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STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

█, a Student, by and through
Parent(s) █,
Petitioners,
v.
FLOWING WELLS UNIFIED SCHOOL
DISTRICT,
Respondent.

No. 12C-DP-016-ADE

ADMINISTRATIVE LAW JUDGE
DECISION DISMISSING COMPLAINT

HEARING: Convened and conducted on March 21, 2012. The hearing record concluded on March 21, 2012.¹

APPEARANCES: Student █ failed to make any appearance through his designated representative, Parent █ ("Parent"). Denise M. Bainton, Esq., represented Flowing Wells Unified School District ("District").

WITNESSES:² For District: Kathleen MacCallum Mohr ("Vision Teacher"); Tracy Antista ("Special Education Teacher for Reading and Writing"); Diane Harper ("Math Teacher"); Jeanna Gehrts ("Special Education Teacher for Math and Writing").

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

Parent, on behalf of Student, brought this due process action raising multiple issues, including requests for additional vision services, additional instructional assistance to help Student, accommodations, additional assistance in the form of a one-on-one aide, and summer school. Parent also alleged that Student's IEP was not being implemented.³

The law governing this due process proceeding is the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code (U.S.C.) §§ 1400-1482 (as re-

¹ Pursuant to discussion at pre-hearing conference, the Court Reporter's transcript is the official record of the due process hearing. The Tribunal has, by statute, also made a digital recording of the proceedings.

² To avoid the use of proper names, and for confidentiality, witnesses are designated a generally descriptive title to be used in the body of the Decision if necessary. The witnesses' proper names are grouped here for ease of redaction.

³ Petitioners filed this due process complaint notice on November 1, 2011. Therefore, the allegations on which any due process determination could be made would relate to actions or inactions of District for the period from November 1, 2009 through November 1, 2011.

1 authorized and amended in 2004),⁴ and its implementing regulations, 34 Code of
2 Federal Regulations (C.F.R.) Part 300,⁵ as well as the Arizona Special Education
3 statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and
4 implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401 through R7-2-406.

5 At the scheduled time of the hearing, Parent failed to appear. Despite awaiting
6 her appearance for one hour, Parent failed to appear at the hearing and failed to notify
7 either the District or Tribunal of any reason for her absence or her failure to appear.⁶

8 The District presented Exhibits A and B, which were admitted to the hearing
9 record. The District confirmed that Parent had made the mandatory disclosure to the
10 District. However, Parent failed to apprise the Tribunal of her disclosure to the District
11 and did not provide copies to the Tribunal of her disclosure. Therefore, as a result of
12 Petitioners' failure to appear at the hearing and present any exhibits to the hearing
13 record, the hearing record contains no exhibits attributed to Petitioners.

14 At the hearing, District presented testimony demonstrating its positions with
15 regard to implementation of Student's IEP and the request for a one-on-one aide for
16 Student. Additionally, District moved to dismiss the due process complaint based on
17 the failure of Petitioners to meet the burden of persuasion as a result of Parent's failure
18 to appear at the hearing and present any evidence for consideration.

19 Based on the following Findings of Fact, Conclusions of Law, and Order, the
20 Administrative Law Judge dismisses Petitioners' Complainant.

21 FINDINGS OF FACT

22 1. At the December 1, 2011 pre-hearing conference, the Administrative Law
23 Judge identified sixteen (16) issues that had been raised by Petitioners in the
24 November 1, 2011 due process complaint notice ("Complaint").

25 2. Following the December 1, 2011 pre-hearing conference, the parties
26 participated in a December 5, 2011 Resolution Session in their efforts to resolve the
27 Complaint without the need for a due process hearing.

28 ⁴ Through Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of
29 2004," IDEA 2004 became effective on July 1, 2005.

30 ⁵ The current federal regulations became effective October 13, 2006; several amendments were
subsequently promulgated, effective December 31, 2008.

⁶ On March 21, 2012, the Office of Administrative Hearings received no phone call, e-mail or facsimile

1 3. On January 9, 2012, District notified the Tribunal of the results of the
2 December 5, 2011 Resolution Session through District's Motion for Partial Dismissal
3 ("Motion"). The District identified multiple issues as resolved at the resolution session
4 and requested dismissal of the issues that were resolved by the parties. The District
5 indicated that Parent, at the end of the session, withdrew her agreement on a resolution
6 for several issues that District believed to have been resolved at the meeting. The
7 District also identified several allegations raising issues not falling within the IDEA and
8 requested dismissal of any issue that did not fall within the IDEA. Finally, the District
9 noted that several issues remained in dispute for a due process hearing.

10 4. On February 16, 2012, the Administrative Law Judge issued an ORDER
11 granting dismissal of the issues (a) determined to have been resolved through the
12 resolution session, (b) granting dismissal of issues determined not to be special
13 education issues within the IDEA, and (c) granting conditional dismissal to several
14 specified issues unless those issues were services, or related to services, that were
15 listed in Student's IEP.

16 5. The Administrative Law Judge's February 16, 2012 ORDER is
17 incorporated by reference into this Decision.

18 CONCLUSIONS OF LAW

19 1. Through the IDEA, Congress has sought to ensure that all children with
20 disabilities are offered a FAPE that meets their individual needs.⁷ These needs include
21 academic, social, health, emotional, communicative, physical, and vocational needs.⁸
22 To do this, school districts are required to identify and evaluate all children within their
23 geographical boundaries who may be in need of special education and services. The
24 IDEA sets forth requirements for the identification, assessment and placement of
25 students who need special education, and seeks to ensure that they receive a free
26 appropriate public education. A FAPE consists of "personalized instruction with

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29 from Parent with regard to her absence or failure to appear.

30 ⁷ See 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

⁸ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

1 sufficient support services to permit the child to benefit educationally from that
2 instruction.”⁹

3 2. Pursuant to IDEA, the District is required to annually review a student’s
4 IEP to determine whether the annual goals are being achieved and to revise the IEP as
5 appropriate to address the lack of expected progress, the results of any reevaluations,
6 information about the student provided by parents, the student’s anticipated needs and
7 any other unique matters.¹⁰ These IEP determinations and the placement decisions are
8 made by a group of people, the IEP Team which includes the parents, knowledgeable
9 about the student, about the available evaluations and about the placement options.¹¹
10 One other mandate is that a school district ensure that a child’s placement is
11 determined annually, is based on the IEP and is as close as possible to the child’s
12 home.¹²

13 3. A petitioner who files for a due process hearing alleging non-compliance
14 with the IDEA must bear the burden of proving that claim.¹³ The standard of proof is
15 “preponderance of the evidence,” meaning evidence showing that a particular fact is
16 “more probable than not.”¹⁴ Therefore, Petitioners bear the burden of proving by a
17 preponderance of evidence the allegations, claims and arguments raised.

18 4. In this case, Petitioners failed to present any evidence regarding the
19 remaining allegations of failure to implement Student’s IEP. Additionally, Petitioners
20 failed to present any evidence regarding the allegations of Student’s need for a one-on-
21 one aide.

22 5. The Administrative Law Judge concludes that Parent has *not* demonstrated
23 that District violated the IDEA or denied FAPE to Student through any action or alleged
24 failures. For the reasons stated herein, the Administrative Law Judge concludes that

25 ⁹ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

26 ¹⁰ See 34 C.F.R. § 300.324(b).

27 ¹¹ See 34 C.F.R. §§ 300.116(a) and 300.501(c). The Administrative Law Judge is now bound to make
determinations within the confines of the IDEA and its purposes and mandates.

28 ¹² See 34 C.F.R. § 300.116(b).

29 ¹³ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).


30 ¹⁴ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
(1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431,
437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No.*
J-84984, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

1 Petitioners have not met their burden to demonstrate any of the allegations and,
2 therefore, Petitioners' claims in the Complaint must be denied and the Complaint must
3 be dismissed.

4 **ORDER**

5 Based on the findings and conclusions above,
6 IT IS ORDERED that Petitioners' Complaint is dismissed.
7 ORDERED this 23rd day of March, 2012.

8 OFFICE OF ADMINISTRATIVE HEARINGS

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10 Kay A. Abramo
11 Administrative Law Judge

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15 **RIGHT TO SEEK JUDICIAL REVIEW**

16 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this
17 Decision and/or Order is the final decision at the administrative level.
18 Furthermore, any party aggrieved by the findings and decisions made
19 herein has the right to bring a civil action, with respect to the complaint
20 presented, in any State court of competent jurisdiction or in a district court
21 of the United States. While the federal law sets forth a time frame for an
22 action for judicial review of a Decision, the federal law also allows that a
23 State may have a different time frame.

24 *Pursuant to Arizona rule A.A.C. R7-2-405(H)(8), any appeal of a*
25 *Hearing Officer's decision must be filed within 35 calendar days after*
26 *receipt of the Hearing Officer's decision.*¹⁵

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28 ¹⁵ A.A.C. R7-2-405, Due Process Standards Relating to Special Education, was amended and, as
29 amended, was adopted by the State Board of Education on January 26, 2006 for purposes of comports
30 Arizona's due process hearing rules with IDEA 2004. Those rules contained a new provision regarding an
appeal time frame. Those amendments have been published, and the Code updated, by the Arizona
Secretary of State in A.A.C. Supp. 09-1.

Copies distributed and mailed this 23 day of March, 2012, to:



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By Cruz Serrano