

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Student, by and through
Parents/Guardians and

No. 13C-DP-045-ADE

Petitioners,

vs.

Peoria Unified School District

ADMINISTRATIVE
LAW JUDGE DECISION

Respondent School District

HEARING: Sept. 3-11, 2013; Sept. 23-25, 2013; Oct. 7-8, 2013

APPEARANCES: Attorney Wendy M. Housman appeared pro hac vice on behalf of Petitioners, accompanied by Parents; attorneys David D. Garner and Rosaleen T. O'Gara, LEWIS AND ROCA LLP, appeared on behalf of Respondent Peoria Unified School District ("PUSD"), accompanied by designated school representative Steve Savoy, Academic Administrator.

HEARING RECORD: Certified Court Reporters Meri Coash, RMR, and Cindy Mahoney, RPR, RMR, CRR, of COASH & COASH were present and recorded the proceedings as the official record of the hearing.¹

WITNESSES:² **Kenneth Hosto**, Director, Chapel Haven West; **Gary M. Greene, Ph.D.**, Transition Assessment Specialist, *Independent Transition Evaluator* (via telephone); **Parent**; **Lynn Carahaly, MA, CCC-SLP**, Director of Foundations Developmental House, LLC, *Independent Speech-Language Evaluator*; **Jennifer T. Gatt, Ph.D.**, Psychologist, Southwest Neuropsychology Associates, *Independent Psychoeducational Evaluator*; Kathleen Harrington, Teacher, New Way Academy ("NWA"); Suzanne Giannetti, Teacher, NWA; Sarah Roddy, Special Education Teacher, PUSD; **Frymet Hare**, Special Education Coordinator, PUSD; David Boone, Teacher, NWA; Jamie Gregory, Teacher, NWA; **Dawn Gutierrez**, former Head of School, NWA; **Daniel Farrell**, Lead School Psychologist (formerly), PUSD, *Psychoeducational Evaluator* (via telephone); Jodi Leonard, Case Manager & Special Education Teacher, PUSD; **Julie Peapenburg, SLP**, Speech Therapist, PUSD; Katie Haas, Regular Education Teacher, PUSD; Julie Fuhrmann, Regular Education Teacher, PUSD; **Deborah Fash**, SLP, Director of Intervention, NWA; Dawn Ratke,

¹ The parties stipulated that the court reporter record is the official record of the proceedings. An audio recording was also made by the Arizona Office of Administrative Hearings.

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. Where necessary, pseudonyms (noted above in bold type) will be used instead.

1 Director of Special Education, PUSD; Mary Arden, Special Education Case Manager,
2 PUSD; **Jennifer Buckler, SLP**, Speech-Language Pathology Department Lead, PUSD,
3 *Speech-Language Evaluator*; **Rick Dunn**, Transition Lead, PUSD; Tamara Ballou,
4 Consultant/Advocate.

5 **ADMINISTRATIVE LAW JUDGE:** Eric A. Bryant

6 Parents, who are guardians of the adult Student, bring this due process action
7 on behalf of Student, claiming that Respondent School District did not provide Student
8 a free appropriate public education ("FAPE") in 2011 and 2012, seeking reimbursement
9 for summer parental placement in a special private school and an order placing Student
10 in that special private school for a two-year program as compensation for failure to
11 provide a FAPE. Parents also request compensatory education and services in the
12 areas of speech therapy, math instruction, reading, and writing. Finally, Parents
13 request reimbursement for an independent evaluation. The law governing these
14 proceedings is the Individuals with Disabilities Education Act ("IDEA"), 20 United States
15 Code ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),³ and its
16 implementing regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well
17 as the Arizona Special Education statutes, Arizona Revised Statutes
18 (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative
19 Code ("A.A.C.") R7-2-401 through R7-2-406.

20 *Procedural History*

21 Petitioners filed their due process complaint on January 15, 2013, and filed an
22 amended complaint on May 7, 2013. The complaint, as amended, claims that
23 Respondent School District did not offer Student a FAPE from January 2011 to January
24 2013 through Individualized Education Programs ("IEPs") created for Student in
25 December 2010, November 2011, and November 2012. Petitioners bring both
26 substantive and procedural claims. Specifically, they assert that the transition planning
27 provided to Student did not provide a FAPE, that Student was deprived of speech
28 services that she was entitled to, that many of the goals in her IEPs were inadequate,
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1 that Respondent School District failed to faithfully implement Student's special
2 education, and that Respondent School District committed other procedural violations.
3 Respondent School District denies all claims, except for one. Respondent School
4 District concedes that Student did not receive 90 minutes of math instruction for one
5 semester as she should have according to her IEP. The only determination to be
6 addressed with regard to that issue is the amount of compensatory education to be
7 awarded. Otherwise, Respondent School District asserts that the IEPs at issue,
8 including the transition plan components, offered Student a FAPE with meaningful
9 educational benefit and that Student is not entitled to any compensatory education
10 other than for the missed math instruction.

11 Evidence and Issues at Hearing

12 The parties presented testimony and exhibits at a formal evidentiary hearing
13 held for twelve days in September and October 2013. The parties presented testimony
14 from the witnesses listed above and provided pre-marked Exhibits as Petitioners'
15 Exhibits S-1 through S-80 and Respondent School District's Exhibits D1 through D161.⁴
16 Petitioners' Exhibits were admitted as follows: S-3, S-5, S-9, S-12, S-14, S-15 through
17 S-18, S-20 through S-22, S-24 (only pages 28-58 and 91-94, including 93A), S-26, S-
18 30, S-31 (page 1 only); S-33 through S-35, S-38, S-40 through S-44,⁵ S-47 through S-
19 52 (for S-52, only the audio recordings were admitted), S-55 through S-60, S-64, S-65,
20 and S-70 through S-80 (only pages 1-5 of S-74; S-79 and S-80 limited to
21 impeachment).⁶ Respondent School District Exhibits were admitted as follows: D1, D2,
22 D4 through D16, D18 through D27, D29 through D40 (D34, pages 1 and 2 only), D43
23 through D47, D50 through D52, D54 through D56, D58 through D72, D83, D86 through

24 ³ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of
25 2004," IDEA 2004 became effective on July 1, 2005.

26 ⁴ The Exhibits consist of thousands of pages of documentation, some of which are duplicative. The
27 record contains exhibit lists from both parties for specific identification.

28 ⁵ S-44 was moved into evidence by Respondent School District and was admitted with the limitation that
29 any information it contains for dates after January 15, 2013, is limited to the issue of compensatory
30 education only.

⁶ In order to make the record as clear as possible, the Administrative Law Judge DID NOT admit
Petitioners' Exhibits S-1, S-2, S-4, S-6, S-7, S-8, S-10, S-11, S-13, S-19, S-23, S-25, S-27, S-28, S-29,
S-32, S-34, S-36, S-37, S-39, S-45, S-46, S-53, S-54, S-59, S-61, S-62, S-63, S-66, S-67, S-68, and S-

1 D92, D94 through D106, D109 and D110, D112, D114, D116 through D119, D121
2 through D125, D130 through D135, D141, D145 and D146, D150, D153 through D156,
3 D158 through D161 (D158, D159, and D160 are limited to compensatory education
4 only).⁷

5 After the Exhibits and testimony were admitted, the parties submitted written
6 arguments to the tribunal. The final memoranda were filed on December 16, 2013.
7 Petitioners make the following claims:⁸

- 8 1) Respondent School District failed to provide Student a FAPE in her
9 2010, 2011, and 2012 IEPs by failing to provide transition
10 assessment and planning that offered her meaningful educational
11 benefit.
- 12 2) Respondent School District failed to provide Student a FAPE in her
13 2010 and 2011 IEPs by failing to implement portions of her
14 transition plan.
- 15 3) Respondent School District failed to provide Student a FAPE in her
16 2010, 2011, and 2012 IEPs by failing to address all of her speech-
17 language needs through measurable goals.
- 18 4) Respondent School District failed to provide Student a FAPE
19 throughout 2011 by failing to provide an alternative speech therapy
20 provider other than the two who were available to provide speech
21 services to Student.
- 22 5) Respondent School District failed to provide Student a FAPE in her
23 2011 IEP by changing the amount of speech therapy minutes from
24 100 minutes *per week* to 120 minutes *per month*.

25 69 for the reasons stated on the record. Some of these exhibits were marked but not offered by
26 Petitioners.

27 ⁷ The Administrative Law Judge DID NOT admit Respondent School District's Exhibits D3, D17, D28,
28 D41, D42, D48, D49, D53, D73 through D82, D84, D85, D93, D107, D108, D111, D113, D115, D120,
29 D126 through D129, D136 through D140, D142 through D144, D147 through D149, D151, D152, and
30 D157 for the reasons stated on the record. Some of these exhibits were marked but not offered by
Respondent School District.

⁸ For purposes of clarity, the Administrative Law Judge has rewritten Petitioners' claims as found in the
original complaint, amended complaint, and post-hearing memoranda. *See, Ford v. Long Beach Unified
Sch. Dist.*, 291 F.3d 1086, 1090 (9th Cir., 2002) (hearing officer may reorganize and restate issues in her
own words as long as she addresses the merits of all issues). Although Petitioners' post-hearing
memoranda are disorganized and often unclear (and at times lack supporting citation to the record), the
Administrative Law Judge has captured the bulk of the arguments.

- 1 6) Respondent School District failed to provide Student a FAPE in her
2 2010 and 2011 IEPs by determining the amount of speech services
3 without parental input.
- 4 7) Respondent School District failed to provide Student a FAPE by failing
5 to provide the amount of speech services required in her IEP for
6 the months of August 2012, September 2012, December 2012 and
7 January 2013.
- 8 8) Respondent School District failed to provide Student a FAPE in 2012
9 by failing to provide the special education instruction minutes
10 required by her IEP in math, reading, and writing.
- 11 9) Respondent School District failed to provide Student a FAPE in
12 November 2012 by continuing to conduct an IEP meeting and
13 making IEP team decisions after Parents had left the meeting.
- 14 10) Respondent School District failed to provide Student a FAPE in her
15 2012 IEP by failing to provide for Extended School Year ("ESY")
16 services in Summer 2013.
- 17 11) Respondent School District should reimburse Parents for private
18 education Student received by parental placement in Summer
19 2013 due to the failure of Respondent School District to provide
20 ESY.
- 21 12) Respondent School District should compensate Student for lost
22 transition education and services by paying for a 24-month special
23 education program at a residential school that teaches
24 independent living skills.
- 25 13) Respondent School District should provide Student compensatory
26 education and services in the following amounts:
- | | |
|----------------------|-------------|
| Speech therapy: | 104.5 hours |
| Math instruction: | 69 hours |
| Reading instruction: | 66 hours |
| Writing instruction: | 130 hours |
- 27 14) Respondent School District should reimburse Parents for the private,
28 independent transition evaluation they obtained from Gary M.
29 Greene, Ph.D.
- 30

1 The Administrative Law Judge has considered the entire record, including the
2 testimony and Exhibits,⁹ and now makes the following Findings of Fact, Conclusions of
3 Law, and Decision finding no substantive or procedural violations that denied Student a
4 FAPE, except for the failure to provide special education math instruction as conceded
5 by Respondent School District. Compensatory education is awarded for that failure.

6 **FINDINGS OF FACT**

7 The claims made by Petitioners are based on actions that occurred from January
8 2011 to January 2013. Therefore, the following factual findings are focused on that
9 period.

10 1. In January 2011, Student was 18 years old and attending high school.¹⁰ She
11 had medical diagnoses of Attention Deficit Hyperactivity Disorder ("ADHD") and Fetal
12 Alcohol Syndrome, a condition that can cause cognitive and functional disabilities.¹¹
13 She was eligible for special education and related services as a student with
14 speech/language impairment and specific learning disabilities in the areas of listening
15 comprehension, reading comprehension, reading fluency, math calculation, and math
16 reasoning.¹² She was attending New Way Academy ("NWA"), a private, non-profit
17 school that specializes in educating students with learning disabilities and language
18 problems.¹³ In Summer 2010, she had attended NWA for ESY services.¹⁴

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20 ⁹ The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in
21 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.

22 ¹⁰ Although Student was legally an adult at this time, she relied almost exclusively on her parents to
23 make significant decisions for her. Parents obtained guardianship over Student in January 2012. Exhibit
24 D100. Due to a miscommunication from Parents' advocate, Respondent School District reasonably
25 believed that Parents had guardianship over Student during the period relevant to this case. Exhibit D54
at PUSD35; see also Exhibit D161 at PUSD5557 (district was told in December 2009 that Parents were
seeking guardianship). Student's status as a legal adult during the time before January 2012 was not
made an issue in this proceeding.

26 ¹¹ Exhibit D86 at PUSD46.

27 ¹² Exhibit D51 at PUSD37-38. At the time, she was also found eligible as a student with Emotional
28 Disability in the areas of inability to build or maintain satisfactory interpersonal relationships with peers
and teachers, inappropriate types of behavior or feelings under normal circumstances, and a tendency to
develop physical symptoms or fears associated with personal or school problems. *Id.* at PUSD38.
29 Although this area of eligibility was dropped in later years, the evidence shows that, albeit to perhaps a
smaller degree, those types of behaviors continued to sometimes appear, especially with regard to
speech therapy and those persons providing her speech therapy.

30 ¹³ Testimony of Gutierrez, Reporter's Transcript of Proceedings ("RTP") Vol. 5 at 1529-30 (Sept. 9,
2013).

December 2010 IEP

2. Student's December 2010 IEP notes that Student was a sophomore at that time and had been attending NWA since November 2009.¹⁵ The IEP has a lengthy description of her levels of academic and functional performance. It describes twelve areas of performance: Attention and Learning Style, Production and Study Skills, Social Adjustment, Cognitive Ability, Classroom Motor and Visual Perception Skills, Speech and Language Assessment, Communication, Reading, Spelling, Written Expression, Math, and Affinities. It also contains a long list of "accommodations and modifications of the learning environment" for Student.¹⁶

December 2010 Levels of Performance, Academic Needs, and Accommodations

3. A summary of her levels of performance in December 2010 will provide a good overview of Student's complex set of difficulties:¹⁷

a) Student needs accommodations to stay focused on her work and does best when alternating between types of instruction (direct instruction; guided practice; multi-sensory lessons; use of manipulatives). She can become overwhelmed if given too much information at once and is highly sensitive to the level of the academic workload. At one point prior to the December 2010 IEP, she was experiencing a high level of anxiety with the demands of her academic schedule. Her schedule was modified to reduce that anxiety by replacing her English class (which was giving her the most anxiety) with an opportunity to serve as a student assistant in PE and Art classes. This helped lower her anxiety level and gave her an opportunity to experience a "leadership" role. Her academic workload has to be carefully monitored to keep her stress and anxiety levels manageable.¹⁸

¹⁴ Exhibit D54 at PUSD334.

¹⁵ *Id.* at PUSD329.

¹⁶ *Id.* at PUSD333.

¹⁷ This summary is based on *id.* at PUSD329-33.

¹⁸ *Id.* at PUSD329.

1 b) Student is organized but needs additional time to complete
2 assignments.¹⁹

3 c) Socially, Student does well with other students but does not cope well
4 with change in routine or schedule. She needs advance notice of such
5 changes or she is prone to excessive stress and anxiety.²⁰

6 d) Student's cognitive abilities are in the average range for non-verbal
7 intelligence and in the low range for verbal intelligence.²¹ Her overall
8 intelligence was not "borderline," as suggested by an evaluation from
9 2008, nor did her cognitive testing show an intellectual disability.²² Her
10 lower verbal intelligence score was explained by the fact that she has a
11 speech/language impairment.²³

12 e) In speech, language, and communication, Student has some significant
13 deficits. She has mild trouble with vocabulary knowledge (comprehension
14 of single words, clearly defining words that she knows, recognizing more
15 than one meaning for statements with multiple interpretations, using
16 language to convey social or practical messages, and using verbal
17 reasoning to make logical associations between words. She has a weak
18 memory and does not rapidly recall words when naming items, which
19 affects verbal formulation, efficiency of reading, and recall of terms when
20 taking tests. Her most significant difficulty relates to pragmatic
21 communication, in particular "code switching." Code switching refers to
22 changing of speaking style to match the setting. Student often spoke with
23 a style that is used by young children: She mispronounces words, uses a
24 higher pitch voice, and uses diminutive word forms (daddy, mommy,
25 doggy, etc.). She used this style at times with her high school peers.
26 However, during the year prior to December 2010, she had made

27
28 ¹⁹ *Id.*

29 ²⁰ *Id.*

²¹ Exhibit D86 at PUSD50; Testimony of Farrell, RTP Vol. 6 at 1670 (Sept. 6, 2013).

²² Exhibit D86 at PUSD50; Testimony of Farrell, RTP Vol. 6 at 1671-72 (Sept. 6, 2013).

30 ²³ Testimony of Daniel Farrell, RTP Vol. 6 at 1671 (Sept. 6, 2013).

1 progress with the code switching problem at school. The IEP notes that
2 she spoke with an age-appropriate voice and vocabulary 80% of the time
3 at school. At home, Parents reported that she continued to speak with the
4 "young voice" much of the time. In both settings, she had not developed
5 effective nonverbal communication in that, for example, she was noted to
6 be "rolling her eyes" when not appropriate.²⁴ Prior to December 2010,
7 she had met goals in the area of receptive and expressive language and
8 in the area of listening comprehension and speaking.²⁵

9 f) In speech therapy, Student worked on conceptualizing and visualizing
10 language from books. She needed teacher cuing for summarizing and
11 making inferences. She showed significant improvement in
12 understanding idiomatic words and expressions, and met one of her goals
13 in receptive/expressive language. However, she struggled with practicing
14 communication skills in a therapeutic setting where she is the focus of
15 attention.²⁶

16 g) In reading and spelling, Student was working with a reading specialist
17 in a multisensory and interactive curriculum that teaches students how to
18 decode. Her reading assessment scores showed her generally at an
19 eighth grade reading level, but also showed scores in the average range
20 for reading sight words and comprehension and in the below average
21 range for reading "efficiency." She was also working in a small group to
22 improve phonetic spelling skills. She struggled to memorize common
23 spelling rules.²⁷

24 h) For written expression, Student's December 2010 IEP notes that she
25 enjoys writing but became overwhelmed with academic demands,
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28 ²⁴ Exhibit D54 at PUSD330.

29 ²⁵ *Id.* at PUSD343-45.

30 ²⁶ *Id.* at PUSD331.

²⁷ *Id.* at PUSD331-32.

1 particularly in English, and was taken out of the English class. She
2 continued to work on reading as noted above.²⁸

3 i) In math, Student needs high levels of support. She was enrolled in
4 "Financial Math" where she was learning personal budgeting and other
5 practical applications of math.²⁹

6
7 4. The December 2010 IEP contained many accommodations for Student
8 concerning organization and planning, testing adaptations (e.g., extra time, repetition of
9 directions, use of calculator or math tables), teaching strategies (e.g., shorter
10 instruction segments, use of hands-on learning), classroom environment (e.g., minimize
11 distractions), and social/emotional concerns (e.g., advance notice for changes to
12 routine).³⁰ Under the heading of "Behavioral Needs," the IEP noted that Student
13 needed extra support to manage anxiety and stress, and that the modification of her
14 schedule (taking her out of English class) had been beneficial for her.³¹

15 5. Student's December 2010 IEP provided for 100 minutes per week of speech
16 therapy.³² It contained two goals for the speech pathologist to work on with Student.
17 Both goals used a rubric of skills that Student was expected to work on and make
18 progress over the course of the year. One rubric concerned "Listening Comprehension
19 and Verbal Expression" and was closely aligned with reading comprehension skills.³³
20 The other rubric addressed communication skills such as tone of voice, facial
21 expression, and word choice.³⁴ Two speech pathology witnesses, Jennifer Buckler and
22 Julie Peapenburg, credibly testified that 100 minutes per week was an excessive
23 amount of therapy time to address Student's speech needs.³⁵

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26 ²⁸ *Id.* at PUSD332-33.

27 ²⁹ *Id.* at PUSD333.

28 ³⁰ *Id.*

29 ³¹ *Id.* at PUSD334.

30 ³² *Id.*

³³ *Id.* at PUSD340-41.

³⁴ *Id.* at PUSD342A-42B.

³⁵ Testimony of Buckler, RTP Vol. 10 at 3051-53 (Sept. 3, 2013); testimony of Peapenburg, RTP Vol. 8 at 2277-78 (Sept. 23, 2013).

1 6. With regard to ESY for Summer 2011, the December 2010 IEP noted that
2 Student had attended ESY in 2010 and was being considered for it again in 2011. It
3 noted that data would be collected to determine if there was regression of skills during
4 breaks in instruction, and that eligibility for ESY would be determined after the data was
5 collected.³⁶

6 December 2010 Transition Plan

7 7. The final major section of the December 2010 IEP addressed "Transition
8 Services and Plan." There is very little information in the IEP about what Student had
9 been doing since age 16 in pursuit of transitioning from high school to post-high school
10 life, other than references to some of her coursework and her opportunity to assist
11 teachers in PE and Art classes. There is no explicit information about assessments
12 she had taken, formal or informal. The IEP notes that Student was "absent" for a formal
13 assessment that was given in April 2010.³⁷ But the IEP also implies that Student was
14 interviewed about her preferences and interests at some time, because it notes that
15 she stated that she was not interested in attending college and would like to get a job
16 after high school, perhaps in her mother's small law office as an assistant. The IEP
17 notes that she expressed interest in being a hostess at a restaurant and that she was
18 having difficulty obtaining a food handler's permit.³⁸ The IEP further notes that Student
19 would soon be exploring career choices in the coming month.³⁹

20 8. For post-secondary goals, the IEP states some very general goals: (a) for
21 Education/Training, Student "will receive educational and job skills through on the job
22 training or a post-secondary program;" (b) for Employment, Student will research
23 employment options in her areas of interest and select a career goal to be achieved
24 after graduation; and (c) for Independent Living, Student will reside with her parents
25 until prepared to live independently.⁴⁰

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28 ³⁶ Exhibit D54 at PUSD334.

29 ³⁷ *Id.* at PUSD335.

30 ³⁸ This was due to having trouble memorizing the material to pass the exam for the permit. Exhibit S-52.

³⁹ *Id.*

⁴⁰ *Id.*

1 9. The transition services activities outlined for Student in the IEP were to
2 complete her high school coursework (a course of study plan was attached); get
3 community experience through her church; develop interviewing skills with an academic
4 coach; successfully complete the Financial Math class to gain adult living skills; work
5 with her family on developing daily living skills such as laundry, cooking, and cleaning;
6 and maintain a daily planner for time management and planning skills. These activities
7 were to be pursued throughout the annual IEP period.⁴¹

8 10. There is no indication that Student participated in the IEP meeting that
9 created the December 2010 IEP.⁴²

10 Events from February 2011 to December 2011

11 11. In February 2011, Parents raised an issue regarding Student's speech
12 therapy.⁴³ The prior school year, Student had been receiving speech therapy from a
13 young NWA speech therapist who was older but fairly close to Student's age. After a
14 year of therapy with Student, that therapist determined that Student's relationship with
15 her had become non-therapeutic because Student saw the therapist more as a friend
16 than a therapist. Thus, the therapist asked that Student be assigned to a different
17 therapist beginning in August 2010. This was done and, fairly quickly, Student began
18 to express problems with the new therapist. Several months into the school year, NWA
19 changed Student's therapist again to address the perceived problems that Student was
20 expressing. Again, Student had issues with the next therapist. NWA investigated the
21 issues and determined that the therapists were acting professionally and that Student's
22 perceptions were not well-founded.⁴⁴ The evidence supports this.⁴⁵

23 12. Parents met with Respondent School District in February 2011 and, after
24 discussing the situation, decided to cease speech therapy for Student for the time
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26 ⁴¹ *Id.*

27 ⁴² *Id.* at PUSD327.

28 ⁴³ Exhibit D55 contains much of the information summarized here.

29 ⁴⁴ Exhibit D118.

30 ⁴⁵ In fact, the evidence in general supports two conclusions: First, that Student was unhappy about not having the young therapist as her therapist. Second, Student appears to have been fatigued with the many hours of speech therapy she was getting. This made her not want to accept the new therapists and not want to be in therapy at all at that time. This is understandable given her age, disabilities, and schedule.

1 being.⁴⁶ Respondent School District took the position that one of the two older
2 therapists who had most recently worked with Student could continue with Student and
3 work on the relationship issues.⁴⁷ This was not acceptable to Parents. Respondent
4 School District also offered to explore an option of providing therapy for Student on a
5 district campus, but this would have been disruptive to Student's schedule. In the end,
6 Parents requested that speech services cease for the time being.⁴⁸ Respondent School
7 District issued a Prior Written Notice ("PWN") stating that speech services were
8 discontinued at Parents request due to a perceived "fractured relationship" with the two
9 therapists who were available to provide the services.⁴⁹ The PWN noted that NWA had
10 two service providers who were "ready, willing, and able" to provide services and that it
11 could explore providing services by a district therapist on a district campus.⁵⁰

12 13. Student's IEP team met in May 2011 to consider ESY.⁵¹ The team noted
13 that Student had a long history of becoming overwhelmed at testing time at the end of
14 the school year. The team noted that, for the first time, Student had completed her final
15 exams with confidence and pride, and that she was showing new found confidence in
16 her teacher assistant position and socially with her peers. The team did not want to
17 lose the momentum Student had built and recommended ESY over the summer.
18 Student attended ESY in Summer 2011 and did well.⁵²

19 December 2011 IEP

20 14. Student continued to attend NWA in Fall 2011. Her 2010 IEP was set to
21 expire in December 2011, so her IEP team met in November 2011 and created an IEP
22 that was implemented beginning December 2011.⁵³ The December 2011 IEP notes
23 that Student's projected date of graduation was May 2013.⁵⁴ This time, her present
24 levels of performance were set forth in ten areas: Attendance; Attention, Production,

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26 ⁴⁶ Thus, they withdrew consent for speech services.

27 ⁴⁷ Exhibit D119.

28 ⁴⁸ *Id.*

29 ⁴⁹ Exhibit D122.

30 ⁵⁰ *Id.*

⁵¹ Exhibit D56.

⁵² Exhibit D10.

⁵³ Exhibit D58.

⁵⁴ *Id.* at PUSD270.

1 and Learning Style; Study Skills; Social and Emotional Adjustment; Classroom Motor
2 and Visual Perceptual Skills; Language and Communication; Reading; Written
3 Expression; Math; and Concerns of the Parent/Adult Student.⁵⁵ Once again, a
4 summary of these performance levels is useful:

5 a) Student had missed 15 days of school from August through the end of
6 November 2011. She required a high level of direct teacher support to
7 make up missed work.⁵⁶

8 b) Student "presented as" motivated, engaged, and interested in learning.
9 However, teachers observed that her attention "fluctuate[d] with her
10 mood, interest in the topic, and level of stress." Student reported that her
11 mood fluctuations were due to comments by teachers that she perceived
12 as "disrespectful and unnecessary."⁵⁷

13 c) Socially, the IEP reported that Student had improved her self-advocacy
14 skills and provided an example: "She initiated and organized a student
15 meeting related to the quantity of homework assignments for high school
16 students. [Student] utilized appropriate self-advocacy skills by asking for
17 help and requesting a meeting with her peers during lunch to discuss
18 homework stress and change of rules at school. [Student] effectively
19 expressed her concerns and was mature while leading the meeting.
20 During this process, she used appropriate communication skills and
21 appeared more confident than in the past. [Student] is well liked by her
22 peers."⁵⁸

23 d) Student continued to have trouble interpreting nonverbal cues from
24 others, conveying her ideas clearly and succinctly, and using language to
25 express her opinions. Her teachers noted that she uses sarcasm and
26 teasing of others but becomes easily upset when they are used on her.
27 Her problem with code switching was less prevalent at school but she still

28 ⁵⁵ *Id.* at PUSD270-72.

29 ⁵⁶ *Id.* at PUSD270.

30 ⁵⁷ *Id.*

⁵⁸ *Id.*

1 used "mommy" and "daddy" when referring to her parents. The IEP noted
2 that she had not been receiving speech therapy since February 2011 and
3 that Parent wanted an alternative to receiving speech at NWA.⁵⁹

4 e) Student had successfully completed an Orton-Gillingham-based
5 phonetic reading program and was working on a new reading program
6 that was research-based. She was using material ranging from 5th to 7th
7 grade level for fluency, comprehension, and vocabulary. She was still
8 developing the skills of inferring meaning and relating events to each
9 other in a cause/effect relationship.⁶⁰

10 f) Student enjoyed writing and the "volume" of her writing was close to
11 grade level but the content and grammar were less developed. The
12 writing process was slow for her.⁶¹

13 g) In math, she was showing significant improvement in her basic math
14 skills, but needed direct instruction about skills and strategies. She was
15 working in algebra, but required detailed explanations. While her basic
16 math skills were improving, she had difficulty solving applied math
17 problems.⁶²

18 h) Noted concerns of Parents and Student were that Parents were not
19 observing issues with stress management relating to school, except for
20 when she perceived that teachers were being hurtful with certain
21 statements or were not accommodating her. Finally, "Parents/student
22 believes most of the incidents of 'shutting down' at school are isolated
23 incidents."⁶³

24
25 15. The IEP retained the many accommodations that Student had from the year
26 before.⁶⁴ For behavioral accommodations, Student was provided a "designated faculty

27 ⁵⁹ *Id.* at PUSD270-71.

28 ⁶⁰ *Id.* at PUSD272.

29 ⁶¹ *Id.*

30 ⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at PUSD273.

1 member to clarify expectations and difficult situations," a private place to express her
2 concerns about social situations, and extra clarification of "school expectations" with
3 consideration of her disabilities.⁶⁵ For communication accommodations, the IEP
4 stressed that repetition and clarification of instructions were needed as well as other
5 classroom language supports.⁶⁶

6 16. The December 2011 IEP noted that Student attended ESY in Summers
7 2010 and 2011. The IEP team resolved to collect data and determine eligibility for ESY
8 2012 at a later date.⁶⁷

9 17. The IEP provided 120 minutes per month of speech therapy.⁶⁸

10 18. The IEP contained goals for written expression, reading, math, and
11 comprehension and verbal expression.⁶⁹ The latter was the same goal as in the
12 December 2010 IEP,⁷⁰ to be worked on with a speech therapist.

13 19. The transition plan in the December 2011 IEP is more sparse than that in
14 the December 2010 IEP. On the transition plan page, no involvement of Student in
15 transition planning and the IEP drafting process is noted.⁷¹ However, Student's
16 participation at the IEP meeting is noted on another page.⁷² The IEP states that no
17 formal or informal transition assessments were given and that a New Way Adult Living
18 Skills Checklist was given to Parents but had not yet been returned.⁷³ Based on her
19 input, Student's strengths were noted to be "motivation" and "hard working."⁷⁴ Her
20 interests were "art" and "yearbook."⁷⁵ Her learning and training preferences were noted
21 as "chef" and "art."⁷⁶ Faculty noted strengths in organization, initiating questions when
22 needed, and using the Internet.⁷⁷ Faculty noted that Student preferred small classes,

23 ⁶⁵ *Id.*

24 ⁶⁶ *Id.* at PUSD274.

25 ⁶⁷ *Id.*

26 ⁶⁸ *Id.* at PUSD275.

27 ⁶⁹ *Id.* at PUSD279-85.

28 ⁷⁰ Compare Exhibit D55 at PUSD340-41 with Exhibit D58 at PUSD284-85.

29 ⁷¹ *Id.* at PUSD276.

30 ⁷² *Id.* at PUSD268.

⁷³ *Id.* at PUSD276.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

1 short and clear directions, and use of visual materials.⁷⁸ Faculty stated that Student
2 tells them she wants to work in her mother's small law office.⁷⁹

3 20. Student's post-secondary goals are overly simple:

4 Upon graduation, student will: [Student] states that, "After I graduate from high
5 school, I want to work in my mother's office."

6 Education/Training

7 [Student] will receive on the job training to work in her mother's office.

8 Employment

9 [Student] will work in her mother's office after graduation.

10 Independent Living (if appropriate)

11 [Student] will live at home after graduation while working in her mother's
12 office.⁸⁰

13 The December 2011 IEP states three transition activities: career exploration in food
14 and art, completing job applications, and continue trying to obtain food handler's
15 permit.⁸¹ It also provides a course of study.⁸²

16 21. At the end of December 2011, just a few weeks after the IEP had been
17 created, the IEP team changed Student's placement from NWA to a public high school
18 within Respondent School District.⁸³ She continued to be educated under the
19 December 2011 IEP. The IEP team modified the IEP to state that Student would
20 receive 270 minutes of special education daily.⁸⁴

21 Student's Education in 2012

22 22. The public high school that Student began attending operated on a
23 schedule that provided four 90-minute classes per day. Parents wanted Student to
24 take three special education classes and one general education class.⁸⁵ In Spring
25 2012, Student took three special education classes (English, Algebra, and Science)

26
27 ⁷⁸ *Id.* at PUSD277.

28 ⁷⁹ *Id.*

29 ⁸⁰ *Id.*

30 ⁸¹ *Id.*

⁸² *Id.* at PUSD278.

⁸³ Exhibit D59.

⁸⁴ *Id.*

1 and an Art I class. However, in Fall 2012 Student took only two special education
2 classes (English and Career Skills), Art II, and Child Development; the latter two were
3 in pursuit of transition education and skills. This left Student lacking 90 minutes per
4 day of special education instruction in the area of math. Respondent School District
5 concedes this and is willing to provide compensatory education. However, the parties
6 dispute the amount of compensatory education that Student should receive.⁸⁶

7 23. In April 2012, Student's IEP team met and determined that she should
8 receive speech therapy and math instruction for Summer 2012 ESY.⁸⁷ The team noted
9 that Student had demonstrated regression in math over breaks in instruction. Student
10 did not participate in this meeting.

11 24. In November 2012, Parents asked for a re-evaluation of Student.⁸⁸ The
12 team met, reviewed information, and determined that Student remained eligible under
13 SLI and SLD. The only change made was that written expression was no longer one of
14 her areas of specific learning disability.⁸⁹

15 25. During the process of re-evaluating Student at this time, Student was asked
16 about her post-high school goals. She stated that she would like to go into art or
17 cooking.⁹⁰ She noted that she was having a hard time passing the test for a food
18 handler's permit, but still wanted to work toward getting it.

19 November 2012 IEP Team Meeting

20 26. In late November 2012, Student's IEP team met again to formulate an
21 annual IEP to take effect starting December 3, 2012, the date of the expiration of the
22 December 2011 IEP.⁹¹ According to the Meeting Notice, the team was to meet from
23 9:00 AM to 11:00 AM and to discuss the annual IEP, transition services, and ESY for
24 Summer 2013.⁹² Respondent School District sent a draft IEP to Parents to help them

26 ⁸⁵ Testimony of Hare, RTP Vol. 12 at 3494 (Oct. 8, 2013).

27 ⁸⁶ That issue is addressed below in the Requested Remedies section of the Conclusions of Law.

28 ⁸⁷ Exhibit D60.

29 ⁸⁸ Exhibit D63.

30 ⁸⁹ *Id.* at PUSD04.

⁹⁰ *Id.* at PUSD19.

⁹¹ Exhibit D64.

⁹² *Id.* at PUSD213.

1 prepare for the meeting.⁹³ Parents attended the meeting, accompanied by two
2 advocates (one identified as an advocate and another identified as an educational
3 consultant).⁹⁴ Student was also present for the first part of the meeting, but left partway
4 through the meeting to go back to class. After the team had discussed both academic
5 issues and transition issues, and about an hour into the meeting, Frymet Hare, PUSD
6 Special Education Coordinator and the district representative running the meeting,
7 informed the team that the transition components of the IEP needed to be discussed on
8 another date due to the amount of issues that needed to be addressed and the limited
9 amount of time left for the meeting. She also stated that the team needed people that
10 weren't currently present at the meeting to be involved in helping with the transition
11 components. The rest of the team seemed to accept this, and the meeting moved on to
12 discuss academic and speech goals.⁹⁵

13 27. During an early part of the meeting, Parents' consultant stated that she
14 needed to leave after two hours. About one hour and forty-five minutes into the
15 meeting, Ms. Hare stated that there was "a limited amount of time" left for the meeting
16 and moved the team to start discussing new goals for Student. The team did so until
17 about five minutes after the two-hour mark. At that point, Parents' consultant stated
18 that she had to leave "in about ten minutes." The discussion of goals continued for a
19 short time. Then, Parents' advocate made a point about needing more goals than were
20 being discussed, and mentioned "reconvening" the team at a later point. In response,
21 Ms. Hare mentioned that the team would in fact be reconvening and making
22 "addendums" to the IEP. Parents' consultant immediately objected, stating that the IEP
23 could not be completed at that time.⁹⁶ Ms. Hare responded: "The District is going to
24 complete an IEP today." She stated that they would then come back and make any

25 ⁹³ Testimony of Hare, RTP Vol. 12 at 3520 Oct. 8, 2013).

26 ⁹⁴ The findings about what occurred at the meeting are primarily based on Exhibit S-52, an electronic
27 audio file of the recording made by Parents of the November 29, 2012, IEP meeting. The recording
28 abruptly ends after 2 hours and 10 minutes and does not contain the entirety of the meeting, which
continued for approximately 20 more minutes after the recording is turned off. No transcript of the
recording was presented.

29 ⁹⁵ Except for a brief period (about ten minutes) in which Parents' advocate continued to talk about
30 transition until Ms. Hare refocused the meeting to non-transition goals.

1 changes that were needed (through an addendum). Parents' advocate then asked Ms.
2 Hare to verify that she intended that the team complete the IEP that day even though
3 old goals had not been closed out, there was a lack of sufficient data to draft new goals
4 for some issues, the transition "expert" that the team wanted to talk to had not been
5 there, and there was no formal transition plan made at that time. Ms. Hare replied,
6 "That's the direction." The advocate then said, "Have a good day folks" and the
7 recording device was abruptly shut off.

8 28. What happened after that is not completely clear, but two things are clear:
9 (1) Parents, advocate, and consultant left the meeting; and (2) the remainder of the IEP
10 team continued the meeting and completed an IEP that day, including a rudimentary
11 transition plan. It is not clear whether there was any meaningful discussion after the
12 recording ends but before Parents left the meeting. Parent testified that she wanted
13 the remainder of the meeting to be postponed to another day.⁹⁷ Ms. Hare testified that
14 the IEP needed to be completed that day because the December 2011 IEP was
15 expiring in a few days.⁹⁸ The PWN that issued on December 3, 2012, stated that the
16 IEP completed at the November 29, 2012, meeting was being implemented.⁹⁹ The
17 PWN stated that Parents' request to postpone completion of the IEP was considered
18 and rejected so that Student's IEP would not expire. The PWN further noted that
19 Respondent School District was willing to reconvene the team and readdress "any
20 continuing concerns" and "amend/addend" the IEP.¹⁰⁰ It also noted that the team had
21 agreed to reconvene and "review/rewrite" the transition component of the IEP.¹⁰¹

22 December 2012 IEP

23 29. Student's 2012 IEP projected her graduation date as May 2014,¹⁰² meaning
24 that the team had determined to move it back one year from the projected date of the
25 two prior IEPs. The presentation of Student's present levels of performance is

26 ⁹⁶ The mention of an addendum by Ms. Hare implied that a completed IEP would be the result of the
27 current meeting and that the team would later make addenda to it if necessary.

28 ⁹⁷ Testimony of Parent, RTP Vol. 3 at 750 (Sept. 5, 2013).

29 ⁹⁸ Testimony of Hare, RTP Vol. 12 at 3523 (Oct. 8, 2013).

30 ⁹⁹ Exhibit D64 at PUSD245.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

1 extensive, containing a lengthy section summarizing Student's strengths, weaknesses,
2 and current evaluation data, a substantial section noting Parents concerns, and
3 sections describing her performance in communication, math, and reading.¹⁰³

4 30. The December 2012 IEP noted that Student was doing well in her classes
5 with supports. She still struggled and required modifications, but her teachers noted
6 that she was very capable of advocating for herself and asking questions when
7 needed.¹⁰⁴ Her "current evaluative data" showed results that were consistent with her
8 prior evaluations.¹⁰⁵ In addition, this IEP noted that Student was being referred to
9 Vocational Rehabilitation, an outside agency, for assistance with post-graduation
10 employment and skills.¹⁰⁶ Parents overall concerns were noted as well.¹⁰⁷

11 31. The December 2012 IEP provided eight goals for Student in math (one for
12 making change with money and one for multiplication computation), reading (one for
13 determining the central idea or theme and one for increasing oral reading fluency),
14 communication (one for expressing ideas clearly, one for improving effectiveness in
15 written and spoken language, and one for improving comprehension of spoken and
16 written language), and self-help (using three memory strategies).¹⁰⁸ It also provided
17 120 minutes per month of speech therapy.¹⁰⁹ Finally, it stated that ESY was "not
18 anticipated based upon the current level of performance."¹¹⁰

19 32. With regard to the transition component of the November 2012 IEP, minimal
20 postsecondary goals and transition services were stated,¹¹¹ as the IEP team planned to
21 revisit that area in a subsequent meeting very soon.

22 33. In January 2013, Student's IEP team met again. A district transition
23 specialist and a representative from Vocational Rehabilitation were present to help the
24

25 ¹⁰² *Id.* at PUSD224.

26 ¹⁰³ *Id.* at PUSD217-22.

27 ¹⁰⁴ *Id.* at PUSD217.

28 ¹⁰⁵ *Id.* at PUSD217-19.

29 ¹⁰⁶ *Id.* at PUSD219.

30 ¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at PUSD225-27.

¹⁰⁹ *Id.* at PUSD228, PUSD230.

¹¹⁰ *Id.* at PUSD233.

¹¹¹ *Id.* at PUSD222-23.

1 team.¹¹² The team reviewed additional transition assessments that had recently been
2 completed and revised Student's transition activities. The team tried to create more
3 specific postsecondary goals than Student had had in prior IEPs, but were unable to do
4 so. They were not able to do so because Student and Parents were not able to specify
5 the focus of transition more than that Student is interested in vocations in the areas of
6 cooking or art.¹¹³

7 34. However, the IEP team was able to further amend the transition component
8 of the December 2012 IEP.¹¹⁴ The amendment adds a lengthy summary of transition
9 assessments that began in September 2012 with an informal interview and describes
10 several formal assessments that had recently been completed.¹¹⁵ It notes that more
11 assessments will be needed. The amendment to the IEP also describes Student's
12 present levels with respect to post-graduation skills. Student reported that she had
13 trouble taking an interest inventory because she did not understand many of the
14 questions. She stated that she does not know how to get a job and she understands
15 that she has problems with memory and communication. She cannot state how to
16 locate events or places in the community, but can provide examples of good daily
17 hygiene. She does not know the names of her doctors or dentist or how to make an
18 appointment. She does chores at her house that consist of making the bed,
19 vacuuming, cleaning her room, loading the dishwasher and wiping kitchen counters.
20 She has not had any paid work experience. She stated that, after graduation, she
21 would like to work at the state fair making cotton candy and wants to live with her
22 parents.¹¹⁶

23 35. The postsecondary goals in the 2012 IEP were also amended.¹¹⁷ Under
24 training/education, Student's post-high school goal is to "become an artist or chef, do
25 on the job training with an artist."¹¹⁸ Transition activities related to that goal are listed,

26
27 ¹¹² Exhibit D65 at PUSD1320.

28 ¹¹³ *Id.*

29 ¹¹⁴ *Id.* at PUSD1317-19.

30 ¹¹⁵ *Id.* at PUSD1317.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at PUSD1318-19.

¹¹⁸ *Id.* at PUSD1318.

1 including exploring the Adult Training Center in PUSD, retaking the food handlers
2 permit test, practice interviewing skills, budgeting skills, exploring jobs on the high
3 school campus, exploring work skills through a community program (a specific program
4 is identified), and exploring taking art classes at a community college or through local
5 city programs. Under employment, Student's post-high school goal is to attend culinary
6 arts school or vocational school or do on the job training with an artist.¹¹⁹ Activities
7 related to that goal included following up with Vocational Rehabilitation for services and
8 assistance after graduation, and completing two interviews of artists or chefs or job
9 shadowing artists, art retailers, or museum curators. Finally, in the area of
10 independent/adult living, Student's post-high school goal is to live with her parents and
11 prepare to live independently in an apartment or house.¹²⁰ Activities related to that goal
12 are: develop an understanding of safety needs when living alone, become familiar with
13 use of public transportation, perform regular housekeeping, learn how to shop for
14 groceries, and develop an understanding of how to establish utilities such as water,
15 telephone, and electricity.¹²¹

16 36. Student's IEP team met again in February 2013 and amended the 2012 IEP
17 with respect to speech therapy.¹²² The amendment added additional information about
18 Student's present performance level in communication, added five communication
19 goals, and increased speech therapy minutes from 120 *per month* to 100 *per week*.

20 Summer 2013

21 37. Parents enrolled Student in a summer program at Chapel Haven West in
22 Tucson, Arizona during July and August 2013.¹²³ Chapel Haven West is a private, non-
23 profit, residential special education program that teaches independent living skills.¹²⁴

24 Speech Services in Fall 2012

25 38. With respect to the amount of speech therapy Student received in Fall 2012,
26 the evidence shows only that Student did not receive 40 minutes of required speech

27 ¹¹⁹ *Id.*

28 ¹²⁰ *Id.*

29 ¹²¹ *Id.*

¹²² Exhibit D66 at PUSD1343.

¹²³ Exhibit S-30; testimony of Hosto, RTP Vol. 1 at 135 (Sept. 3, 2013).

30 ¹²⁴ *Id.* at 125.

1 therapy in September 2012.¹²⁵ Given that this is just 7% of speech services she was to
2 receive in Fall 2012, the failure to provide those 40 minutes is not found to be a
3 material failure.

4 Student's Overall Course of Study 2007-2013

5 39. Student turned 16 and began receiving transition services in 2008.
6 Because transition planning is ongoing and "fluid,"¹²⁶ and because "course of study" is
7 a major component of transition planning,¹²⁷ her entire course of study for transition
8 planning is relevant to determining the sufficiency of the transition services she has
9 received. Since 2008, Student has taken many courses that, merely on their face, are
10 designed to provide high school students with skills necessary for post-high school life.
11 For example, Student has taken classes in career exploration, consumer math,
12 financial math, technology, and career skills.¹²⁸ Student has also taken a class that
13 teaches life skills.¹²⁹ In addition, Student has taken courses that align with her stated
14 preferences and interests, such as cooking, child development, and art.¹³⁰ She
15 continued to take these types of classes through her six years of high school and right
16 up through January 2013 when Petitioners filed this action.¹³¹ Indeed, in January 2013
17 she was taking a class entitled Transition from School to Work.¹³² She has more than
18 the required credits to graduate,¹³³ but continues to need these courses and services
19 per her IEP team.

20 Expert Testimony at Hearing

21
22
23 ¹²⁵ Petitioners argue that Student did not receive all required speech services in August 2012, December
24 2012, and January 2013 as well. However, the evidence that Petitioners cite does not support the
25 argument. Petitioners rely on the testimony of Julie Peapenburg, but she did not know if Student had
26 received speech therapy in August 2012 and testified that Student missed speech time in December
2012 because Student was absent and then finals and winter break came. Testimony of Peapenburg,
RTP Vol. 8 at 2229-32 (Sept. 23, 2013). For January 2013, the speech logs show that Student was again
absent. Exhibit S-44 at 12.

27 ¹²⁶ Testimony of Dunn, RTP Vol. 11 at 3214-15 (Oct. 7, 2013).

28 ¹²⁷ 34 C.F.R. § 300.320(b)(2).

29 ¹²⁸ Exhibit D1.

30 ¹²⁹ Exhibit D14 at PUSD1296.

¹³⁰ Exhibit D1.

¹³¹ *Id.*

¹³² Exhibit D65 at PUSD1321.

¹³³ Exhibit D83 at PUSD5527.

1 40. Eight witnesses with specialized expertise (other than special education
2 administration and teaching) testified at the hearing. Of these, three were independent
3 (Greene, Carahaly, and Gatt) and five were not independent (Farrell, Peapenburg,
4 Fash, Buckler, and Dunn). Six of these witnesses had special expertise in either
5 transition planning or speech pathology. The speech pathology witnesses (Carahaly,
6 Fash, Buckler, Peapenburg) testified about whether speech goals in the IEPs were
7 adequate and appropriate, and gave an opinion about the quantity of any potential
8 compensatory services. The transition planning witnesses (Greene, Dunn) testified
9 about whether the IEPs provided the required transition planning and services.¹³⁴

10 Speech

11 41. To support the claim that Student's IEPs did not contain appropriate speech
12 goals, Petitioners called Lynn Carahaly as a witness. Ms. Carahaly is a speech
13 pathologist who evaluated Student when she performed an Independent Educational
14 Evaluation ("IEE") focused on speech in February 2013.¹³⁵ Her main purposes in the
15 IEE were to address Parents concerns about the "interruption of services" beginning in
16 2011, and also to get a current assessment of where she was performing for purposes
17 of transitioning out of high school.¹³⁶ Her written report does not state the records she
18 reviewed in preparation for writing her report,¹³⁷ but she testified that she reviewed
19 "historical" documents, including Student's IEPs.¹³⁸ With respect to Student's
20 December 2010 IEP, she testified that the speech "goal" in it (that used a skills rubric)
21 did not address all of Student's needs and was not properly written.¹³⁹ She
22 recommended compensatory services, mostly based on what was characterized as an
23
24

25 ¹³⁴ Gatt and Farrell testified about the psychoeducational evaluations of Student that they performed and
26 were not particularly focused on speech services or transition planning.

27 ¹³⁵ Exhibit D94.

28 ¹³⁶ Testimony of Carahaly, RTP Vol. 2 at 487 (Sept. 4, 2013).

29 ¹³⁷ This caused some confusion in the record. RTP Vol. 2 at 555-65.

30 ¹³⁸ *Id.* at 484.

¹³⁹ *Id.* at 520-22. Carahaly mischaracterized it as the only speech goal (*id.* at 520), when in fact there was another one (Exhibit D54 at PUSD342A-42B). However, it appears that she had not reviewed Student's 2010 IEP prior to her report. RTP Vol. 2 at 565. It is also unclear when she reviewed the 2010 IEP before her testimony, although she had seen it by then. *Id.* at 575.

1 “interruption” in services in 2011 and 2012.¹⁴⁰ Also, she was under the erroneous
2 impression that Student had an intellectual disability.¹⁴¹

3 42. Of more weight and credibility are the testimonies of the three other speech
4 pathologists that testified: Julie Peapenburg, Deborah Fash, and Jennifer Buckler.
5 They testified that the speech “goal” using the rubric was appropriate and addressed
6 Student’s needs. For example, Julie Peapenburg, a speech pathologist who provided
7 services to Student in Fall 2012, reviewed the 2010 IEP speech skills rubric and found
8 it to be appropriate for Student in that the content of it actually contained seven
9 different goals that addressed her needs.¹⁴² Ms. Fash, a trained and experienced
10 speech pathologist who was in administration at NWA while Student was there, and
11 Ms. Buckler, a speech pathologist who evaluated Student in November-December
12 2012,¹⁴³ also testified that the skills rubric was an appropriate speech “goal” for
13 Student.¹⁴⁴

14 Transition Planning and Services

15 43. With regard to transition planning and services, two witnesses with high
16 levels of specialization in that area testified: Gary M. Greene, Ph.D., a retired university
17 professor who has taught special education transition planning and who performed an
18 independent transition evaluation for Student in January 2013;¹⁴⁵ and Rick Dunn, a 30-
19 year special education teacher who has been the “Transition Lead” for Respondent
20 School District for 10 years¹⁴⁶ and performed a “Transition Assessment Review” in April
21 2013 with regard to Student’s transition planning.¹⁴⁷ The Administrative Law Judge
22 finds both witnesses to be highly knowledgeable and credible. However, Mr. Dunn’s
23 testimony is given more weight due to his more specific knowledge of Arizona
24 requirements and Respondent School District’s process, and due to Dr. Greene’s lack

25
26 ¹⁴⁰ *Id.* at 546.

27 ¹⁴¹ *Id.* at 585.

28 ¹⁴² Testimony of Peapenburg, RTP Vol. 7 at 2171 (Sept. 11, 2013).

29 ¹⁴³ Testimony of Buckler, RTP Vol. 10 at 3065 (Sept. 25, 2013).

30 ¹⁴⁴ Testimony of Fash, RTP Vol. 8 at 2492-97 (Sept. 23, 2013); testimony of Buckler, RTP Vol. 10 at 3022-27 (Sept. 25, 2013).

¹⁴⁵ Exhibit S-16; Exhibit D92.

¹⁴⁶ Testimony of Dunn, RTP Vol. 11 at 3209 (Oct. 7, 2013).

¹⁴⁷ Exhibit D83.

1 of specific information about the particulars of Student's coursework and transition
2 planning.

3 44. Dr. Greene testified that Student's transition plans in the 2010 and 2011
4 IEPs were inadequate.¹⁴⁸ The main reason he gave for his opinion was that her
5 transition planning appeared to be weighted toward academics rather than functional
6 skills.¹⁴⁹ It was clear that this opinion was heavily based on a lack of knowledge about
7 the content of the courses she took. He had not been given that information through
8 course descriptions or other means.¹⁵⁰ When shown, through cross-examination, that
9 her coursework did indeed address functional skills and relate to transition, Dr. Greene
10 backed away from his earlier opinion about her coursework and modified his
11 conclusion.¹⁵¹ His honesty in that regard boosted his credibility, but his former opinion
12 with regard to Student's coursework was now weakened.

13 45. Of greater weight was Mr. Dunn's testimony about Student's transition
14 planning from the time she entered high school because he was more familiar with the
15 coursework and the process that Respondent School District uses to provide transition
16 services. He testified that the process for determining and providing transition services
17 is ongoing and fluid.¹⁵² One year may be more focused on academics and another on
18 functional skills.¹⁵³ He had reviewed Student's transition planning from the time she
19 entered high school in 2007 and found that she had been given informal and formal
20 transition assessments over that time,¹⁵⁴ but that Respondent School District was not
21 getting specific information from Student or Parents so that the post-high school
22 planning became generalized.¹⁵⁵ He also testified that the coursework she was
23 provided, which contained a great deal of focus on post-high school skills,¹⁵⁶ was a very
24

25 ¹⁴⁸ Testimony of Greene, RTP Vol. 1 at 270-83 (Sept. 3, 2013) and RTP Vol. 2 at 292-315 (Sept. 4,
26 2013). He had much less criticism for the 2012 IEP.

27 ¹⁴⁹ *Id.* at 358.

28 ¹⁵⁰ RTP Vol. 6 at 1799 (Sept. 10, 2013).

29 ¹⁵¹ *Id.* at 1840-49.

30 ¹⁵² Testimony of Dunn, RTP Vol. 11 at 3214-15 (Oct. 7, 2013).

¹⁵³ *Id.* at 3216.

¹⁵⁴ *Id.* at 3226.

¹⁵⁵ *Id.* at 3231.

¹⁵⁶ *Id.* at 3236.

1 important piece of the transition plan.¹⁵⁷ What made the planning for her less specific
2 and more general was the lack of a concrete and realistic direction for Student's post-
3 high school life.¹⁵⁸ Mr. Dunn summarized this by testifying that if one looks at Student's
4 high school IEPs in a broad sense, there has been a general "focus" on transition and
5 providing transition services. What hindered it from being better focused was Student's
6 absenteeism, changing of schools, guardianship, and lack of specificity of vocational
7 interests.¹⁵⁹

8 46. Dr. Greene also pointed out that the 2010 and 2011 IEPs contained very
9 little information about transition assessments that had been given and that they did not
10 contain goals that were very specific. He characterized them as not offering "a road
11 map based on what's on the piece of paper."¹⁶⁰ In fact, his testimony about these
12 aspects of the transition planning in the 2010 and 2011 IEPs is supported by the
13 documents themselves, which were poorly written.

14 47. However, the evidence of record shows that transition assessments were
15 given prior to and throughout the period at issue, even though not appearing in the
16 IEPs.¹⁶¹ These included, among others, formal assessments given in 2008 and
17 2012,¹⁶² interviews with Student,¹⁶³ and other informal assessments,¹⁶⁴ as well as
18 information about Student that was relevant to post-high school skills and activities that
19 was gleaned during evaluations.¹⁶⁵ So, even though the IEPs were poorly written, the
20 assessments required by the IDEA were performed.

21 Other Findings

22 48. The record shows that at all times relevant, Parents had a meaningful
23 opportunity to participate in creating Student's IEPs.

24 ¹⁵⁷ *Id.* at 3235.

25 ¹⁵⁸ *Id.* at 3253. This is corroborated by a statement from Dr. Greene, in which he testified that Parents
26 told him their primary goal was to get Student graduated from high school and they had no idea what she
would do after that. RTP Vol. 2 at 359 (Sept. 4, 2013).

27 ¹⁵⁹ Testimony of Dunn, RTP Vol. 11 at 3320, 3398-99.

¹⁶⁰ RTP Vol. 7 at 1914 (Sept. 11, 2013).

¹⁶¹ See RESPONDENT'S POST-HEARING OPENING MEMORANDUM at 16-18.

28 ¹⁶² Exhibit D47 at PUSD462; Exhibit D89 at PUSD17-18.

¹⁶³ Exhibits D68, D69, and D70.

29 ¹⁶⁴ Information from teachers and others that was described in the present levels of performance sections
30 of her IEPs.

1 49. The record shows a large number of absences for Student during the
2 relevant time period. Indeed, the record shows that since Student entered high school
3 in 2007, and through the 2011-12 school year, she had not attended about 280 school
4 days.¹⁶⁶ This makes it difficult for Respondent School District to provide education and
5 services to Student and could cause her to lose educational benefit.

6 **CONCLUSIONS OF LAW**

7 **APPLICABLE LAW**

8 *The Meaning of a FAPE*

9 1. Through the IDEA, Congress has sought to ensure that all children with
10 disabilities are offered a FAPE (free appropriate public education) that meets their
11 individual needs.¹⁶⁷ These needs include academic, social, health, emotional,
12 communicative, physical, and vocational needs.¹⁶⁸ To provide a FAPE, school districts
13 must identify and evaluate all children within their geographical boundaries who may be
14 in need of special education and services. The IDEA sets forth requirements for the
15 identification, assessment, and placement of students who need special education, and
16 seeks to ensure that they receive a FAPE. A FAPE consists of "personalized
17 instruction with sufficient support services to permit the child to benefit educationally
18 from that instruction."¹⁶⁹ The IDEA mandates that school districts provide a "basic floor
19 of opportunity," nothing more.¹⁷⁰ The IDEA does not require that each child's potential
20 be maximized.¹⁷¹ 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."¹⁷²

24 ¹⁶⁵ Exhibits D86 and D89.

25 ¹⁶⁶ Testimony of Hare, RTP Vol. 5 at 1321 (based on Exhibits D103, D104, D105, D106, and D109).

26 There are 180 days in a school year. *Id.*

27 ¹⁶⁷ 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

28 ¹⁶⁸ *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).

29 ¹⁶⁹ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

30 ¹⁷⁰ *Id.*, 458 U.S. at 200.

¹⁷¹ *Id.* at 198.

¹⁷² *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)).

The IEP

2. Once a student is determined eligible for special education services, a team composed of the student's parents, teachers, and others familiar with the student formulate an IEP (Individualized Education Program) that generally sets forth the student's current levels of educational and functional performance and sets annual goals that the IEP team believes will enable the student to make progress in the general education curriculum.¹⁷³ The IEP tells how the student will be educated, especially with regard to the student's needs that result from the student's disability, and what services will be provided to aid the student. The student's parents have a right to participate in the formulation of an IEP.¹⁷⁴ The IEP team must consider the strengths of the student, concerns of the parents, evaluation results, and the academic, developmental, and functional needs of the student.¹⁷⁵ To foster full parent participation, in addition to being a required member of the team making educational decisions about the student, school districts are required to give parents written notice when proposing any changes to the IEP,¹⁷⁶ and are required to give parents, at least once a year, a copy of the parents' "procedural safeguards," informing them of their rights as parents of a student with a disability.¹⁷⁷

3. When a student turns 18 years of age, IDEA parental rights transfer to the student, unless the student has been determined to be legally incompetent under state law.¹⁷⁸ Under Arizona law, students who are 18 years old and are competent can delegate educational decision-making authority back to their parents.¹⁷⁹

Transition Planning

4. Beginning no later than when a student turns age 16, the student's IEP must contain two additional items: (a) postsecondary goals and (b) "transition services."¹⁸⁰

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

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

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

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

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

¹⁷⁸ 20 U.S.C. § 1415(d)(B).

¹⁷⁹ 20 U.S.C. § 1415(m); A.R.S. § 15-773(A).

¹⁷⁹ A.R.S. § 15-773(B).

¹⁸⁰ 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b).

1 These two items are often referred to as a transition plan. Postsecondary goals must
2 be appropriate and measurable, and must be "based upon age appropriate transition
3 assessments related to training, education, employment, and, where appropriate,
4 independent living skills. . . ." ¹⁸¹ Transition services are a "coordinated set of activities"
5 that include instruction, related services, community experiences, development of
6 employment and other post-school adult living skills, and, if appropriate, acquisition of
7 daily living skills and provision of a functional vocational assessment. ¹⁸² Provision of
8 these activities is based on the student's needs and takes into account the student's
9 strengths, preferences, and interests. ¹⁸³ The student's transition plan must be results-
10 oriented and focused on improving the student's academic and functional achievement
11 in order to facilitate the student's movement from school to post-school life. ¹⁸⁴ A
12 student's post-school life might include postsecondary education, vocational education,
13 integrated or supported employment, adult education, adult services, independent
14 living, or community participation. ¹⁸⁵ Transition services include courses of study and
15 must be provided so as to assist the student to reach his postsecondary goals. ¹⁸⁶

16 *Reimbursement for Parental Private School Placement*

17 5. Parents who dispute whether an IEP provides a FAPE to a student, and who
18 as a result enroll that student in a private program, may receive reimbursement for the
19 costs of that private enrollment under certain circumstances. ¹⁸⁷ The program offered by
20 the school district must fail to provide a FAPE to the student and the private school
21 must be an "appropriate" placement. ¹⁸⁸ A private school placement may be appropriate
22 even if it does not operate under public school standards. ¹⁸⁹ Under these
23 circumstances, parents may "enroll the child in a private preschool, elementary school,
24 or secondary school without the consent of or referral by the [school district]. . ." and

25
26 ¹⁸¹ 34 C.F.R. § 300.320(b)(1).

27 ¹⁸² 34 C.F.R. § 300.43(a)(2).

28 ¹⁸³ *Id.*

29 ¹⁸⁴ 34 C.F.R. § 300.43(a)(1).

30 ¹⁸⁵ *Id.*

¹⁸⁶ 34 C.F.R. § 300.320(b)(2).

¹⁸⁷ 34 C.F.R. § 300.148.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

1 seek reimbursement from the school district for the expense of that enrollment from a
2 court or hearing officer.¹⁹⁰ Indeed, parents have “an equitable right to reimbursement
3 for the cost of providing an appropriate [private] education when a school district has
4 failed to offer a child a [free appropriate public education].”¹⁹¹ Furthermore, the
5 placement does not have to meet IDEA requirements.¹⁹²

6 6. However, an award for reimbursement can be reduced or denied in various
7 circumstances.¹⁹³ An award may be reduced or denied if the parents have not given
8 adequate notice as set forth in the IDEA.¹⁹⁴

9 Compensatory Education

10 7. Compensatory education is an equitable remedy that may be awarded in
11 appropriate cases wherein students have not been provided a FAPE.¹⁹⁵ Although the
12 goal is to compensate a student for missed education or services, there is no obligation
13 to provide day-for-day compensation for time missed.¹⁹⁶ Appropriate relief is that which
14 is designed to ensure that the student is appropriately educated within the meaning of
15 the IDEA.¹⁹⁷ Case-specific factors should be taken into account to craft an appropriate
16 remedy.¹⁹⁸

17 **DECISION**

18 Burden of Proof and Basis of Decision

19 8. A parent who requests a due process hearing alleging non-compliance with
20 the IDEA must bear the burden of proving that claim.¹⁹⁹ The standard of proof is
21 “preponderance of the evidence,” meaning evidence showing that a particular fact is
22
23

24 ¹⁹⁰ 34 C.F.R. § 300.148(b) and (c).

25 ¹⁹¹ *Union School Dist. v. Smith*, 15 F.3d 1519, 1524 (9th Cir. 1994) (quoting *W.G. v. Bd. of Trustees*, 960
F.2d 1479, 1485 (9th Cir. 1992)).

26 ¹⁹² *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 13 (1993).

27 ¹⁹³ 34 C.F.R. § 300.148(d).

28 ¹⁹⁴ 34 C.F.R. § 300.148(d)(1). *Anchorage School District v. M.P.*, 689 F.3d 1047, 1059 (9th Cir. 2012)
lists other equitable factors that might reduce reimbursement, none of which have been raised here.

29 ¹⁹⁵ *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994).

30 ¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

1 "more probable than not."²⁰⁰ Therefore, Petitioners bear the burden of proving by a
2 preponderance of evidence that Respondent School District failed to provide Student a
3 FAPE through the December 2010 IEP, the November 2011 IEP, and the November
4 2012 IEP. If Student was denied a FAPE, they also must show that the parental
5 placement at Chapel Haven West for Summer 2013 was appropriate and that they are
6 entitled to the compensatory education they are requesting.

7 9. This tribunal's determination of whether or not Student received a FAPE must
8 be based on substantive grounds.²⁰¹ For substantive analysis of IEPs, this tribunal's
9 review of the IEPs is limited to the contents of the documents.²⁰² Therefore, the
10 question of whether the IEPs are reasonably calculated to provide educational benefit
11 to Student must be decided on the basis of the content of the IEPs themselves.

12 10. Procedural violations in and of themselves do not necessarily deny a
13 student a FAPE. If a procedural violation is alleged and found, it must be determined
14 whether the procedural violation either (1) impeded the student's right to a FAPE; (2)
15 significantly impeded the parents' opportunity to participate in the decision-making
16 process; or (3) caused a deprivation of educational benefit.²⁰³ If one of those three
17 impediments has occurred, the student has been denied a FAPE due to the procedural
18 violation.

19 Claim 1: Student's 2010, 2011, and 2012 IEPs failed to provide transition
20 planning that offered her meaningful educational benefit.

21 11. Petitioners' main argument is that the transition planning provided by
22 Respondent School District did not offer Student meaningful benefit. This argument is
23 based almost entirely on the pre-hearing opinion of Dr. Greene. However, Dr.
24 Greene's pre-hearing opinion does not stand up to scrutiny. As found above, Dr.

25 ²⁰⁰ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
26 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431,
27 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action*
28 *No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

29 ²⁰¹ 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. §§ 300.513(a)(1).

30 ²⁰² *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001) ("only those services identified or
described in the . . . IEP should have been considered in evaluating the appropriateness of the program
offered) (relying on *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) (IDEA requirement of a
formal, written offer should be enforced rigorously)).

1 Greene modified his opinion upon learning more information during the hearing,
2 especially about Student's academic coursework that was geared toward independent
3 living skills and post-high school activities. Also, his opinion is outweighed by that of
4 Mr. Dunn, who had specific information about the transition services and programming
5 Student had been receiving since entering high school.

6 12. While it is true that the transition components of the 2010 and 2011 IEPs
7 were poorly drafted and provided minimal information, the Administrative Law Judge
8 cannot say that, even on their face, those IEPs did not offer Student some educational
9 benefit. Those IEPs offered highly generalized guidance, but this was due to the levels
10 of performance that Student presented to the IEP teams. The evidence supports a
11 conclusion that Student's maturity is delayed, and that she was not at the point where
12 she can make more specific vocational decisions. Her Parents, too, are not clear about
13 what she should do after high school. Therefore, rather than showing that Respondent
14 School District responsible for the vague and imprecise transition plans, as Petitioners'
15 argue, the evidence shows that Student was simply not yet at the point where she was
16 ready to make specific vocational decisions. The IEPs were individualized to Student's
17 generally stated preferences and interests at the time.

18 13. The evidence offered by Respondent School District shows that the
19 coursework Student has taken and continues to take has offered her exposure to pre-
20 vocational activities and independent living skills. Perhaps her many absences and her
21 level of maturity kept her from fully accessing that exposure, but the IDEA only requires
22 Respondent School District to offer the benefits.

23 14. As for the transition component of the 2012 IEP, it was amended in 2013,
24 shortly after the filing of the due process complaint, and provides many activities that
25 will help Student move closer to her post-high school goals after she graduates in May
26 2014. That IEP offers Student meaningful benefit as well.

27 15. Petitioners have failed to prove that the transition portions of Student's
28 2010, 2011, and 2012 IEPs failed to offer meaningful educational benefit, and therefore
29 a FAPE.

30 ²⁰³ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).
34

1 Claim 2: Respondent School District failed to implement Student's 2010
2 and 2011 IEPs by failing to implement portions of her transition plan.

3 16. Petitioners make the claim that Respondent School District failed to
4 implement three components of her transition plans in 2011 and 2012. They claim that
5 Respondent School District: (1) failed to provide teaching of interviewing skills with an
6 academic coach; (2) failed to follow up with Parents regarding independent living skills
7 that were being worked on at home; and (3) failed to assist Student with obtaining a
8 food handlers permit. However, these arguments are merely stated and are not
9 developed in their Closing Brief; Petitioners do not cite to the record to support these
10 claims.²⁰⁴ In addition, the record does not support them.²⁰⁵

11 17. Respondent School District did not fail to implement Student's 2010 and
12 2011 IEPs by failing to implement portions of her transition plan.

13 Claim 3: Student's 2010, 2011, and 2012 IEPs did not have measurable
14 speech goals.

15 18. Petitioners' claim that the skills rubrics used for speech therapy in Student's
16 2010 and 2011 IEPs did not provide Student a FAPE is not supported by the evidence.
17 The testimonies of Ms. Fash, Ms. Peapenburg, and Ms. Buckler support a finding, as
18 made above, that the rubrics were appropriate and meaningful.

19 19. Student's 2010, 2011, and 2012 IEPs had appropriate and measurable
20 speech goals.

21 Claim 4: Respondent School District failed provide an alternative speech
22 therapy provider for Student throughout 2011.

23 20. As found above, Parents withdrew consent for speech therapy in February
24 2011 due to Student's expressed problems with the two speech therapy providers who
25 had been providing the services since August 2010. Petitioners argue that Respondent
26 School District should have provided Student with speech therapy through a different
27 provider in 2011. That argument is based on a false premise: that Student had to be
28 provided the services by someone other than the two speech therapists who were

29

30 ²⁰⁴ The claims are stated twice, both times without citation to support in the record. PETITIONERS' POST-
HEARING CLOSING BRIEF at 11, 28.

1 ready, willing, and able to provide Student the services. Parents are not entitled to
2 their choice of service providers.²⁰⁶ The record shows no reason why one of the two
3 available service providers could not have worked with Student, whose perceptions
4 could have been addressed directly. Parents made the choice to discontinue speech
5 services and Respondent School District is not responsible to make up those services.

6 21. Petitioners have failed to prove that Respondent School District violated the
7 IDEA when speech services were discontinued at Parents request during 2011.

8 Claim 5: Student's 2011 IEP did not provide Student enough speech
9 therapy minutes by providing 120 minutes per month.

10 22. Petitioners' claim that the 2011 IEP was deficient because it did not provide
11 100 minutes of speech therapy per week but only provided 120 minutes per month is
12 not supported by the evidence. Speech pathologists Peapenburg and Buckler credibly
13 testified that 100 minutes per week was excessive and that 120 minutes per month was
14 appropriate.²⁰⁷

15 23. Student's 2011 IEP provided adequate speech therapy minutes.

16 Claim 6: Respondent School District violated the IDEA by determining the
17 amount of speech services in the 2010 and 2011 IEPs without parental
18 input.

19 24. Petitioners argue that the change in speech minutes made by Student's IEP
20 teams in the 2010 and 2011 IEPs were made without Parents input.²⁰⁸ However.
21 Petitioners cite nothing in the record that would support these claims.²⁰⁹ Moreover, the
22 Administrative Law Judge has found that at all times Parents have had a meaningful
23 opportunity to participate in the creation of the IEPs at issue.²¹⁰

24 ²⁰⁵ RESPONDENT'S POST-HEARING RESPONSE MEMORANDUM at 4-7.

25 ²⁰⁶ *B.R. v. San Ramon Valley Unified Sch. Dist.*, 2007 U.S. Dist. LEXIS 9135, *21 (N.D. Cal. Jan. 25,
26 2007); see also *Slama v. Independent Sch. Dist. No. 2580*, 259 F. Supp. 2d 880, 885 (D. Minn. 2003)
27 ("[N]othing in the [Supreme] Court's [IDEA] opinions suggest that parents can usurp the District's role in
selecting its staff to carry out the IEP's provisions").

27 ²⁰⁷ Finding of Fact 5.

28 ²⁰⁸ Petitioners call the change a "reduction" and frame the question as if Student is entitled to the same
29 amount of services each year unless Respondent School District can show otherwise. This approach
erroneously attempts to shift the burden to Respondent School District and ignores the intent of the IDEA
for each IEP to be created annually based on current levels of performance.

30 ²⁰⁹ PETITIONERS' POST-HEARING CLOSING BRIEF at 12, 19.

²¹⁰ Finding of Fact 48.

1 25. Petitioners have failed to prove that the amount of speech services provided
2 to Student in the 2010 and 2011 IEPs was determined without meaningful participation
3 by Parents.

4 Claim 7: Respondent School District failed to provide the amount of
5 speech services required in Student's IEP for the months of August 2012,
6 September 2012, December 2012 and January 2013.

7 26. Petitioners have shown that Student did not receive all of the speech
8 therapy minutes that were required in her IEP in Fall 2012.²¹¹ However,

9 when a school district does not perform exactly as called for by the IEP,
10 the district does not violate the IDEA unless it is shown to have materially
11 failed to implement the child's IEP. A material failure occurs when there
12 is more than a minor discrepancy between the services provided to a
13 disabled child and those required by the IEP.²¹²

14 The evidence shows that Student missed 7% of her speech services in Fall 2012 due to
15 Respondent School District's failure.²¹³ This is not a material failure.²¹⁴

16 27. Respondent School District did not materially fail to provide Student the
17 speech services in her IEP in Fall 2012.

18 Claim 8: Respondent School District failed to provide Student special
19 education instruction minutes required by her 2011 IEP in math, reading,
20 and writing.

21 28. With regard to special education instructional minutes under the 2011 IEP,
22 Respondent School District has conceded that a semester of math instruction was not
23 given to Student in Fall 2012, apparently due to oversight.²¹⁵ Petitioners also claim that
24 significant instructional time for special education reading and writing were also not
25 provided.²¹⁶ However, the only evidence cited in support of that claim is a self-serving

26
27 ²¹¹ Finding of Fact 38.

28 ²¹² *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 811 (9th Cir. 2007).

29 ²¹³ Finding of Fact 38.

30 ²¹⁴ Especially since there would be no harm anyway because Student's IEP went back to 100 per week of
speech therapy in February 2013.

²¹⁵ Finding of Fact 22.

²¹⁶ PETITIONERS' POST-HEARING CLOSING BRIEF at 3, 21.

1 statement of compensatory education that Petitioners claim is owed to Student.²¹⁷

2 Even so, the evidence does not support the claim.²¹⁸

3 29. Petitioners have not proven that Respondent School District failed to
4 provide Student with the amount of reading and writing instruction required by her 2011
5 IEP.

6 Claim 9: Respondent School District violated the IDEA by continuing to
7 conduct an IEP meeting in November 2012 and making IEP team
8 decisions after Parents left the meeting.

9 30. Petitioners claim that Respondent School District violated the IDEA by
10 continuing the November 29, 2012 IEP meeting after Parents left with their advocates.
11 The Administrative Law Judge has carefully considered the evidence in this regard and
12 concludes that Parents left the meeting on their own volition and that Respondent
13 School District did not err by completing the IEP on that date. All members of the team
14 knew that Student's 2011 IEP was expiring in a few days and all had agreed to hold the
15 meeting just prior to that expiration. Respondent School District offered Parents the
16 opportunity to complete the IEP that day and then meet again at any time and make
17 any addenda that were needed, so that they could get a basic IEP in place and not let
18 the existing IEP expire. Indeed, the IEP team met two other times shortly after that to
19 address transition and speech issues. Petitioners have shown no reason why they
20 could not stay on November 29, finish the IEP, and then schedule further meeting to
21 discuss and consider other changes to it. Parents made a choice to leave the meeting
22 early and cannot now complain that the rest of the team finished its work. They were
23 clearly informed that the IEP team needed to complete an IEP at that meeting, but
24 could reconvene and make amendments at a later time, any time Parents wanted. The
25 Administrative Law Judge finds the ruling of the Ninth Circuit Court of Appeals in *Doug*
26 *C. v. State of Hawaii Dept. of Educ.* instructive:

27 When confronted with the situation of complying with one procedural
28 requirement of the IDEA or another, we hold that the agency must make a
29 reasonable determination of which course of action promotes the

30 ²¹⁷ Exhibit S-65.

²¹⁸ See RESPONDENT'S POST-HEARING OPENING MEMORANDUM at 32-33.

1 purposes of the IDEA and is least likely to result in the denial of a FAPE.
2 In reviewing an agency's action in such a scenario, we will allow the
3 agency reasonable latitude in making that determination.²¹⁹

4 Here, Respondent School District made a reasonable decision under the circumstances
5 and allowed Parents an avenue to raise additional concerns. The team was already
6 going to meet again for transition planning and speech therapy assessment. Parents
7 chose to leave the meeting and cannot hold Respondent School District responsible for
8 their failure to participate in the final 20 minutes.

9 31. Respondent School District's decision to continue the November 29, 2012,
10 IEP meeting so that Student would have an IEP in place starting December 3, 2012,
11 was a reasonable decision and did not deprive Parents of meaningful participation
12 because Parents chose to leave the meeting early.

13 Claim 10: Respondent School District failed to provide Student a FAPE in
14 her 2012 IEP by failing to provide for ESY services in Summer 2013.

15 32. As the evidence showed, Student's IEPs in December 2010 and December
16 2011 provided that the IEP team would meet the following Springs to determine if
17 Student was eligible for ESY. Both times the teams reconvened and she was found
18 eligible. However, in November 2012 she was found to not be eligible and the team did
19 not decide to reconvene. Parents claim that Student was improperly denied ESY for
20 Summer 2013 for two reasons: (1) because the IEP team made the decision during the
21 November 29, 2012, IEP meeting without Parents present; and (2) because "it
22 remained clear that [Student] lacked critical skills in the areas of social communication,
23 pragmatics and post-secondary transition." The first reason has been addressed
24 above. Parents left the meeting early and were not present when the subject of ESY
25 was addressed. Thus, they were not present when the decision was made because
26 they left early. The second reason is merely stated in the Closing Brief, but no support
27 from the record is cited.²²⁰ Therefore, Petitioners have failed to prove the claim.

28 ²¹⁹ 720 F.3d 1038, 1046 (9th Cir. 2013).

29 ²²⁰ PETITIONERS' POST-HEARING CLOSING BRIEF at 25-26. The hearing record is extraordinarily large and it
30 is not possible to keep it all in one's mind. Without citation to specific points in the record, the
Administrative Law Judge is at a loss as to the evidentiary basis for the claim. Furthermore, Petitioners
do not argue that Student was entitled to ESY because she had received it in prior years. Even if they

1 33. The evidence does not show that the IEP team erred in determining that
2 Student did not qualify for ESY services for Summer 2013.

3 Requested Remedies

4 34. Because the underlying violations were not proven, and Student was offered
5 a FAPE, Petitioners' requests for compensation for ESY 2013, speech, reading, and
6 writing are denied. In addition, Petitioners' request for placement at Chapel Haven
7 West is denied because the evidence has not shown a violation of the IDEA with
8 regard to transition services.

9 35. Moreover, although a request for reimbursement of Dr. Greene's fee for his
10 transition evaluation has been made, Petitioners provided no evidence that they have
11 met the requirements of 34 C.F.R. § 300.502, which governs reimbursement for IEEs.
12 Therefore, the request for reimbursement of Dr. Greene's fee is denied.

13 36. The one remedy that is awarded is compensatory education for math
14 instruction, based on Respondent School District's concession that such instruction
15 was not given to Student in Fall 2012, even though it was called for in her IEP. Based
16 on the evidence and expert opinions, the Administrative Law Judge finds that 40 hours
17 of one-on-one instruction will compensate Student for that loss.

18 37. Petitioners argue for 69 hours of one-on-one special education math
19 instruction, but provide no analysis of how that number was reached.²²¹ Respondent
20 School District's witnesses Dan Farrell and Ms. Hare both agreed that 40 hours of one-
21 on-one special education math instruction will compensate Student.²²² The evidence
22 supports the opinions of Mr. Farrell and Ms. Hare.

23 Conclusion

24 38. Petitioners have failed to prove their claims. Other than the lapse in math
25 instruction, the Administrative Law Judge finds no violations of the IDEA and, therefore,
26 does not award any reimbursement or compensation other than for math instruction.

27
28
29 had argued that point, the law does not support it, as eligibility for ESY is to be established each year
30 with each IEP. 34 C.F.R. § 300.106.

²²¹ PETITIONERS' POST-HEARING CLOSING BRIEF at 35.

²²² Testimony of Farrell, RTP Vol. 6 at 1676 (Sept. 10, 2013); testimony of Hare, RTP Vol. 5 at 1285 (Sept. 9, 2013).

1 39. Student is entitled to 40 hours of one-on-one special education math
2 instruction, to be provided by Respondent School District.

3 **DECISION**

4 Based on the findings and conclusions above, IT IS HEREBY ORDERED that
5 Respondent School District provide Student with 40 hours of one-on-one special
6 education math instruction as soon as practicable.

7 IT IS FURTHER ORDERED that no further action be taken and this matter be
8 closed.

9 Done this day, March 18, 2014.

10 /s/ Eric A. Bryant
11 Administrative Law Judge
12

13 **RIGHT TO SEEK JUDICIAL REVIEW**

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

24 Copy sent by **electronic mail** and regular mail
25 this 18 day of March 2014, to:

26
27 Wendy M. Housman
28 Law Offices of Wendy Housman
29 Counsel Pro Hac Vice for Petitioners
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11 Transmitted electronically to:

12 Arizona Department of Education
13 Dispute Resolution Unit
14 ATTN: Kacey Gregson, Dispute Resolution Coordinator
15 Arizona Department of Education

16 By: eab
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