

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

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2
3 [REDACTED], a Student, by and through Parent
4 [REDACTED],
5 Petitioners,
6 v.
7 PRESIDIO SCHOOL,
8 Respondent.

No. 14C-DP-064-ADE

**ADMINISTRATIVE LAW JUDGE
DECISION**

9
10 **HEARING:** Hearing session conducted on November 17, 2014, followed by the
11 post-hearing submission period for receipt of the hearing transcript, ending on
12 December 11, 2014 and extended on agreement of the parties; the 45th day was
13 recalculated as February 18, 2015.

14 **APPEARANCES:** Student's Mother, [REDACTED] ("Mother") represented
15 herself and Student. Terry S. Garza, Co-Superintendent, represented Presidio School
16 ("Respondent" or "Presidio"), accompanied by Co-Superintendent Thomas Drexel.

17 Certified Court Reporter Kenneth W. Schippers, BOULEY & SCHIPPERS, recorded the
18 proceedings as the official record of the hearing.

19 **WITNESSES:**¹ Student's Father, [REDACTED] ("Father"); Student; Richard
20 D. Detzel, Ph.D. School Psychologist; Carin Stair, Special Education Consultant and
21 Mother's Advocate ("Advocate"); Student's Mother, [REDACTED] ("Mother");
22 Thomas Drexel, Presidio Co-Superintendent and Presidio Test Coordinator; Ryan
23 Larkin-Smith, M.Ed., Presidio Director of Exceptional Student Services and Special
24 Education Consultant; Mindy White, Presidio Principal; Megan McDonald, Presidio
25 Student Services Coordinator.

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

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28 Parent brings this due process action, on behalf of Student, seeking (a)
29 compensatory education, (b) funding for an independent educational evaluation ("IEE")
30 and a speech evaluation, (c) removal of suspensions from Student's records, and (d)
transportation services to Student's new school for alleged procedural violations and
failure to provide a free and appropriate public education ("FAPE") to Student by

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

8 Procedural History

9 Petitioner's initial due process complaint notice ("Complaint") was received at
10 the Tribunal on June 11, 2014. The Complainant contained allegations, but few details.

11 During a telephonic pre-hearing conference on August 21, 2014, Petitioners
12 were granted permission to file an amendment to the Complaint.³

13 Petitioners filed an Amended Complaint on October 2, 2014 to clarify the
14 allegations and issues.

15 Neither the Complainant nor the Amended Complaint contain any assertion that
16 an exception to the two-year limitation period under 34 C.F.R. § 300.511(e) and (f)
17 would apply.

18 Pursuant to review of the Amended Complaint and discussion at the October 28,
19 2014 telephonic pre-hearing conference, the following issues were identified for the
20 hearing:

- 21 1. Petitioners allege that Respondent failed to provide FAPE to Student from
22 October 2012 to May 2014 in not providing "any" special education and related
23 services to address his disability.⁴ Petitioners also allege that Student was
24 "subject to his teacher's derogatory names and unfair treatment" based on his
25 disability.

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28 ² By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of
29 2004," IDEA 2004 became effective on July 1, 2005.

30 ³ See 34 C.F.R. § 300.508(d)(3).

⁴ Student was determined to be eligible for special education services as a child with a disability under
the category of other health impairment ("OHI").

1 1a. Petitioners allege that Respondent failed to provide FAPE to Student
2 when it failed to implement Student's prior IEP that called for special education
3 services in writing of 1000 minutes per month.

4 1b. Petitioners allege that Respondent failed to provide FAPE to Student
5 when it did not provide "instructional accommodations."⁵

6 1c. Petitioners allege that Respondent failed to provide FAPE to Student
7 when, in January 2013, Respondent cut Student's IEP special education
8 services in writing from 1000 minutes per month to 30 minutes per week.

9 1d. Petitioners allege that Respondent failed to provide FAPE to Student,
10 following the January 30, 2014 IEP, when Respondent did not provide 30
11 minutes per week of special education instruction and 60 minutes of daily
12 "general education staff for instruction in behavior (organization)" from January
13 30, 2014 to May 23, 2014.⁶

14 2. Petitioners allege that Respondent failed to provide FAPE by failing to provide
15 "regular progress reports of annual goals" either at the January 30, 2013 IEP
16 meeting or at any time from October 2012 through May 2014.

17 3. Petitioners allege that Respondent failed to provide FAPE to Student by not
18 providing testing accommodations of "small group testing" and allowed "breaks,"
19 as stated in Student's IEPs, during AIMS testing in 2013 and 2014.

20 4. Petitioners allege that Respondent failed to provide FAPE to Student when he
21 was "suspended several times without consideration to his disability."⁷

22 5. Petitioners alleged that Respondent failed to follow through on an August 13,
23 2014 agreement, made at a resolution session in this matter, to fund an
24 independent educational evaluation ("IEE") and a speech evaluation.⁸

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26 ⁵ This claim appeared to reference either Student's prior IEP or the time frame from May 24, 2012
27 through January 30, 2013. Petitioners did not specify the "instructional accommodations" that were not
28 provided.

29 ⁶ Parent indicated that in January 2014, the IEP team created a behavior plan. Parent's Complaint was
30 not clear whether the alleged non-provided services of "organization" fall under the behavior plan.

⁷ The complaints provided no details. See 34 C.F.R. § 300.530 *et seq.*, regarding disciplinary
suspensions and authorized actions up to 10 school days in a school year.

⁸ See 34 C.F.R. § 300.502 regarding IEEs.

1 Petitioners are seeking the following specific remedies for Respondent's alleged
2 violations: (a) compensatory education to replace lost hours of services in the form of
3 "tutoring by a special education teacher in order "to bring Student to current academic
4 level;" (b) funding the IEE and evaluation agreed to in August 2014; (c) removing the
5 "suspensions" from Student's education records; and, (d) provision of transportation to
6 and from school.

7 Presidio disagrees with the Complaint and Amended Complaint arguing that
8 Student received services in full compliance with his IEP. Presidio argued that Student
9 prospered, met educational standards evidenced through his grades and test scores,
10 and met his academic goals.

11 The law governing these proceedings is the Individuals with Disabilities
12 Education Act ("IDEA"), 20 United States Code ("U.S.C.") §§ 1400-1482 (as re-
13 authorized and amended in 2004),⁹ and its implementing regulations, 34 Code of
14 Federal Regulations ("C.F.R.") Part 300, as well as the Arizona Special Education
15 statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and
16 implementing rules, Arizona Administrative Code ("A.A.C.") R7-2-401 through R7-2-
17 406.

18 Evidence and Issues at Hearing

19 The parties presented testimony and exhibits at a formal evidentiary hearing
20 held on November 17, 2014. The parties presented testimony from the witnesses listed
21 above¹⁰ and offered into evidence Petitioners' Exhibits 1 through 16 and Presidio's
22 Exhibits A through X. The parties presented oral closing arguments to the Tribunal at
23 the hearing. The court reporter's transcript is the official record of the hearing.

24 Introduction

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28 ⁹ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of
29 2004," IDEA 2004 became effective on July 1, 2005.

30 ¹⁰ The court reporter's transcript of the hearing session has been added to the record. By agreement of
the parties, the transcript is the official record of this due process hearing. By law, the Tribunal also
created an audio record of the due process hearing, which is available to the parties at no cost.

1 The Administrative Law Judge has considered the entire record, including the
2 testimony and Exhibits,¹¹ and now makes the following Findings of Fact, Conclusions of
3 Law, and Order finding that *Petitioners' claims fail* that Presidio failed to provide FAPE
4 to Student. While the hearing record demonstrates that Presidio procedurally violated
5 the IDEA when it failed to provide progress reports as set forth in Student's January
6 2013 and January 2014 IEPs, the hearing record in this case did not demonstrate that
7 such failure resulted in impeding Student's rights to a FAPE, in impeding the parents'
8 opportunities to participate in the decision making process regarding Student's services
9 or in any deprivation of educational benefit to Student.¹² Therefore, Petitioners'
10 requests for remedies for denial of FAPE is denied, with the exception of the request
11 for Presidio to fund an IEE at public expense, as agreed, in response to the Parents'
12 request for such.¹³

13 FINDINGS OF FACT

14 1. Student suffered a concussion in April 2006 at age 8 when he fell from a
15 slow moving car.¹⁴ Parents noticed behavior changes following the injury; Student's
16 2006 Neuropsychological Evaluation mentions: clumsiness, fatigue, overreaction to
17 situations, easily tearful and/or angered, and less focus.

18 2. Prior to attending Presidio, Student attended [redacted] Elementary School in
19 the Tucson Unified School District ("TUSD").¹⁵ At TUSD, Student was receiving special
20 education services under the eligibility category of Other Health Impaired
21 ("OHI") due to his certified medical diagnosis of ADHD and behavioral concerns.¹⁶

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23 ¹¹ The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned
24 in this Decision. The Administrative Law Judge has also considered the testimony of every witness,
25 even if the witness is not specifically mentioned in this Decision.

26 ¹² See 34 C.F.R. § 300.513(a)(2).

27 ¹³ See 34 C.F.R. § 300.502.

28 ¹⁴ See Exhibit V (Child's Development & Medical History).

29 ¹⁵ In 2008, while living in [redacted], Student had been diagnosed with ADHD. See Exhibit S.
30 Student was determined eligible for special education services under the category of other health
impaired. See Exhibit U (Eligibility Report) and Exhibit T (IEP, April 28, 2010).

¹⁶ Following a September 2011 MET meeting, Student had been continued on services pending medical
documentation from parents; however, in November 2011, Student was exited from special education
due to lack of medical documentation. See Exhibit Q (MET 2011-2012). In December 2011, A MET
Report indicated that Student did not meet criteria for special education eligibility/services. *Id.* In
January 2012, following a MET meeting, Student's services were reinstated, with medical
documentation. See Exhibit F (MET 2012-2013).

1 3. Student's last MET at TUSD, in January of 2012, noted some specific
2 behavioral issues both from the past and the present.¹⁷ The MET team noted: difficulty
3 socializing with peers and meeting daily expectations, including licking pencils,
4 touching other students, *pretend gun pointing*, generally acting silly to garner attention
5 and distracting behavior.¹⁸ See Exhibit P, current social-emotional and behavior
6 functioning. The MET team noted that Student "refuses work in the classroom on an
7 ongoing basis. He often does not finish assignments." After listing out prior behavior
8 reports, the MET team noted that Student "misses a good deal of instructional time
9 when engaged in avoidance behaviors." The MET team indicated that Student's
10 "difficulty with sustaining attention and controlling his impulsivity impacts his ability to
11 complete work in the classroom." The MET team noted that Student "does participate
12 in the classroom behavior management plan." The MET team noted Student's needs in
13 the general curriculum to be in the areas of (a) writing "support in utilizing tools to
14 develop multiple paragraph pieces"; and (b) in math "a good deal of redirection to
15 complete work."

16 4. Student's TUSD IEP covered the annual period of January 31, 2012
17 through January 30, 2013. This IEP contained one goal, regarding writing process,
18 and the IEP called for 230 minutes per month one time a week in the general education
19 setting from the Special Education Teacher pertaining to this goal.¹⁹ This IEP also
20 "projected" that Student would receive 1000 minutes per month of writing special
21 education services in daily sessions in the language arts room. This IEP noted that
22 Student was working at grade level in reading and math. With regard to social
23 emotional skills, Student was demonstrating behaviors in the classroom; however,
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28 ¹⁷ See Exhibit P.

29 ¹⁸ See Exhibit F, Section 5b, present levels. Emphasis added here regarding "pretend gun pointing" due
30 to the hearing testimony regarding an incident in May 2014, after which Parents stated (and Father
testified at hearing) that Student was not doing this action but had reported to them that another student
was the person doing this action. See Hearing Transcript, pages 12-14.

¹⁹ See Exhibit F. The service minutes would translate to 57.5 minutes per week.

1 Parents had previously refused a behavior plan and the TUSD IEP indicates that a
2 behavior plan was not needed.²⁰

3 5. The TUSD IEP projected future special education services beginning May
4 24, 2012, regarding writing to be provided each day for a total of 1000 minutes per
5 month; this would translate to 50 minutes daily.²¹

6 (a) The TUSD IEP contained one academic goal regarding writing process:
7 Student will be able to use organizational strategies [such as main idea, supporting
8 details and graphic organizer] to plan writing independently and elaborate a structured
9 five-sentence paragraph; the process resulting in a paragraph with a topic sentence,
10 three explanatory sentences and a closing sentence with 80 % accuracy.

11 (b) The TUSD IEP contained a section after the writing goal, specifically
12 called "IEP Progress Report." Information is set forth therein as to Student's progress
13 on the writing goal. The March 2012 progress report indicated that student was
14 "working on the writing process for a five sentence paragraph." The May 2012
15 progress report indicated that Student was making "limited progress due to his refusal
16 to receive services."

17 (c) The TUSD IEP called for several accommodations: (a) extending time to
18 complete assignments and extending time for state testing; (b) using graphic
19 organizers; (c) allowing more bathroom and water breaks; (d) small group testing; and,
20 (e) a familiar test administrator.²²

21 6. Student enrolled at Presidio for 6th Grade in August 2012.²³ On
22 registration, despite attendance at multiple IEP and MET meetings over the past
23 several years and clear knowledge of Student's prior special education eligibility and
24 services, Parents did not advise Presidio of Student's previous special education
25 background. Parents did not check either "yes" or "no" with regard to the registration
26 form questions regarding special education or past IEPs. At hearing, Mother indicated
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28 ²⁰ The TUSD IEP noted that Student's was having difficulty socializing, and his behaviors included licking
29 pencils, touching other students, *pretend gun pointing*, and generally acting silly to garner attention.

30 ²¹ See Exhibit F.

²² See Exhibit F.

²³ See Exhibit A. The registration form is also found at Exhibit 13.

1 that this was an oversight.²⁴ On the Presidio registration form, Parents did not advise
2 Presidio of Complainant's diagnosis of attention deficit hyperactivity disorder ("ADHD")
3 or any prescription medications.

4 7. Father typically dropped off and picked up Student at Presidio. At
5 hearing, Father indicated that his primary interaction at Presidio was conferring with
6 Presidio teachers and administration regarding Student's school work status and any
7 behavioral issues that arose. On September 28, 2012, after a behavioral incident for
8 Student, Father sought information regarding Student's special education services at
9 school and asked for a meeting with Scott Duerstock, Presidio's Special Education
10 Teacher at that time. Mr. Duerstock requested Student's special education records
11 from TUSD two times and, upon receipt of the records in October 2012, notified
12 Presidio administration and staff of the existence of a current IEP with the eligibility
13 category of OHI for Student.²⁵

14 8. On January 30, 2013, Presidio's IEP team met for Student's annual
15 review and reviewed his progress.²⁶ Six names are present as participants (two of
16 which appear to be the same person, Scott Duerstock, as both test interpreter and a
17 special education teacher). Others attending the meeting were Mother, a general
18 education teacher (Carl Orfield), the school representative (Thomas Drexel, Presidio's
19 Co-director)²⁷ and a "parent or surrogate" (illegible signature).²⁸

20 9. In reviewing Student's present levels of performance, the IEP Team
21 gathered teacher input from the previous semester and the current semester. The IEP
22 Team reviewed Student's previous year's information based on prior METs, IEPs and
23 testing results. This information was specifically charted out in the present levels
24 section of the IEP, and the teacher's comments set forth include both past [November
25 2012] levels current [January 2013] levels in addition to suggestions and
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27 ²⁴ Transcript, page 115.

28 ²⁵ See Exhibit B (record request), Exhibit D (record notice), Exhibit C (e-mail), and Exhibit E (E-mail re
upcoming meeting to discuss IEP).

29 ²⁶ See Exhibit 4 (October 24, 2012 e-mail). See Exhibit 9 (meeting notice); see also Exhibit G (IEP).

30 ²⁷ Hearing Transcript, page 147-148.

²⁸ At hearing, Mother indicated that Student's grandmother sometimes came to meetings; this participant
may have been Father or grandmother.

1 recommendations.²⁹ The IEP specifies that Student met the 2012 AIMS standards in
2 reading and writing and was approaching the 2012 AIMS standards in math.³⁰

3 (a) With regard to writing, in November 2012, Language Arts Teacher Orfield
4 believed that Student had trouble with completing the tasks and needed direct and
5 intensive instruction but that he routinely and effectively used graphic organizers,
6 additional time and repeated directions in his work. Social Studies Teacher Conrad
7 indicated that Student was a "strong writer who excels at creative writing, grammar and
8 exact use of content vocabulary."

9 (b) With regard to behavior, the IEP team gathered teacher input from the
10 previous semester and the current semester. Language Arts Teacher Orfield noted
11 that Student was inattentive and easily distractible, but felt that accommodations
12 (breaks, redirection, reminders, preferential seating and positive reinforcement) had
13 been effective. Social Studies Teacher Conrad noted that Student can be unprepared
14 for transitions and his focus on writing neatly and legibly interferes with his completion
15 of taking notes and copying assignments. Spanish Teacher Farias noted that Student
16 did not complete assignments, is unfocused in class and often refuses to work; it was
17 further noted that his undesirable behaviors usually continue despite redirection. Math
18 Teacher Sadowl noted that Student can work quietly and diligently but will become
19 angry and belligerent if he cannot work on what he wants to; it was further noted that
20 Student seemed to be falling behind because he did not complete work and that trying
21 to convince him to complete the work during breaks or after school resulted in Student
22 having "attitude." TaeKwonDo Teacher Duerstock noted that Student performs well
23 when he is not "overexcited" when he comes to the class; it is noted that Student acts
24 out to draw attention to himself and, if he does not obtain attention, his behaviors
25 become louder and more animated in the absence of redirection.

26 ²⁹ The January 2012 TUSD IEP contained a specific section for progress reports on the academic goal
27 therein. Having only received the TUSD IEP in October of 2012, Presidio apparently did not create an
28 addendum regarding the interim semester at Presidio. See 34 C.F.R. § 300.323(e), requiring only that
29 the new school provide comparable services until it formally adopts the prior IPE or develops and
30 implements a new IEP.

³⁰ Math Teacher Sadowl noted that Student took an inordinate amount of time to complete the math work
and refused to show his computational work, proffering that Student's errors may have been the result of
having difficulty processing the answer mentally and then transferring the answer to the page.

1 (c) With regard to possible accommodations that could be made available,
2 the IEP team noted the following: (i) extended time for completing tests; (ii) testing in
3 small groups; (iii) having a familiar test administrator; (iv) allowing frequent breaks; (v)
4 speaking to Student privately regarding his behaviors; (vi) enforcing rules consistently;
5 (vii) reducing distractions (to him and from others); (viii) repeating instructions; (ix)
6 using positive reinforcement and praise; and, (x) frequent interactions to maintain
7 Student's involvement. The IEP specifies that "Student will choose whether to use the
8 accommodations during testing."

9 10. The January 2013 IEP team determined that Student should be provided
10 15 minutes per week of behavior services through the special education director, who
11 was responsible to monitor Student's behavior and provide both teacher and Student
12 consultation as needed.

13 11. Based on the present levels, the January 2013 IEP developed contained
14 no writing goals or objectives. The PWN for this IEP states as follows in pertinent part:

15 It was time for [Student's] annual IEP review, so the IEP team reviewed progress
16 to ensure that he would receive the appropriate type and level of services
17 needed.

18 ...

19 Discussion by the IEP team of classroom needs and performance level rejected
20 other than what was decided by the IEP was necessary.

21 The January 2013 IEP was made available to Presidio teaching staff for their review.³¹

22 12. The January 2013 IEP indicates that parents "will be sent a progress
23 report at the end of each grading period" and that they will also receive a supplemental
24 report regarding progress on goals and objectives at the same time or within two weeks
25 thereafter.

26 13. The January 2013 IEP includes a behavior plan. In the event of
27 disruptive or off-task behaviors, Student's Behavior Plan calls for (a) redirection and
28 then (b) allowance to take a "water" break walk, sit outside the classroom or walk with a
29 note to meet with the special education teacher. If the behavior continues after

30 ³¹ See Exhibit 8. Mr. Larkin-Smith requested each teacher review and sign off on their review of the IEP; the review was intended to make them familiar with the accommodations and behavior plan set forth in the IEP.

1 returning to class, Student would become subject to the standard conduct code and its
2 consequences. If Student is unable to self-regulate after the teachers' redirection, the
3 standard conduct code called for Student to receive a behavioral infraction and
4 subsequent removal from the classroom for administrative action.

5 14. On January 30, 2014, Presidio's IEP team met for Student's annual
6 review and reviewed his progress.³² The participants were noted as being Mother,
7 Student, Special Education Teacher Ryan Larkin-Smith, General Education Teacher
8 Ms. Amy Slutzsky, Presidio Student Services Coordinator Megan Smith and Presidio
9 school representative Thomas Drexel.

10 15. Student's teachers and staff provided input as to current level and
11 functioning, grades, attendance records, behavior records and test scores.³³ Overall
12 the general education teachers indicated to the IEP team that Student is able to do
13 grade level, even exceptional, work when he focuses on the content but that he has
14 difficulty with focus in the classroom, does not complete work in a timely matter, gets off
15 task easily and is resistant to getting extra help. Regarding academics, the IEP
16 specified that Student met the 2013 AIMS standards in reading and writing and
17 exceeded the 2013 AIMS standards in math. Student was noted to be reading at or
18 above grade level and writing at or above grade level. Regarding social, emotional and
19 behavioral functioning, the IEP team noted that Student had difficulty with focus,
20 tending to "zone-out" and then difficulty with refocusing on the task at hand. The IEP
21 team noted that Student does not turn in work, resulting in low scores, despite having
22 the academic skills and ability to do the work. The IEP team noted that teachers report
23 Student "talking out of turn, out of seat behavior and behaviors that are evidence of his
24 difficulty with impulse control.

25 16. The IEP team created three behavioral goals for Student.

26 (a) Goal 1. (Behavior Organization - planner). Student will use a daytimer
27 planner and write down the work assignments 100% of the time for all classes for all
28 five days, as checked daily by school staff, measured by charting. Student's baseline

29 ³² See Exhibit H.

30 ³³ See Exhibit H, PWN (January 30, 2014).

1 was non-use of a daytimer. The IEP provides for 15 minutes one time per week,
2 outside the general education setting, with the Special Education Teacher.

3 (b) Goal 2. (Behavior Management for building social interaction skills).
4 During recess and other social time, Student will appropriately interact with peers
5 displaying at least five appropriate social interactions within a 30 minute observation
6 period, measure by charting. Student's baseline was a tendency not to interact with
7 peers. The IEP provides for 15 minutes one time per week, outside the general
8 education setting, with the Special Education Teacher.

9 (c) Goal 3. (Behavior Organization - work completion). Student will turn in all
10 his required work each week, measured by a review of work completion on a weekly
11 basis. Student's baseline was turning in nearly 80% of his work. The IEP provides for
12 60 minutes daily in the general education setting with the general education staff; the
13 IEP explained that the "general education staff" would check Student's daytimer for
14 accuracy, completion and feedback for about 10 minutes each day.³⁴

15 17. With regard to accommodations, the IEP team noted that Student should
16 have reduced distractions in the classroom, preferential seating and a change in
17 location for testing and evaluations. With regard to timing and assignments, the IEP
18 team noted that Student should have extended time for completion; to accommodate
19 extended time, this would be accomplished after school, on Saturday, or during teacher
20 planning time. Additionally, the teachers would print out a weekly work-completion
21 report for Student and his parents.

22 18. Recognizing that the specialized instruction would take place in the
23 absence of non-disabled peers, in Presidio's efforts to not stigmatize Student, the IEP
24 called for the specialized instruction to be outside the classroom for about 30 minutes
25 per week regarding consistent work completion. Additionally, the IEP called for 30
26 minutes per week with administrative staff "viewing and discussing the Model Me
27 Videos to help [Student] with his interpersonal interactions.

28
29 ³⁴ The Administrative Law Judge presumes that each of several general education teachers was to be
30 checking Student's daytimer for accuracy and that such a situation would account for the seeming
discrepancy in the numbers of 60 minutes per day of services and 10 minutes each day of "general
education staff" checking the daytimer.

1 19. Student was suspended on January 27, 2014 for one day [January 28,
2 2014] due to an incident regarding hiding behind and dancing suggestively with a
3 textbook he was returning to another student.³⁵

4 20. Student was suspended on February 28, 2014 for one day [March 3,
5 2014] due to an incident of anger, cursing, and striking a classmate with a book for
6 moving Student's things from Student's unassigned desk (that was assigned to that
7 other classmate) to Student's assigned desk in academic lab.³⁶

8 21. Student was suspended on May 15, 2014 due to a reported bullying
9 incident regarding Student threatening to 'finger bang' another classmate who was also
10 emulating a gun.³⁷ Student was reported to be "rude" to that classmate every day.
11 While other students also found that particular classmate to be annoying, it was felt
12 that the banter that day reached the level of a threat. The suspension was determined
13 to be implemented through monitored study in the administration building for the
14 remainder of the year; however, when parents disagreed with such a consequence, the
15 suspension was changed to one day out of school [May 16, 2014] with Student being
16 able to return on May 19, 2014 because the classmate was not returning to school for
17 the remainder of the school year.

18 22. Sometime in May 2014, Richard D. Detzel, Ph.D., School Psychologist,
19 was brought in on a consult regarding Student and he was asked by Ryan Larkin-Smith
20 to take a look at Student's behavior dysregulation issues.³⁸ At hearing, Dr. Detzel
21 indicated that he had some "dialogue" with Mr. Larkin-Smith. At hearing, neither party
22 delved into any advice that Dr. Detzel had provided to Presidio with regard to Student
23 and the consult review Dr. Detzel had conducted.³⁹

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28 ³⁵ See Exhibit I.

29 ³⁶ *Id.*

30 ³⁷ *Id.*

³⁸ Hearing Transcript, pages 37 and 44.

³⁹ Hearing Transcript, page 44; see also page 51.

1 23. Dr. Detzel reviewed Student's educational records.⁴⁰ Dr. Detzel
2 described Presidio's "tracking records" as "pretty detailed" but was unable to recall
3 seeing any quarterly IEP reports.⁴¹ Dr. Detzel indicated that a special education
4 student would be receiving progress reports towards their specific goals.⁴² Dr. Detzel
5 had no direct knowledge of Student receiving special education services at Presidio.⁴³
6 However, in looking at the records, Dr. Detzel found that Student was making adequate
7 academic progress "commensurate with his ability level."⁴⁴ When asked whether he
8 would have recommended a writing goal, Dr. Detzel indicated that the school
9 psychologist doesn't make such recommendations, leaving such decisions to the IEP
10 Team.⁴⁵

11 24. At hearing, regarding an ADHD diagnosis, Dr. Detzel indicated that he
12 would typically recommend taking a look at "behavioral supports and maybe even
13 academic supports" due to such a student's difficulty with planning and organizing.⁴⁶
14 On viewing Student's January 2014 IEP at hearing, Dr. Detzel opined that Goal #1 and
15 Goal #2 were typical for students with ADHD and opined that the overall goal for
16 students with ADHD is to have them become self-corrective.

17 25. Ryan Larkin-Smith, M.Ed., began his special education consulting work
18 with Presidio in late January of 2014.⁴⁷ Mr. Larkin-Smith is also a certified special
19 education teacher and a certified principal.⁴⁸ His duties at Presidio include child find
20 evaluations, coordination and running [IEP and MET] meetings, and assuring that the
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25 ⁴⁰ He reviewed prior Arizona records, ~~Georgia~~ records, and the more recent Arizona records: "There were
26 IEPs, there were documentation of eligibility, medical documentation, there's progress reports from
Presidio within each subject area. The type of gains he was making..." Hearing Transcript, page 52.

27 ⁴¹ The term "tracking record" used by Dr. Detzel was not further explored by either party.

28 ⁴² Hearing Transcript, page 53.

29 ⁴³ Hearing Transcript, page 37.

30 ⁴⁴ Hearing Transcript, page 46.

⁴⁵ Hearing Transcript, page 49.

⁴⁶ Hearing Transcript, page 38.

⁴⁷ Hearing Transcript, page 152.

⁴⁸ Hearing Transcript, page 166.

1 eligible students receive the services set forth in their IEPs.⁴⁹ He attended the January
2 30, 2014 IEP meeting.⁵⁰

3 26. At the time he began consulting at Presidio, Presidio did not have a
4 special education teacher, and Mr. Larkin-Smith stepped in and took over "some" of the
5 special education responsibilities as to the twelve (12) special education students.⁵¹
6 At hearing, Mr. Larkin-Smith indicated that, beginning two weeks after the January
7 2014 meeting,⁵² he began providing the 15 minutes per week of specialized instruction
8 to Student "to help him develop his organizational skills" and, further, that he had
9 followed up with staff members "to make sure that they were doing what they were
10 supposed to be doing."⁵³ When asked whether he had documented the dates and
11 times of his services, Mr. Larkin-Smith indicated that he had been at Presidio every
12 Wednesday but that he had not written down or kept track of his services to Student
13 "because I met with a variety of students." Mr. Larkin-Smith indicated that he "would
14 either go into [Student's] classroom or ... pull him out for a period of not more than 15
15 minutes each time..."⁵⁴ Mr. Larkin-Smith described his delivery of services in the
16 following manner:

17 [I] would pull him out of class oftentimes it was just into the breezeway or I would
18 go into the class and kind of kneel down beside his desk for a couple minutes
19 and pull him out for a couple minutes. I was really making an effort to not
20 interrupt his classroom any more than it was necessary or I would grab him
between classes if there was a break time.⁵⁵

21 ⁴⁹ Hearing Transcript, page 154.

22 ⁵⁰ At the hearing, Mr. Larkin-Smith indicated that he had not recalled academic goals on Student's prior
23 IEPs, but recalled that there had been the 15 minutes for behavior support. Hearing Transcript, page
24 168-169. Mr. Larkin-Smith did not recall any parental request for academic goals but indicated that,
25 had reasonable academic goals been requested, he would have probably put such in the IEP. Hearing
26 Transcript, page 171.

27 ⁵¹ Hearing Transcript, page 166. The hearing record indicates that Mr. Duerstock was the Special
28 Education Teacher at Presidio in 2012 when Student enrolled and that Mr. Duerstock was still at Presidio
29 for part of 2013. See the IEP meeting participant lists in Exhibit F and Exhibit G. Mr. Larkin-Smith
30 specified that he did not provide any speech therapy services as that could only be provided by a speech
therapist.

⁵² Hearing Transcript, page 158.

⁵³ Hearing Transcript, page 155. Regarding staff members, Mr. Larkin-Smith indicated that he was
following up with Ms. McDonald as to whether teachers and staff were checking and signing off in
Student's day-planner but that he himself was not checking it. *Id.*, page 160-161.

⁵⁴ Hearing Transcript, page 158.

⁵⁵ Hearing Transcript, page 159. The hearing record does not contain a daily school schedule, which
would likely demonstrate the times and lengths of the breaks.

1 27. Mr. Larkin-Smith did not provide progress reports to Student's parents,
2 indicating at hearing that they should have received them.⁵⁶

3 28. Mr. Larkin-Smith was not able to verify or document whether Student had
4 received services prior to February of 2014. Mr. Larkin-Smith "assumed [Student] was
5 [receiving services] because he had an IEP in place."⁵⁷

6 29. Mr. Larkin-Smith opined that Student's "academic skills were actually fine"
7 and that Student was able to access the general education curriculum. Mr. Larkin-
8 Smith further opined that Student's behavioral, organizational and peer issues were the
9 things that were holding Student back.⁵⁸ Mr. Larkin-Smith noted that he heard from
10 teachers that "they knew [Student] was very bright, [and] they knew he could do the
11 work but that he wasn't getting stuff turned in on a regular basis."⁵⁹ Mr. Larkin-Smith
12 opined that, the days of the "bigger" behavior issues seemed to correspond to the days
13 that Student had indicated he had not taken his medication, and that it also appeared
14 that Student could manage his impulsivity but still struggled with organization on the
15 days when he had taken his medication.⁶⁰

16 30. Thomas Drexel was the Presidio test coordinator.⁶¹ Mr. Drexel described
17 the testing procedure on testing day as having students come into a classroom,
18 providing snacks and preparation/relaxation time for them, and advising them they
19 "have all the time in the world to make sure that they do the best on the test" before the
20 testing begins.⁶² Mr. Drexel indicated that the students are provided intermittent
21 breaks, for stretching, standing and taking bathroom breaks (with certain protocols).
22 Mr. Drexel indicated that, for 6th and 7th grades, the class size is 40 students but they
23 are broken into two groups of no more than 20 in a class test setting. Mr. Drexel further
24 indicated that such a circumstance is what they consider "small group" testing and that
25

26 ⁵⁶ Hearing Transcript, page 167.

27 ⁵⁷ Hearing Transcript, page 158-159.

28 ⁵⁸ Hearing Transcript, page 165.

29 ⁵⁹ Hearing Transcript, page 168.

30 ⁶⁰ Hearing Transcript, page 168.

⁶¹ At hearing, Mr. Drexel indicated that he has been the test coordinator since 1997, "with the exception of AIMS." This was not further explained or examined; therefore, the Administrative Law Judge concludes that the testimony provided regarding testing dealt with school testing and not with AIMS.

1 they have never done any smaller group testing.⁶³ Mr. Drexel opined that best
2 practices for "small group" testing numbers can be "anything you wish them to be ...
3 anything that makes the student feel comfortable and in spirit." Mr. Drexel specified "[I]
4 cannot do isolation ... isolation would not be a small group situation."⁶⁴

5 31. Student testified that his "basic" teacher at Presidio helped him with his
6 writing and "other things" he had challenges with.⁶⁵ Student indicated that he had
7 asked to be moved on May 15, 2014, but that the "she" just kept him where he sat,
8 "toward the back."⁶⁶ Student recalled being called a nickname, "Mumbles" or "Homes,"
9 by his general education teacher; Student also recalled that she called other students
10 by nicknames.⁶⁷ Student testified that "it didn't like bother me or whatever"⁶⁸ and that
11 he "didn't let it bother [him] that much" and that he would have reported it or asked her
12 not to if it had bothered him.⁶⁹

13 32. Neither Mother nor Presidio asked Student about receiving special
14 education services from either Mr. Duerstock or Mr. Larkin-Smith.

15 33. Mr. Duerstock, the previous Presidio Special Education Teacher, was not
16 called by either party.

17 34. Petitioners did not call any of Student's 2012 or 2013 teachers for
18 questioning regarding the Complaint's allegations.

20 ⁶² Hearing Transcript, page 142-143

21 ⁶³ Hearing Transcript, page 143.

22 ⁶⁴ Hearing Transcript, page 146.

23 ⁶⁵ Hearing Transcripts, page 26. Student mentioned "note taking" as one of the things that was difficult
24 for him. *Id.*, page 26.

25 ⁶⁶ This question about being moved "that day" was raised following questions about the "finger banging"
26 incident, which took place on May 15, 2014. Student also recalled himself and other students having
27 gone to the Principal regarding this particular student talking and making noises, and the Principal having
28 suggested to stay away from him. *Id.*, page 31-32. Student indicated that this would have been difficult
29 as they were all in the same class.

30 ⁶⁷ Hearing Transcript, page 29-30; see also Finding of Fact 13 herein regarding the general education
teacher. At hearing, the evidence reflected that Presidio took action regarding Student's parents'
complaints about nicknames when the Presidio Principal talked to the general education teacher in the
presence of Student's parents regarding not using nicknames for students and that she apologized to
them and, later, to Student. Hearing Transcript, page 175.

⁶⁸ Hearing Transcript, page 30 does not accurately reflect Student's statement, which is quoted here from
the OAH audio record of the morning hearing session on November 11, 2014 at 43:42-43:48. Student's
testimony was difficult to hear and understand as he spoke quickly and in low tones.

⁶⁹ Hearing Transcript, page 33.

1 35. Presidio did not call any of Student's 2012 or 2013 teachers for
2 questioning to rebut the Complaint's allegations.

3 36. At hearing, Presidio did not dispute that it had agreed at the August 2014
4 resolution session to fund an IEE. Presidio did not indicate that it had provided the
5 requisite criteria and Petitioners did not indicate that they had received the requisite
6 criteria in order to make the arrangements for the IEE.

7 37. During closing argument, Ms. Garza attempted to give testimony
8 regarding the provision of special education services by Mr. Duerstock; however, Ms.
9 Garza was not a listed witness and was not sworn in this matter. Therefore, any
10 purported factual information Ms. Garza attempted to provide during closing argument
11 was not considered herein.

12 **CONCLUSIONS OF LAW**

13 **APPLICABLE LAW**

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

15 1. Through the IDEA, Congress has sought to ensure that all children with
16 disabilities are offered a free appropriate public education that meets their individual
17 needs.⁷⁰ These needs include academic, social, health, emotional, communicative,
18 physical, and vocational needs.⁷¹ To do this, school districts must identify and evaluate
19 all children within their geographical boundaries who may be in need of special
20 education and services. The IDEA sets forth requirements for the identification,
21 assessment and placement of students who need special education, and seeks to
22 ensure that they receive a free appropriate public education. A FAPE consists of
23 "personalized instruction with sufficient support services to permit the child to benefit
24 educationally from that instruction."⁷² The IDEA mandates that school districts provide
25 a "basic floor of opportunity," nothing more.⁷³ It does not require that each child's
26 potential be maximized.⁷⁴ A child receives a FAPE if a program of instruction "(1)

27 ⁷⁰ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

28 ⁷¹ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983
29 U.S.C.C.A.N. 2088, 2106).

30 ⁷² *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

⁷³ *Id.*, 458 U.S. at 200.

⁷⁴ *Id.* at 198.

addresses his unique needs, (2) provides adequate support services so he can take advantage of the educational opportunities and (3) is in accord with an individualized educational program.”⁷⁵

The Individualized Education Program - IEP

2. Once a child is determined eligible for special education services, a team composed of the child's parents, teachers, and others formulate an IEP that, generally, sets forth the child's current levels of educational performance and sets annual goals that the IEP team believes will enable the child to make progress in the general education curriculum.⁷⁶ The IEP tells how the child will be educated, especially with regard to the child's needs that result from the child's disability, and what services will be provided to aid the child. The child's parents have a right to participate in the formulation of an IEP.⁷⁷ The IEP team must consider the strengths of the child, concerns of the parents, evaluation results, and the academic, developmental, and functional needs of the child.⁷⁸ Annually, the IEP team must review the student's IEP to determine whether the annual goals are being achieved and to revise the IEP as appropriate to address the lack of progress toward the annual goals, the results of any re-evaluation, information about the child provided by parents, the child's anticipated needs and any other relevant matters.⁷⁹ The IEP must include a statement regarding when periodic reports of a child's progress toward annual goals will be given.⁸⁰ When a student transfers from a different local education agency ("LEA") within the state, the new LEA must provide comparable services to those described in the existing IEP until the new LEA either adopts that IEP or develops, adopts and implements a new IEP.⁸¹ To foster full parent participation, in addition to being a required member of the team making educational decisions about the child, school districts are required to give

⁷⁵ *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)).

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

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

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

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

⁸⁰ 20 U.S.C. § 1414(d)(1)(a)(i)(III); 34 C.F.R. § 300.320(a)(3)(ii). The rules suggest several periodic times, including quarterly and concurrent with issuance of report cards.

⁸¹ 20 U.S.C. § 1414(d)(2)(c)(1); 34 C.F.R. § 300.323(e).

1 parents written notice when proposing any changes to the IEP,⁸² and are required to
2 give parents, at least once a year, a copy of the “procedural safeguards,” informing
3 them of their rights as parents of a child with a disability.⁸³

4 Prior Written Notice- PWN

5 3. The IDEA process for making changes to an IEP, including identification,
6 eligibility and changing educational placements, requires a school district to give
7 parents written notice before taking the proposed action.⁸⁴ Designated as the Prior
8 Written Notice (or PWN), that notice must contain certain information specified by the
9 IDEA, such as an explanation of why that decision is being made, the documentation
10 used to make the decision, and a reminder of parents’ procedural rights. Of particular
11 note is the requirement that the PWN contain “[a] description of other options that the
12 IEP Team considered and the reasons why those options were rejected. . . .”⁸⁵ Thus,
13 the PWN is issued after an IEP team decision with regard to identification, eligibility or
14 educational placement has been made, not before.

15 The IEP Team

16 4. The IDEA provides that the public agency, the school, must “ensure” that
17 the IEP team includes certain persons, typically those with specific and/or particular
18 knowledge of the student and the types of resources and services available for a child
19 with that student’s disabilities.⁸⁶ Additionally, a parent has the discretion to include
20 other persons “who have knowledge or special expertise regarding the child, including
21 related services personnel as appropriate.”⁸⁷ The determination of knowledge and
22 expertise is made by the party who invited the other person to be a member of the IEP
23 team.⁸⁸ When conducting MET and IEP meetings, and other administrative matters
24 regarding the IDEA procedural safeguards, the parties “may agree to use alternative
25

26 ⁸² 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

27 ⁸³ 20 U.S.C. § 1415(d); 34 C.F.R. § 300.503. Safeguards may also be posted on the Internet.
28 20 U.S.C. § 1415(d)(B).

29 ⁸⁴ 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).

30 ⁸⁵ 20 U.S.C. § 1415(c)(1)(E); 34 C.F.R. § 300.503(b)(6).

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

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

⁸⁸ 34 C.F.R. § 300.321(c).

means of meeting participation, such as video conferences and conference calls.”⁸⁹

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

5. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.⁹⁰ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”⁹¹ Therefore, in this case, Petitioners bear the burden of proving by a preponderance of evidence that Presidio failed to provide Student FAPE from October 2012 to May of 2014 under the January 2012 TUSD IEP, the Presidio-developed January 2013 IEP, and the Presidio-developed January 2014 IEP.

6. Count 1. Petitioners allege that Respondent failed to provide “any” special education and related services from October 2012 through May 2014. Petitioners have not presented sufficient evidence to demonstrate that such was the case. While a negative can be difficult to demonstrate, as is shown in the decision regarding Count 2 herein, a sworn witness can provide the information demonstrating a negative. Once Presidio was aware of the existence and the extent of the January 2012 TUSD IEP, Presidio was required only to provide comparable services until it either adopted that IEP or developed and implemented a new IEP. The hearing record contains no indication that Presidio “adopted” the TUSD IEP. Therefore, Presidio was only required to provide comparable services. In this case, Student testified that his general education teacher did help him with his writing. While Student was not specific as to the extent of such help or the time period thereof, the Administrative Law Judge may conclude, based on the hearing record, that Presidio provided comparable

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

⁹⁰ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

⁹¹ *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 services until it developed and implemented a new IEP in January 2013. Petitioners'
2 allegation in Count 1 that Student was discriminated against due to being called
3 derogatory names and being treated unfairly cannot be determined by the
4 Administrative Law Judge herein. The IDEA provides no jurisdiction for discrimination
5 claims.⁹²

6 7. Count 1(a). This claim falls for the same reasons as stated above. The
7 IDEA did not require Presidio to implement the services contained in the January 2012
8 TUSD IEP. Presidio was only required to provide comparable services until it either
9 adopted that IEP or developed and implemented a new IEP.

10 8. Count 1(b). This claim fails as Petitioners failed to specify and present
11 any evidence regarding any "instructional accommodations" that were set forth in the
12 Presidio IEPs or any that, so set forth, were not provided.

13 9. Count 1(c). The hearing record demonstrated that Student's IEP Team
14 determined in January 2013 that, based on Student's classroom needs and present
15 levels of performance, Student no longer needed an academic goal in writing and, thus,
16 Student no longer needed specialized instruction in writing. Petitioners failed to
17 demonstrate that Student needed continued specialized instruction in writing at that
18 time. Therefore, the claim fails that Presidio failed to provide FAPE when Presidio
19 removed the specialized instruction in writing (whether the 230 minutes or the 1000
20 "projected" minutes) in January 2013.

21 10. Count 1(d). The hearing record is insufficient with regard the claim of
22 failure to provide the January 2013 determined behavior organizational specialized
23 instruction. Petitioners failed to present any evidence regarding such services; there is
24 no sworn testimony regarding behavior services from January 2013 to February of
25 2014. The Presidio witness testimony related only to such services that started in
26 February of 2014, and his testimony is correctly described as weak. Mr. Larkin-Smith's
27 description of the manner in which he provided such services did not demonstrate any
28 particular length of time of the services that he provided each week (as required under
29

30 ⁹² See §504 of the Rehabilitation Act of 1973 [Public Law No. 93-112, 87 Stat. 394 (September 26, 1973), codified at 29 U.S.C. § 701 *et seq.*].

1 the IEP). Mr. Larkin-Smith testified that he left the checking of Student's planner and
2 calendar to staff (as is indicated in the IEP). While Presidio evidence was weak
3 regarding provision of the behavioral services, it surpasses the Petitioner's
4 presentation of no testimonial evidence regarding the provision of the behavioral
5 services.

6 11. Count 2. The hearing record clearly demonstrates that Presidio failed to
7 provide progress reports from February 2014 to May 2014; Mr. Larkin-Smith testified
8 that he had not given parents any progress reports. Given parents' allegations of
9 failure to provide other progress reports and none having been provided to the hearing
10 record within Student's educational records, the Administrative Law Judge may
11 conclude that Presidio failed to provide progress reports from January 2013 to May
12 2014. While it might be argued that the November 2012 comments within the January
13 2013 IEP present levels discussion could be considered to be progress reports, the fact
14 is that no records exist of any progress reports that were provided to the parents at the
15 end of each grading period as was set forth in the January 2013 IEP.

16 12. Count 3. Petitioners' claim fails that Presidio did not provide small group
17 testing for AIMS 2013 and AIMS 23014. Petitioners failed to present any evidence
18 regarding AIMS testing. The Presidio witness testimony regarding small group
19 testimony excluded AIMS testing.

20 13. Count 4. Petitioners failed to demonstrate any IDEA violation with regard
21 to suspensions. A student receiving special education services may be suspended for
22 violations of the school's code of conduct for not more than 10 consecutive school days
23 per year without creating an IDEA violation. See 34 C.F.R. § 300.530 *et seq.*,
24 regarding disciplinary suspensions and authorized school actions up to 10 school days
25 in a school year. The hearing record demonstrated only three suspensions for only
26 three total days.

27 14. Count 5. Petitioner's Amended Complaint claims that Presidio agreed at
28 an August 13, 2014 resolution session to fund an IEE and a speech evaluation. IEEs
29 are addressed at 34 C.F.R. § 300.502, which calls for the schools' criteria for IEEs to
30

1 be provided to the requesting parent and subsequent compliance with the school
2 criteria.

3 15. Based on the foregoing, the Administrative Law Judge concludes that
4 *Petitioners' claims fail* that Presidio failed to provide FAPE to Student. The hearing
5 record does not demonstrated that the procedural violation of failing to provide
6 progress reports resulted in any of the three circumstances of impeding Student's rights
7 to a FAPE, in impeding the parents' opportunities to participate in the decision making
8 process regarding Student's services or in any deprivation of educational benefit to
9 Student.⁹³ Therefore, Petitioners' requests for remedies for denial of FAPE shall be
10 denied, with the exception of the request for Presidio to fund an IEE at public expense,
11 as agreed to by Presidio, in response to the Parents' request for such.⁹⁴

12 **ORDER**

13 Based on the findings and conclusions above,

14 IT IS ORDERED Petitioners' claims of denial of FAPE to Student are dismissed.
15 Therefore, Petitioners' requests for remedies for the claimed denial of FAPE to Student
16 are denied, with the exception of the request for Presidio to fund an IEE at public
17 expense, as agreed to by Presidio in August of 2014 in response to the Parents'
18 request for such.⁹⁵

19 ORDERED this 18th day of February, 2015.

20
21 **OFFICE OF ADMINISTRATIVE HEARINGS**

22
23 /s/ Kay A. Abramsohn
24 Administrative Law Judge

25 26 **RIGHT TO SEEK JUDICIAL REVIEW**

27
28
29 ⁹³ See 34 C.F.R. § 300.513(a)(2).

30 ⁹⁴ See 34 C.F.R. § 300.502.

⁹⁵ See 34 C.F.R. § 300.502.

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

12 Copy sent by **electronic mail** and regular mail
13 this 18th day of February 18, 2015 to:

14 [REDACTED]
15 [REDACTED]

16 Parent/Petitioners

17 [REDACTED]

18 Thomas Drexel, Superintendent
19 Presidio School
20 ATTN: Ryan Larkin-Smith, Dir. Special Education
21 1695 E Fort Lowell Rd
22 Tucson, AZ 85719
23 Respondent
tomd@presidioschool.com
terryg@presidioschool.com

24 Kacey Gregson, Legal Dept.
25 Arizona Department of Education
26 1535 W Jefferson
27 Phoenix, AZ 85007
kacey.gregson@azed.gov

28
29 By: Cruz Serrano
30