

STATE OF ARIZONA  
OFFICE OF ADMINISTRATIVE HEARINGS

Student, by and through Parent No. 11C-DP-004-ADE

Petitioners,

v.

Gilbert Unified School District,

Respondent.

ADMINISTRATIVE  
LAW JUDGE  
DECISION

HEARING: January 31, 2011 and February 1, 2011

APPEARANCES: Parent appeared on behalf of Petitioners; attorney Heather Pierson of UDALL, SHUMWAY & LYONS PLC, appeared on behalf of the Gilbert Unified School District ("GUSD"),<sup>1</sup> accompanied by Tommi Pierce, Director of Special Education, GUSD. Certified Court Reporter Karine Moore-Deysie was present and recorded the proceedings as the official record of the hearing.

WITNESSES: Ann Neatherton, School Psychologist, GUSD; Diana Monson, Administrative Secretary, GUSD; Laura Schuler, Special Education Teacher, GUSD ("Special Education Teacher A"); Shannon Weiss, Speech Language Pathologist, GUSD; Ann Toy, Occupational Therapist, GUSD; Michelle Irvin, Physical Therapist, GUSD; Vauna Clifford, Teacher, GUSD ("Regular Education Teacher"); Janet Knopf, Special Education Teacher, GUSD ("Special Education Teacher B"); Petitioner ("Parent").<sup>2</sup>

ADMINISTRATIVE LAW JUDGE: Eric A. Bryant

Parent brings this due process action, on behalf of Student, challenging an individualized educational program ("IEP") adopted by Respondent School District. The law governing these proceedings is the Individuals with Disabilities Education Act ("IDEA"), 20 United States Code ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),<sup>3</sup> and its implementing regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well as the Arizona Special Education statutes, Arizona Revised

<sup>1</sup> Co-counsel Matthew White also appeared and assisted Ms. Pierson.

<sup>2</sup> Throughout this Decision, proper names of teachers and parents are not used in order to protect confidentiality of Student and to promote ease of redaction.

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

1 Statutes (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona  
2 Administrative Code ("A.A.C.") R7-2-401 through R7-2-406.<sup>4</sup>

3 Procedural History

4 Petitioners filed the original due process complaint on August 24, 2010. The  
5 complaint alleged that an IEP created in May 2010 does not provide Student a free  
6 appropriate public education ("FAPE"), raising procedural and substantive challenges to  
7 it. Respondent School District responded in defense of the proposed IEP. Parent then  
8 filed a substantial reply to Respondent School District's response. A telephonic pre-  
9 hearing conference was held on September 22, 2010, and it was noted that Parent  
10 wanted to have an Independent Educational Evaluation ("IEE") performed before the  
11 hearing. This tribunal extended the time for hearing so that the IEE could be  
12 performed. In addition, this tribunal deemed Parent's substantial reply to be an  
13 amendment of the original due process complaint.

14 Thereafter, both parties requested postponement of the hearing to await the IEE,  
15 and the request was granted. A pre-hearing conference was held on January 10, 2011,  
16 during which the issues to be presented at the hearing were discussed and clarified.  
17 On January 13, 2011, this tribunal issued an Order Clarifying Issues for Hearing that  
18 listed the issues and gave the parties an opportunity to clarify the issues further. By the  
19 time another pre-hearing conference was held on January 21, 2011, the eight issues  
20 listed below were established, clarified, and confirmed by this tribunal's Order of  
21 January 21, 2011.

22 Evidence and Issues at Hearing

23 The parties presented testimony and Exhibits at a formal evidentiary hearing  
24 held on January 31, 2011 and February 1, 2011. The parties presented testimony from  
25 the witnesses listed above and offered into evidence Petitioners' Exhibits 1 through 8,  
26 with exclusion of portions of Exhibit 5,<sup>5</sup> and Respondent School District's Exhibits A  
27 through LL, except for Exhibits F, I, and FF, which were marked but not offered.

28  
29 <sup>4</sup> It is noted that these rules have not yet been published by the Arizona Secretary of State.

30 <sup>5</sup> Pages 3, 8, and 9 of Exhibit 5 were not admitted. On page 2 of Exhibit 5, only the following paragraphs were admitted: (1) entry for 4/9/2009 regarding Order of Protection; and (2) entry for 4/16/2009 regarding school records.

1 After the Exhibits and testimony were admitted, the parties argued to the tribunal  
2 the following issues:

3 (A) Is the May 2009 IEP invalid because it does not provide  
4 the same amount of services as Student's prior IEP from  
5 another school district? Does Student need the same  
6 amount of services as in the prior IEP?

7 (B) Does Student meet the criteria for special education  
8 eligibility under the category of Mental Retardation?

9 (C) Does Student meet the criteria for special education  
10 eligibility under the category of Other Health Impaired due to  
11 ADHD?

12 (D) Did Respondent School District fail to assist Parent with  
13 getting compensatory education/services to Student that  
14 were owed to Student by another school district? If so, was  
15 Respondent School District required to assist?

16 (E) Did Respondent School District get proper consent from  
17 Student's mother to evaluate Student in April/May 2009?

18 (F) Does Student require physical therapy as a related  
19 service?

20 (G) Did Respondent School District act timely after Parent  
21 requested an IEE in about August 2010?

22 (H) Did Respondent School District violate the IDEA by  
23 failing to provide Parent with "school reports" from April 2009  
24 through approximately May 2010?

25 Parent argued that there were both procedural and substantive violations of the IDEA.  
26 His main contention is that Student is not mildly mentally retarded as Respondent  
27 School District has found him to be. Parent also strongly urges that Respondent  
28 School District had no cause to reduce the amount of services Student was receiving  
29 when Student came into the Respondent School District in May 2009.

30 Respondent School District defends its findings and actions, arguing that there  
has been no IDEA violation.

1 The Administrative Law Judge has considered the entire record, including the  
2 testimony and Exhibits,<sup>6</sup> and now makes the following Findings of Fact, Conclusions of  
3 Law, and Order finding no violations of the IDEA and finding that Respondent School  
4 District has provided a FAPE to Student.

#### 5 FINDINGS OF FACT

6 1. Student is an 11-year-old currently in the fourth grade. He was born in [REDACTED] of  
7 [REDACTED] parents. He was born prematurely with a low body weight,<sup>7</sup> and is a small child.  
8 He had developmental delays as well.<sup>8</sup> He moved to the United States with his parents  
9 in 2005 and began kindergarten shortly thereafter.

#### 10 Education Prior to Gilbert Unified School District

11 2. He arrived in Arizona with his parents in 2007. Although he had been found  
12 eligible for special education by his previous school in California (due to orthopedic  
13 impairment), the Scottsdale Unified School District ("SUSD") found that he was not  
14 eligible for special education in February 2008, specifically declining to find that he was  
15 eligible due to Attention Deficit Hyperactivity Disorder ("ADHD"), orthopedic impairment,  
16 a Specific Learning Disability, or Mild Mental Retardation. When a speech evaluation  
17 was performed shortly thereafter, however, SUSD found him eligible in the category of  
18 Speech-Language Impairment ("SLI"). In May 2008, he was determined eligible for  
19 special education due to SLI and ADHD as an "Other Health Impairment."<sup>9</sup> He then  
20 moved with his parents to another school district.

21 3. In the Fall of 2008, Student began third grade in the Paradise Valley Unified  
22 School District ("PVUSD") with an IEP due to his qualification for special education in  
23 the category of Speech-Language Impairment ("SLI"). His PVUSD IEP was amended  
24 in February 2009. In addition to special education in math, writing, and speech therapy,  
25 Student received related services in occupational therapy, adaptive PE, and physical  
26 therapy for functional deficits in those areas.

27  
28 <sup>6</sup> The Administrative Law Judge has read and considered each admitted Exhibit, even if not mentioned in  
29 this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if  
30 the witness is not specifically mentioned in this Decision.

<sup>7</sup> Exhibit V at 3.

<sup>8</sup> *Id.*

<sup>9</sup> Exhibit V has a detailed history of psycho-educational evaluations performed for Student.

1 3. In March 2009, Student's parents were on the road to getting divorced and  
2 Student's mother obtained an Order of Protection against Parent [REDACTED] (hereinafter  
3 "Parent"). The protective order required Parent to have no contact with mother or  
4 Student and included a restriction keeping Parent from the school grounds.<sup>10</sup> In April  
5 2009, the order was modified to restrict contact only with Student's mother.<sup>11</sup>

6 4. Also in April 2009, SUSD, Student's former district, agreed to provide Student  
7 approximately 63 hours of speech therapy as compensation for lost speech services.<sup>12</sup>

8 Gilbert Unified School District

9 5. In March 2009, Student's mother enrolled him in Respondent School  
10 District.<sup>13</sup> In the enrollment documentation, Student's mother did not give any  
11 information about Parent.<sup>14</sup> She did, however, provide Respondent School District with  
12 a copy of the March 2009 Order of Protection against Parent.

13 6. Respondent School District obtained permission from mother in April 2009 to  
14 evaluate Student in the areas of occupational therapy ("OT") and physical therapy  
15 ("PT").<sup>15</sup> In addition, mother filed documentation that mentioned Parent by name.<sup>16</sup>  
16 Thereafter, evaluations were performed and Respondent School District set up two IEP  
17 meetings to review the evaluations, one with mother and a separate one with Parent.<sup>17</sup>  
18 The OT evaluation recommended services,<sup>18</sup> but the PT evaluation did not, finding that  
19 Student could safely access the school environment and recommending adaptive PE to  
20 address higher level coordination and lifelong leisure skills.<sup>19</sup> The IEP team met  
21 separately with both mother and Parent.<sup>20</sup> The team was in agreement that PT should  
22 be discontinued, including mother and Parent.<sup>21</sup> Student continued to qualify for special  
23 education under the categories of SLI and Other Health Impairment ("OHI"). Speech

24 \_\_\_\_\_  
25 <sup>10</sup> Exhibit E.

26 <sup>11</sup> Exhibit 5, p. 2.

27 <sup>12</sup> Exhibit 4.

28 <sup>13</sup> Exhibit C.

29 <sup>14</sup> Exhibit D.

30 <sup>15</sup> Exhibits H and I.

<sup>16</sup> Exhibit J.

<sup>17</sup> Exhibits G and L.

<sup>18</sup> Exhibit F.

<sup>19</sup> Exhibit K.

<sup>20</sup> Exhibits M and N.

<sup>21</sup> *Id.*

1 services were reduced from 240 minutes per month to 180 minutes per month, while  
2 OT was reduced from 30 minutes per week to 60 minutes per month. Adaptive PE  
3 service time was increased, as was resource support time for math and writing. Help  
4 from a teacher's aide in the classroom was increased for reading and social  
5 studies/science. As noted, mother and Parent were in agreement with these changes  
6 at the time.

7 7. Student was educated under the May 2009 IEP for the 2009-2010 school  
8 year.

9 2010 Evaluations

10 8. In April 2010, Student was due for a three-year evaluation and Respondent  
11 School District obtained permission from both mother and Parent to perform a full re-  
12 evaluation of Student.<sup>22</sup> Respondent School District then performed a comprehensive  
13 evaluation in May 2010 that included the following areas: psycho-educational, speech  
14 language, and occupational therapy.<sup>23</sup> The comprehensive evaluation report concluded  
15 that Student remained qualified for special education in the area of SLI and would  
16 continue to receive speech therapy. Student was also found to continue to need OT  
17 and adaptive PE.

18 9. Based on testing performed by Respondent School District School  
19 Psychologist Ann Neatherton, she reached the conclusion that Student met the criteria  
20 for Mildly Mentally Retarded ("MMR") and thus qualified for special education in a  
21 second category of Mental Retardation. Student's Multidisciplinary Evaluation Team  
22 ("MET") adopted that conclusion.<sup>24</sup> The MET included Student's mother.<sup>25</sup> Student's  
23 IEP team then proposed that Student be placed in "the Academic SCILLS program"  
24 within the district.<sup>26</sup> That program is a self-contained classroom with programming for  
25 significant delays and is located on a different public school campus than Student's  
26 home school that he had attended in 2009-2010.

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<sup>22</sup> Exhibits P, Q, R, and S.

29 <sup>23</sup> Exhibit V.

30 <sup>24</sup> Exhibit V at 17.

<sup>25</sup> Exhibits W and X.

<sup>26</sup> Exhibit Z.

1 10. Ann Neatherton contacted Parent by telephone on May 10, 2010, and  
2 reviewed the evaluation results with him. She informed him of the new program that  
3 was being recommended for placement. Her note about the conversation states that  
4 Parent approved the change in eligibility category and proposed placement. Shortly  
5 thereafter, Parent expressed concern and disagreement about the evaluation results  
6 and expressed opposition to the proposed placement.

7 11. The results of the psycho-educational evaluation done by Ann Neatherton  
8 surprised Parent. Looking closely at the evaluation report, it shows that she performed  
9 numerous tests and assessments for Student, gathering information from parents and  
10 teachers and her own observations of Student.<sup>27</sup> The results of the testing of Student's  
11 cognitive functioning showed functioning that was well below average in many areas  
12 and in the mildly mentally retarded range for general intellectual ability.<sup>28</sup> The testing  
13 also found that Student's academic functioning was below average and his ability to  
14 apply academic skills was well below average.<sup>29</sup> As for adaptive behavior, information  
15 was obtained from Student's Regular Education Teacher and Special Education  
16 Teacher A, as well as from Student's mother, about how Student functions at school  
17 and at home. "Adaptive behavior refers to an individual's typical performance of the  
18 day-to-day activities required for personal and social sufficiency."<sup>30</sup> Based on the  
19 teachers' information, the results showed that Student was overall in the mildly mentally  
20 retarded range. From the mother's information, he was in the moderately low range.  
21 Based on that data and other results from psycho-educational testing as noted in the  
22 report, the MET concluded that Student met the criteria for qualification under IDEA as  
23 Mildly Mentally Retarded.<sup>31</sup>

24 12. Testing results also showed significant findings for characteristics of  
25 ADHD.<sup>32</sup>

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27 <sup>27</sup> Exhibit V.

28 <sup>28</sup> *Id.* at 8-9.

29 <sup>29</sup> *Id.* at 9.

30 <sup>30</sup> *Id.* at 10. The assessment measures what a student actually does rather than what the student is able  
to do. *Id.*

31 <sup>31</sup> *Id.* at 17.

32 <sup>32</sup> *Id.* at 11.

1 13. Ann Neatherton testified at the hearing in support of her conclusion that  
2 Student meets the criteria for eligibility under Mental Retardation. She explained the  
3 significance of the testing results to be that both intellectual functioning deficits were  
4 found concurrently with adaptive behavior deficits. She testified that the combination of  
5 the two is what is considered mental retardation. She ruled out the possibility that  
6 language is significantly affecting the results because Student has been in the United  
7 States educational system since kindergarten and speaks primarily English. From the  
8 evidence in the record, English is the primary language spoken in Student's mother's  
9 home, where Student spends most of his time when not in school.

10 14. This tribunal finds that Ms. Neatherton's experience and training give her  
11 opinion credibility, and her explanation of the results and conclusions of her testing are  
12 entitled to great weight.

13 15. In late July 2010, the evidence shows that Parent sent an e-mail requesting  
14 an IEE.<sup>33</sup> He believed that he was sending the request to Ann Neatherton. However,  
15 testimony showed that the e-mail address Parent used, unbeknownst to him, was not  
16 the correct address. About a month later, Parent sent the request to Respondent  
17 School District's Director of Special Education and it was received.<sup>34</sup> Respondent  
18 School District responded to the request on August 30, 2010, but sent the response to  
19 mother's address and not Parent's address.<sup>35</sup> On September 22, 2010, the response  
20 was sent to Parent's address after Respondent School District learned of the error  
21 during a pre-hearing telephonic conference held by this tribunal.<sup>36</sup>

22 16. In November 2010, an IEE was performed by Guillermo Blanco, also a  
23 School Psychologist.<sup>37</sup> He interviewed Parent and Student, reviewed Student's prior  
24 evaluations, reviewed the proposed May 2010 IEP, and performed his own testing and  
25 assessments. Mr. Blanco's conclusion is not very clear. He reports the scores of the  
26 testing he performed, many of which are reported as in the "borderline" and "mild"  
27 ranges in the intellectual assessment category. With regard to adaptive behavior, Mr.

28 <sup>33</sup> Exhibit 7.

29 <sup>34</sup> Exhibit DD.

30 <sup>35</sup> Exhibit GG.

<sup>36</sup> Exhibit HH.

<sup>37</sup> Exhibit I; Exhibit II.



1 Blanco used an assessment completed by Parent, which Mr. Blanco states must be  
2 viewed cautiously because it seems to not fit with the other information about Student.<sup>38</sup>  
3 Mr. Blanco concludes by describing Student as "a student with cognitive variability  
4 ranging from mild to borderline levels and with subtest scatter suggesting potentials for  
5 higher functioning on multiple cognitive measures."<sup>39</sup> There is no further explanation of  
6 what that statement means and it is not fully clear to the Administrative Law Judge. In  
7 addition, Mr. Blanco did not testify at the hearing to explain the statement.

8 17. Nowhere in the evaluation done by Mr. Blanco does he explicitly rule out a  
9 finding of Mild Mental Retardation for Student.

10 18. This tribunal finds that the evaluation results from that performed by Ms.  
11 Neatherton are entitled to greater weight than those of Mr. Blanco.

12 19. Parent testified on his own behalf as his sole witness at the hearing.

13 20. Finally, the evidence shows that Student spends most of his time in his  
14 mother's custody since the separation of his parents in early 2009.

#### 15 CONCLUSIONS OF LAW

16 1. Through the IDEA, Congress has sought to ensure that all children with  
17 disabilities are offered a free appropriate public education that meets their individual  
18 needs.<sup>40</sup> These needs include academic, social, health, emotional, communicative,  
19 physical, and vocational needs.<sup>41</sup> To do this, school districts must identify and evaluate  
20 all children within their geographical boundaries who may be in need of special  
21 education and services. The IDEA sets forth requirements for the identification,  
22 assessment and placement of students who need special education, and seeks to  
23 ensure that they receive a free appropriate public education. A free appropriate public  
24 education ("FAPE") consists of "personalized instruction with sufficient support services  
25 to permit the child to benefit educationally from that instruction."<sup>42</sup> The IDEA mandates  
26

27  
28 <sup>38</sup> *Id.* at 13.

29 <sup>39</sup> *Id.*

30 <sup>40</sup> 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

<sup>41</sup> *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

<sup>42</sup> *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

1 that school districts provide a "basic floor of opportunity," nothing more.<sup>43</sup> It does not  
2 require that each child's potential be maximized.<sup>44</sup>

### 3 APPLICABLE LAW

4 2. Only children with disabilities that affect their education are eligible for special  
5 education and related services under the IDEA. One of the categorical disabilities  
6 defined by the IDEA is Mental Retardation, which means "significantly subaverage  
7 general intellectual functioning, existing concurrently with deficits in adaptive behavior  
8 and manifested during the developmental period, that adversely affects a child's  
9 educational performance."<sup>45</sup> Another is Other Health Impairment which can include  
10 medical diagnoses such as ADHD.<sup>46</sup> After a child is evaluated, a team of educators,  
11 professionals, and parents reviews the results and determines if eligibility categories  
12 are met.<sup>47</sup>

13 3. Once a child is determined eligible for special education services, a team  
14 composed of the child's parents, teachers, and others formulate an IEP that, generally,  
15 sets forth the child's current levels of educational performance and sets annual goals  
16 that the IEP team believes will enable the child to make progress in the general  
17 education curriculum.<sup>48</sup> The IEP tells how the child will be educated, especially with  
18 regard to the child's needs that result from the child's disability, and what services will  
19 be provided to aid the child. The child's parents have a right to participate in the  
20 formulation of an IEP.<sup>49</sup> The IEP team must consider the strengths of the child,  
21 concerns of the parents, evaluation results, and the academic, developmental, and  
22 functional needs of the child.<sup>50</sup>

23 3. If a parent disagrees with the results of an evaluation, the parent has a right  
24 to receive an IEE, performed by a professional who is not employed by the school  
25 district.<sup>51</sup> The results of the IEE must be considered by school district.<sup>52</sup>

26 <sup>43</sup> *Id.*, 458 U.S. at 200.

27 <sup>44</sup> *Id.* at 198.

28 <sup>45</sup> 34 C.F.R. § 300.8(a)(6).

29 <sup>46</sup> 34 C.F.R. § 300.8(a)(9).

30 <sup>47</sup> 34 C.F.R. § 300.306.

<sup>48</sup> 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

<sup>49</sup> 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

<sup>50</sup> 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

<sup>51</sup> 34 C.F.R. § 300.502.

1 4. A parent who requests a due process hearing alleging non-compliance with  
2 the IDEA must bear the burden of proving that claim.<sup>53</sup> The standard of proof is  
3 "preponderance of the evidence," meaning evidence showing that a particular fact is  
4 "more probable than not."<sup>54</sup> Therefore, Petitioners bear the burden of proving by a  
5 preponderance of evidence that Respondent School District has failed to provide a FAPE  
6 through the May 2010 IEP proposed for Student.

7 5. This tribunal finds that Petitioners have not met their burden.

### 8 DECISION

9 Parent has raised several issues in his complaint and made several arguments at  
10 the close of the evidence. The issues are hereby addressed in turn.

11 (A) Is the May 2009 IEP invalid because it does not provide  
12 the same amount of services as Student's prior IEP from  
13 another school district? Does Student need the same  
14 amount of services as in the prior IEP?

#### 14 **ALJ Decision: No**

15 The Administrative Law Judge has considered the questions posed and finds that the  
16 May 2009 IEP did not need to provide the same amount of services as the prior IEP.  
17 Parent has presented no authority that states that Respondent School District was  
18 required to provide the same amount of services to Student when his IEP was required  
19 to be updated in May 2009. Respondent School District evaluated areas of concern  
20 and obtained data that would show the IEP team what services and what level of  
21 services Student needed. That is how the IEP team is should function and the record  
22 supports the conclusions reached by the team in the May 2009 IEP.

23 (B) Does Student meet the criteria for special education  
24 eligibility under the category of mental retardation?

#### 25 **ALJ Decision: Yes**

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27 <sup>52</sup> *Id.*

28 <sup>53</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Petitioners' argument that the burden of proof is  
shifted in this case is without merit and is hereby summarily rejected.

29 <sup>54</sup> *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,  
30 437, 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 The Administrative Law Judge finds that the evidence supports the finding of mild  
2 mental retardation. This tribunal has found that the greater weight of the evidence  
3 supports the finding that Student meets the criteria for IDEA eligibility under the  
4 category of mental retardation.

5 (C) Does Student meet the criteria for special education  
6 eligibility under the category of Other Health Impaired due to  
7 ADHD?

8 **ALJ Decision: No, not until current medical  
9 documentation is provided.**

10 The record shows that Student has characteristics of ADHD. Respondent School  
11 District has expressed willingness to add eligibility under the Other Health Impairment  
12 category if Parent provides an updated medical diagnosis of ADHD. As such  
13 supporting documentation is necessary to corroborate the underlying health condition,  
14 Respondent School District is not required to find eligibility in that category without the  
15 documentation.

16 (D) Did Respondent School District fail to assist Parent with  
17 getting compensatory education/services to Student that  
18 were owed to Student by another school district? If so, was  
19 Respondent School District required to assist?

20 **ALJ Decision: No**

21 The Administrative Law Judge answers the questions posed in the negative. Parent  
22 has provided no authority to show that Respondent School District is required to assist  
23 him with getting the compensatory education that Scottsdale Unified School District  
24 owes to Student. Student's parents are responsible for seeing that SUSD carries out its  
25 obligations.

26 (E) Did Respondent School District get proper consent from  
27 Student's mother to evaluate Student in April/May 2009?

28 **ALJ Decision: Yes**

29 The Administrative Law Judge concludes that proper consent was obtained. The  
30 evidence of record shows that Student's mother spoke English well enough to interact  
with the school, interact with the IEP team, and provide consent for evaluations. Parent

1 did not call mother as a witness or obtain a statement from her about her English  
2 fluency. Parent's argument that Student's mother did not understand English well  
3 enough to give consent is based on circumstantial evidence that is not persuasive.

4 (F) Does Student require physical therapy as a related  
5 service?

6 **ALJ Decision: No**

7 The Administrative Law Judge concludes that Student does not require physical therapy  
8 services. The evidence supports Respondent School District's decision to discontinue  
9 providing physical therapy to Student. Parent did not provide a current evaluation that  
10 states that Student needs physical therapy in order to access the school setting.  
11 Student is receiving adaptive PE to help him with recreational skills.

12 (G) Did Respondent School District act timely after Parent  
13 requested an IEE in about August 2010?

14 **ALJ Decision: Yes**

15 The Administrative Law Judge finds no violation regarding the request for an IEE. The  
16 evidence shows that once Respondent School District received Parent's request, it was  
17 acted upon. The mistaken address caused a delay of about one month, but there is no  
18 evidence showing that this harmed Student or that it harmed Parent's ability to obtain  
19 an IEE.

20 (H) Did Respondent School District violate the IDEA by  
21 failing to provide Parent with "school reports" from April 2009  
22 through approximately May 2010?

23 **ALJ Decision: No**

24 The Administrative Law Judge concludes that the record does not contain sufficient  
25 evidence to show a violation as alleged in this claim.

26 In conclusion, the May 2009 and May 2010 IEPs offered Student a FAPE.  
27  
28  
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**ORDER**

Based on the findings and conclusions above, IT IS HEREBY ORDERED that the due process complaint filed by Petitioners on August 24, 2010, as amended on September 9, 2010, against Respondent School District be **dismissed**.

Done this 1<sup>st</sup> day of March 2011.

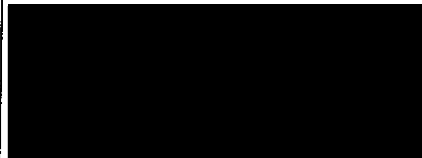
OFFICE OF ADMINISTRATIVE HEARINGS

  
Eric A. Bryant  
Administrative Law Judge

**RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a district court of the United States. Any action for judicial review must be filed within 90 days of the date of the Decision or, if the State has an explicit time limitation for bringing this type of action, in such time as the State law allows.

Copy sent by **electronic mail** and regular mail  
this \_\_\_ day of March 2011, to:



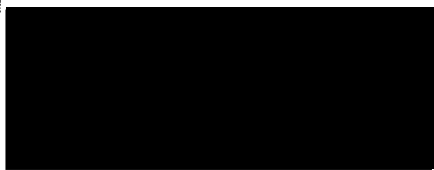
1 Copy sent by **electronic mail** and regular mail  
2 this   1   day of March 2011, to:

3 Heather R. Pierson  
4 Udall, Shumway & Lyons PLC  
5 30 West First Street  
6 Mesa, AZ 85201-5300  
7 **hrp@udallshumway.com**

8 Copy mailed by interdepartmental mail this   1   day of March 2011, to:

9 Colette Chapman, Exceptional Student Services  
10 Arizona Department of Education  
11 ATTN: Kacey Gregson  
12 1535 West Jefferson  
13 Phoenix, AZ 85007

14 Courtesy copy sent this   1   day of March 2011, to:



15  
16  
17  
18 By \_\_\_\_\_

*Cruz Serrano*