizing the PECS with Student for
14 1200 minutes per week. Petitioners did not allege that Special Education Teacher was
15 the only person who should provide the service during Student's day because it is
16 understood that PECS is to be used by Student throughout the day in different settings.
17 Rather, it is implied that the Special Education Teacher was responsible for creating,
18 overseeing, and implementing the PECS. Therefore, Petitioners apparently agreed
19 with this implementation as this was not an argument raised in the due process
20 complaints.

21 20. It is evident that the notation of "Occupational Therapist" related to
22 Sensory Diet was not indicating an expectation or requirement that the Occupational
23 Therapist be the only staff member to implement that service. As such, Petitioners
24 failed to sustain their burden to show that Respondent School failed to properly
25 implement the August 2012 IEP in this respect.

26 Procedural Issues

27 21. Procedural violations of the IDEA do not require a remedy unless the
28 procedural violation impeded Student's right to a FAPE, significantly impeded Parents'
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1 opportunity to participate in the decision-making process, or caused a deprivation of
2 educational benefit that denied Student a FAPE.⁵⁴

3 22. The IDEA process for making changes to an IEP requires a school district
4 to give parents written notice within a reasonable time before taking the proposed
5 action.⁵⁵ That notice, or PWN, must contain certain information specified by the IDEA,
6 such as an explanation of why a decision is being made, the documentation used to
7 make the decision, and a reminder of parents' procedural rights. Thus, the PWN is
8 issued after an IEP team decision has been made, not before.

9 23. The IDEA does not provide a specific timeframe in which a PWN must be
10 issued. Rather it must be issued a reasonable time before the proposed change is to
11 take effect.

12 24. Respondent School acknowledged that the PWN regarding amendment of
13 Goal 7 of the August 2012 IEP was not timely issued in that the IEP meeting was held
14 on November 5, 2012, and the PWN was not issued until February 19, 2013.

15 25. The failure to timely issue a PWN constitutes a procedural violation.
16 However, while the PWN should have been issued earlier, Petitioners failed to
17 establish that the failure to issue the PWN before February 19, 2013, impeded
18 Student's right to a FAPE, significantly impeded Parents' opportunity to participate in
19 the decision-making process, or caused a deprivation of educational benefit that denied
20 Student a FAPE due to the procedural violation.

21 26. Respondent School acknowledged that a PWN regarding the change
22 from the VB-MAPPS evaluation to the ABLLS-R evaluation was never issued.

23 27. Parent [REDACTED] testified she did not have any objection to the change and
24 that receiving a PWN would not have changed her actions going forward. Rather,
25 Parent [REDACTED] complained that no evaluation was done during the summer of 2013 that
26 would have better informed the formulation of goals for the 2013 – 2014 annual IEP.⁵⁶

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29 ⁵⁴ 20 U.S.C. § 1415(f)(3)(E); *Bd. Of Educ. Of the Hendrick Hudson Central Sch. Dist. V. Rowley*, 458
U.S. 176, 206-07 (1982).

30 ⁵⁵ 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).

⁵⁶ This was not an issue raised in the Due Process Complaints.

1 28. While a PWN should have been issued, Petitioners failed to establish that
2 the failure to issue the PWN impeded Student's right to a FAPE, significantly impeded
3 Parents' opportunity to participate in the decision-making process, or caused a
4 deprivation of educational benefit that denied Student a FAPE due to the procedural
5 violation.

6 The 2013 – 2014 Annual IEP

7 29. Once a child is determined eligible for special education services, a team
8 composed of the child's parents, teachers, and others formulate an IEP that, generally,
9 sets forth the child's current levels of educational performance and sets annual goals
10 that the IEP team believes will enable the child to make progress in the general
11 education curriculum.⁵⁷ The IEP tells how the child will be educated, especially with
12 regard to the child's needs that result from the child's disability, and what services will
13 be provided to aid the child. The child's parents have a right to participate in the
14 formulation of an IEP.⁵⁸ The IEP team must consider the strengths of the child,
15 concerns of the parents, evaluation results, and the academic, developmental, and
16 functional needs of the child.⁵⁹ To foster full parent participation, in addition to being a
17 required member of the team making educational decisions about the child, school
18 districts are required to give parents written notice when proposing any changes to the
19 IEP,⁶⁰ and are required to give parents, at least once a year, a copy of the parents'
20 "procedural safeguards," informing them of their rights as parents of a child with a
21 disability.⁶¹

22 30. The IEP team must consider the concerns of a child's parents when
23 developing an IEP.⁶² In fact, the IDEA requires that parents be members of any group
24 that makes decisions about the educational placement of a child.⁶³

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27 ⁵⁷ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

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

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

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

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

⁶² 20 U.S.C. § 1415(d)(B).

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

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

1 31. Petitioners argued that they were not allowed an opportunity to fully
2 participate in the IEP meetings because the meetings were structured to push parental
3 questions and concerns to the end of the meetings and the time limits were strictly
4 enforced to end the meetings before Petitioners were able to make all their concerns
5 fully known. Further, Petitioners argued that the drafts they were presented with either
6 before or at the meetings rendered them unable to carefully compare the multiple drafts
7 to determine the changes that had been made.

8 32. In the present case, at least one parent was included in each IEP
9 meeting, including the IEP meetings in May 2013 and August 2013. The evidence
10 shows that Petitioners were given multiple opportunities to ask questions and to give
11 their input during those IEP meetings. The fact that Petitioners were an hour late to the
12 August 14, 2013 meeting, which limited the time available, and further chose not to take
13 full advantage of the opportunities presented was not the fault of Respondent School.
14 Petitioners did not offer any authority requiring an IEP meeting to keep going until
15 every possible concern and question raised by the parents has been answered to their
16 satisfaction.

17 33. Therefore, Petitioners failed to sustain their burden of proving that they
18 were not afforded an opportunity to meaningfully participate in the August 14, 2013,
19 and August 15, 2013, IEP meetings.

20 Compensatory Education

21 34. As discussed previously, Student was denied a FAPE with respect to the
22 Annual Goals 1, 2, 3, and 13 in the August 2012 IEP.

23 35. Neither party presented any evidence to demonstrate what portion of
24 Student's typical day would have been spent engaged in those annual goals.
25 Accordingly, the Administrative Law Judge has discretion in fashioning an appropriate
26 award of compensatory education.

27 36. The times during which Student remained on an STO after demonstrating
28 mastery and before being advanced to the next STO with respect to these four annual
29 goals averaged between six and seven months. The annual goals identified fall into
30 the categories of Basic Reading Skills, Math, and Listening Comprehension. According

1 to the August 2012 IEP, those areas of special education services account for 480
2 minutes per week of instruction, or 96 minutes per day. However, these annual goals
3 do not represent the only instruction provided to Student within those areas.
4 Generously estimating that the four annual goals constituted 40 percent of Student's
5 instruction in those areas, the minutes lost to Student due to Respondent School's
6 material failure to implement the IEP in those areas can be calculated as follows: 40
7 percent of 96 minutes per day would be approximately 38 minutes per day, and 38
8 minutes per day over seven months of 20 days per month would be 5320 minutes or
9 approximately 89 hours.

10 37. Accordingly, the Administrative Law Judge concludes that Student is
11 entitled to compensatory education for that failure to provide Student a FAPE with
12 respect to those Annual Goals in the amount of 90 hours.

13 38. All other claims raised in the due process complaints are denied.

14 **ORDER**

15 Based on the findings and conclusions above, IT IS HEREBY ORDERED that
16 that the relief requested in the due process complaints is **granted** as set forth above.
17 All other relief requested in the due process complaints is **denied**. Respondent School
18 must provide 90 hours of compensatory education.

19 Done this day, August 4, 2014.

20
21 /s/ Tammy L. Eigenheer
22 Administrative Law Judge

23 **RIGHT TO SEEK JUDICIAL REVIEW**

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

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