

STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS

_____, Student, by and through Parent(s)
_____,
Petitioners,
v.
CASA GRANDE ELEMENTARY SCHOOL
DISTRICT,
Respondent.

No. 11C-DP-027-ADE
No. 11C-DP-056-ADE

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: Conducted on January 26, 2012, January 27, 2012 and January 30, 2012. The hearing record concluded on February 22, 2012 with receipt of the Court Reporter's transcript.¹

APPEARANCES: Parent _____ ("Parent") represented Student _____. ("Student"). Attorneys Denise Lowell-Britt and Heather R. Pierson represented Casa Grande Elementary School District ("Casa Grande").

WITNESSES:² For Petitioners: Parent _____ ("Parent"); Maria Singh, Fourth Grade Teacher ("4-G Teacher"); Melissa Chesney, Teacher of Visually Impaired ("VI Teacher"); Laurie Escalante, School Nurse, Mesquite ("Nurse"); Marc Molinaro, Physical Education Teacher ("PE Teacher"); Jeff Lavendar, Villago Middle School Principal ("Principal"); Kelly Grapp, Resource Teacher in 5th Grade, Mesquite ("Resource, 5th"); Stacy Miles, Fifth Grade Teacher, Mesquite ("5-G Teacher"); Angela Irvin, Resource Teacher in 6th Grade ("Resource, 6th").

For Casa Grande: Anne Gordon, Physical Therapist ("PT"); Sheila Powell, Occupational Therapist ("OT"); Stefan Reid, Social Skills ("SSKI") Teacher ("SSKI Teacher"); Jefre Kleinhanzl, School Psychologist ("Psychologist"); Alice Balkow, On-Assignment Special Education Teacher (OA Special Education Teacher); Maria Berecin-Rascon, Director of Special Education Programs, Casa Grande Elementary School District ("Director, Special Education").

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

¹ Pursuant to discussion at pre-hearing and due process hearing, the Court Reporter's transcript is the official record of the due process hearing. White & Associates reporting services transcribed the proceedings and the company provided its transcript to the parties and to the Tribunal. 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.

1 Parent, on behalf of Student, bring this due process action raising multiple
2 issues, primarily asserting that Casa Grande failed to provide a free and appropriate
3 public education ("FAPE") as a result of several alleged actions or inactions.

4 **COMPLAINTS MADE BY PETITIONERS³**

5 As set forth in Parent's Amended Complaint, Petitioners allege:

- 6 1. Respondent failed to provide FAPE when (a) Student's IEPs were not
7 individualized; (b) Student failed to meet his IEP goals; (c) Student was not
8 provided social skills services; (d) Student was not given related services; (e)
9 Student was not given accommodations of magnification and large print
10 resources; and (f) Student was given tests that were not enlarged. Related to
11 this issue, Parent alleges that Student's visual impairments (partial sight,
12 blindness, and tracking issues) were not addressed through necessary
13 equipment, through structured elective classes and through adaptive specialized
14 physical education. In regard to services, Parent alleges that Respondent failed
15 to provide assistive technology devices in elementary school.
- 16 2. Respondent denied extended school year ("ESY") services.
- 17 3. Student was unnecessarily disciplined (suspended) for behavior problems and,
18 thus, deprived of his opportunity to be educated. Parent alleges that Student's
19 behavior problems were caused by his frustrations and problems as a result of
20 his vision impairments.
- 21 4. Student was not educated in the least restrictive environment ("LRE") with non-
22 disabled peers when he was inappropriately placed and when he should have
23 been in the general education classroom with intensive reading services and
24 vision services.
- 25 5. Respondent failed to properly identify and evaluate Student and, thus, he was
26 not given appropriate services.
- 27 6. Respondent prevented parental participation at IEP meetings by not providing
28 educational records (and information to be considered at the meeting) in
29 advance of the IEP meetings, by never adding parental suggestions and
30

³ Petitioners' allegations proceeding to due process are set forth in Tribunal's January 11, 2012 ORDER.

1 concerns to the IEPs, by not taking parents' schedules into account (not having
2 mutually agreeable times) and by not advising parents of the persons who
3 would/would not be in attendance at IEP meetings.

4 **REMEDIES REQUESTED BY PETITIONERS**

5 As remedies for the alleged violations, Petitioners requested the following:

6 (a) compensatory services (at Respondent's expense of \$160,000.00) for
7 education from February 2009 to the present;

8 (b) ESY services;

9 (c) private day school placement at ACCEL until Student meets age/grade level;

10 (d) transportation costs to and from school and related services, activities and
11 functions;

12 (e) tuition reimbursement and transportation costs for private placement at
13 ACCEL for May 11, 2011 through May 25, 2011;

14 (f) severance between Respondent and the family for compensatory services
15 and education related services, current and future;⁴

16 (g) an opportunity for the court to evaluate all Student's years with Respondent
17 (2002-2003 through 2010-2011);⁵

18 (h) reimbursement for all parents' costs relating to these matters, including pro-
19 se attorney fees and other attorney fees;

20 (i) provision of all Student's eye-related examinations and services by
21 Respondent, and provision of all Student's eye wear (yearly prescription glasses and
22 sunglasses, safety goggles, swimwear and recreational glasses), for the remainder of
23 Student's school years.⁶

24
25
26 ⁴ At the pre-hearing conference with regard to this request, Parent essentially indicated that, if
27 compensatory services were demonstrated to be necessary because Respondent failed to provide them,
28 she would want Respondent to pay for all the necessary services to catch Student up ("because he's so
29 far behind") but not have any control over the services to be provided by any new school. Parent
30 understood that she could "sever" ties by indicating that she no longer wanted Respondent to provide
special education services to Student.

⁵ By application of the Tribunal's December 21, 2011 ORDER, Petitioners' remedy request designated
herein as (g) shall be dismissed.

⁶ In the Tribunal's December 21, 2011 ORDER, the Administrative Law Judge incorrectly labeled some
remedy requests; those designations are corrected herein through use of bolded lettering.

APPLICABLE LAW

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-authorized and amended in 2004),⁷ and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 300,⁸ as well as the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401 through R7-2-406.

DUE PROCESS HEARING

The parties presented testimony and Exhibits at the three hearing sessions. During the hearing sessions, Petitioners presented testimony from the witnesses noted above, and Petitioners' Exhibits designated 4, 4A, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20 and 21 were admitted to the hearing record.⁹ Respondent presented evidence from the witnesses noted above, and Respondent's Exhibits designated A through Z, AA through ZZ, AAA through ZZZ and AAAA through ZZZZ, with the exception of four exhibits: W, LL, RRRR and SSSS.¹⁰ The Court Reporter's transcript is the official record of the due process hearing.

The Administrative Law Judge has considered the hearing record, including the testimony and exhibits,¹¹ and now makes the following Findings of Fact, Conclusions of Law, and Order finding that that Petitioners have not met the burden to show that Casa Grande failed to provide or offer FAPE to Student, and that Petitioners have not met the burden to show that Casa Grande denied FAPE through any of the alleged procedural failures or alleged violations. As a result of these findings, the Petitioners' Due Process Complaint should be dismissed.

⁷ Through Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004," IDEA 2004 became effective on July 1, 2005.

⁸ The current federal regulations became effective October 13, 2006; several amendments were subsequently promulgated, effective December 31, 2008.

⁹ During the hearing, there were consistent problems with Petitioners' exhibits not containing the same documents in each of the Judge's, Witness', Respondent's and Parent's own exhibit books. On the third day of hearing, a considerable amount of time was spent in efforts to coordinate Petitioners' exhibit books.

¹⁰ The documents in Casa Grande's exhibits are also bates-stamp numbered.

¹¹ The Administrative Law Judge has read each witness-referenced Exhibit, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if not mentioned in this Decision.

FINDINGS OF FACT

1. At the time of the due process complaint notice in February 2011, Student was a [REDACTED] year old child. Student had previously been determined eligible for special education and related services as a child categorized under visual impairment. In November 2008, Student was subsequently, and consistently since, also determined eligible for special education as a child categorized under emotional disturbance ("ED"), resulting in the additional categorization as a child with multiple disabilities.¹²

2. Student's visual issues included hypertropia strabismus (wandering of the eye; upward deviation of his line of sight),¹³ amblyopia (lazy eye),¹⁴ esotropia (inward turning of the eye),¹⁵ and anisometropia (unequal refractive power).¹⁶ Student has diagnoses of Attention Deficit Hyperactivity Disorder ("ADHD") and Mood Disorder,¹⁷ for which he has, off and on, taken various medications. Student also has asthma.

3. Student has been enrolled in Casa Grande schools, attending Mesquite Elementary School since Kindergarten. In first grade, Student had a 504 Plan to address his strabismus. In [REDACTED] grade (2006-2007), Student was classified as a child with a visual impairment and began to receive vision services. In fourth grade (2007-2008), Student began to exhibit emotional and behavioral issues. In October 2007, Student received his first lunch duty detention for behavioral issues.¹⁸ In [REDACTED] and [REDACTED]

¹² See Exhibits 4A (11-2007 through 11-2008), Exhibits 7 and LLLL (11-2008 through 11-2009), Exhibits 9 and FFFF (12-2008 Addendum), Exhibits 15 and OOO (11-2009 through 11-2010), Exhibit HHH (2-2010 Addendum), and Exhibit ZZ (10-2010 through 10-2011). See also Exhibit Z (4-2011 through 4-2012), which was developed after the filing of the due process complaint.

¹³ Strabismus is most commonly known as cross-eyed. It is a visual condition in which one or both eyes may turn up, down, in or out in a constant or intermittent manner. Dr. Aleta Gong indicated that Student has hypertropia strabismus and intermittent esotropia. See Exhibit 20, February 11, 2011 Gong report and Vision Terms.

¹⁴ Amblyopia is most commonly known as lazy eye. It is a visual condition typically affecting only one eye. Therapy often consists of eye patching, so that the lazy eye is able to develop the capacity to see as well as the good eye.

¹⁵ Esotropia is an inward turning of the eye. Dr. Aleta Gong indicated that Student has intermittent esotropia, causing one eye to fail to intersect the object of fixation. See Exhibit 20, February 11, 2011 Gong report and Vision Terms.

¹⁶ Anisometropia is a visual condition in which the two eyes have unequal refractive power and are in different myopic states, such as when one eye is nearsighted and one eye is farsighted. The wearing of eye glasses is the most common form of correction. See Exhibit LLLL, bates page 363.

¹⁷ See Exhibit LLLL, bates page 366, where the IEP Team notes that Parents indicate the mood disorder is bipolar disorder.

¹⁸ The hearing record appears to indicate that Student's first behavioral suspension from school came about on August 27, 2008. See Exhibit 12, discipline records presented by Parent. Casa Grande provided disciplinary records beginning in February 2009, corresponding with the two year limitations

grades, Student continued to have behavioral issues of increasing frequency and severity.¹⁹

4. In his personal life over the last two to three years, Student has experienced various stressors: his oldest adult brother moved out of the family home; his parents divorced; his father remarried; his mother was diagnosed with a serious illness; his paternal grandfather died; a family pet died; he was placed in a program for students with social-behavioral problems; and his mother initiated due process.²⁰

5. In November 2007, the IEP Team determined Student's special education eligibility category to continue to be Visual Impairment.²¹ The IEP Team considered the existing educational evaluation,²² current vision screening²³ and teachers' observations and assessments of Student's daily performance. The IEP Team noted that Student had a basic instructional impediment, which was not staying on task, and also that Student had some specific behaviors that impeded his learning, including the following: wanting to visit the nurse for many reasons, frequent bathroom visits, a pre-occupation with what other people were doing, tattling on others, getting his feelings hurt for both real and imagined reasons and putting his head down on his arms. With regard to the impeding behaviors, the IEP Team determined to create a goal related to Student's behavior and a monitoring checklist.

6. The IEP Team developed an Individual Educational Program ("IEP") for Student for the period of November 7, 2007 through November 6, 2008.²⁴ In addition to the three goals set forth therein, the IEP noted vision related services and multiple accommodations for the purposes of allowing Student to progress toward the IEP goals.

period in this matter. See Exhibit QQQQ.

¹⁹ This information is taken from the December 2008 Evaluation Report. See Exhibit GGGG, Educational History and Classroom information, pages 331 and 333, respectively.

²⁰ This summary of information was taken from the October 2011 Independent Psychoeducational Evaluation of Joel S. Hanania, Ph.D. See Exhibit 20.

²¹ Student's father attended this IEP meeting. See Exhibit 4A. Given his vision issues, the Administrative Law Judge presumes that Student's prior IEP Team had also determined a vision impairment eligibility.

²² Student's current evaluation was from November 2006. The hearing record does not contain a copy thereof.

²³ Student's current vision screening was from January 2006.

²⁴ See Exhibit 4A, Student's November 7, 2007 IEP. This IEP was the IEP in place two years prior to Petitioners' filing the instant Complaint.

1 7. The IEP Team determined to provide the following accommodations for
2 Student: providing consistent daily routine/schedule; preferential seating; seating near
3 another student that will be helpful; minimize distractions in the classroom; make
4 certain Student understood directions, reducing the amount of information presented on
5 the blackboard; using visually clear handouts; providing a hard copy of overhead
6 material; allowing use of vision equipment; frequent monitoring of Student's
7 independent work; and, allowing extra test time.²⁵

8 8. The IEP Team also determined to provide 80 minutes per month of
9 special education services, through the VI Teacher, in the general education
10 classroom.²⁶ Additionally, the IEP Team determined that specific equipment was to be
11 available to Student "as needed." The specific vision equipment included a magnifier,
12 CCTV, color overlay, a monocular and a slant board.

13 9. Student's Language Arts goal was to improve his tracking skills by
14 locating specific information within the educational text. Student's baseline was
15 success in 5 of 10 trials; his target level of success was 9 of 10 times.

16 10. In May 2008, Student's progress was to the level of 8 successful trials. In
17 October 2008, Student's progress was 9 successful trials. The VI Teacher noted
18 Student's difficulties in following multiple directions at once.

19 11. Student's Social Emotional goal was to improve his on-task behavior in
20 class during the day. Student's baseline was 5 impeding behaviors during the day; his
21 target level of success was to reduce the number to only 1 impeding incident during the
22 day.

23 12. In May 2008, Student has mastered the goal, and had zero impeding
24 behaviors. In October 2008, Student had regressed back to his baseline or worse,
25 which the VI Teacher attributed to this year's teacher being less structured and less
26 strict and to Student appearing to be more hyper this year.

27 13. Student's Related Services goal was to improve his tracking skill through
28 use of a computer to type words and sentences. Student's baseline was 5 words per
29 minute; his target level of success was 15 words per minute.

30 ²⁵ See Exhibit 4A, page 10.

²⁶ See Exhibit 4A, page 8.

1 14. In May 2008, Student's progress on this third goal was to the level of 13
2 words per minute and, during the quarter, he had attained 17 words per minute with
3 90% accuracy. In October 2008, Student was at the level of 19 words per minute with
4 68% accuracy and during the quarter, he had attained 25 words per minute.²⁷

5 15. On May 14, 2008, Student had eye surgery, regarding his esotropia, to
6 rescind the oblique muscle in his right eye.²⁸

7 16. On December 4, 2008, the Team developed a new behavior plan, for the
8 purposes of redirecting Student's negative and disruptive behaviors and rewarding
9 positive behaviors and actions.²⁹

10 17. On December 9, 2008, the IEP Team met to consider the re-evaluation
11 data and to create an Addendum (to the IEP for the period November 4, 2008 to
12 November 3, 2009).³⁰ The IEP Team determined that, in addition to his eligibility for
13 special education as a child with a visual impairment, Student was also eligible for
14 special education as a child with an emotional disturbance disability, ED, which resulted
15 in Student's additional categorization as a child with multiple disabilities. Student's
16 visual impairments and his need for continued work on tracking and accommodations
17 were discussed and are reflected in the present levels. Academically, the Team
18 believed that Student was not working out answers in math but was guessing and was
19 rushing through text in reading and not answering carefully. Student's behavior issues
20 in the classroom were discussed and one-on-one assistance 4 days a week for 30
21 minutes was initiated in efforts to keep Student on task; the Team acknowledged that
22 Student did his best work in small groups and one-on-one. Regarding disciplinary
23 issues, the Team noted that Student had been suspended, sent to the office several
24 times and had received time outs, none of which seemed to improve his behavior. The
25 Team specifically noted that when Student was sent to his ■■■ grade teacher's class
26 room his behavior was better and he was able to complete his work.

27
28 ²⁷ No accuracy measure was provided on the progress report.

29 ²⁸ See Exhibit 6. Parent did not provide any discharge information regarding what Student could expect in
30 the way of vision and acuity in the coming days or weeks following the surgery. The last day of school in
May 2008 is not evident in the hearing record.

²⁹ See Exhibit IIII, bates pages 354-355. This Behavior Plan was developed by Resource, 5th.

³⁰ See Exhibit JJJJ. Student's mother and Student's step-mother attended this IEP meeting.

1 18. Parental input considered at that time was the concern that Student did
2 not relate well to the [REDACTED] grade teacher and that he responded better to adults than
3 others (peers). Parents were concerned that he was being picked on by peers.
4 Parents were concerned about his poor academic and behavioral performance this year
5 (worse than the prior year) and believed he would do better in small groups or one-on-
6 one environments. Parents indicated that he was being monitored on new medications.
7 At that time, the Team did not believe that a new functional behavioral assessment
8 ("FBA") or a new behavior intervention plan ("BIP") were needed.³¹

9 19. The IEP Team determined to add the following accommodations in
10 addition to the existing accommodations: allow provisions for physical movement by
11 Student (helping to distribute materials or run errands); reducing the amount of
12 information presented on the white board; and, permit Student to dictate responses for
13 assignments and tests.³²

14 20. The IEP Team also determined to continue to provide 80 minutes per
15 month of special education services, through the VI Teacher, in the general education
16 classroom.³³ Additionally, the IEP Team determined to provide 25 minutes each day of
17 math special education, 25 minutes per day of reading special education and 25
18 minutes per day of written expression special education in the special education
19 classroom. Behavioral support was to be provided in the special education classroom
20 for 120 minutes per day.³⁴ Vision equipment was to be available to Student "as
21 needed." In addition to the vision equipment as set out in the prior IEP, a reader strip
22 was to be available for use during reading and Student was to be using a large pencil
23 and a study carrel. Finally, as extra support for his needs, VI Teacher and resource
24 teacher(s) were to consult with 5-G Teacher as needed and the vision aide would also
25 provide additional behavior and academic support as needed.³⁵

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28 ³¹ See Exhibit LLLL, bates page 366; see also Exhibit EEEE, bates page 309 (notation near the
Addendum date, stating "FBA 11-23-08". There is no copy of such FBA in the hearing record.

29 ³² See Exhibit LLLL, bates page 369.

30 ³³ See Exhibit LLLL, bates page 372.

³⁴ See Exhibit XXX, bates page 290 (referencing such services beginning 11-4-08).

³⁵ See Exhibit LLLL, bates page 372.

1 21. The Team considered the possible need for extended school year ("ESY")
2 services but rejected it, regarding regression/recoupment factors, for the reason that
3 Student was making adequate progress on his IEP goals.³⁶

4 22. On December 9, 2008, Parent withdrew Student from Mesquite
5 Elementary School.³⁷ Parent indicated that Student would be utilizing an online
6 Academy, Arizona Virtual Academy.

7 23. The next semester began on January 5, 2009.³⁸ Student re-enrolled on
8 February 23, 2009.³⁹

9 24. On February 24, 2009, following an incident on the playground on
10 February 23, 2009 (and two other incidents the same day), Student was suspended for
11 one day.⁴⁰ At the manifestation determination review, consensus was reached that the
12 conduct was related to his disability but was not a manifestation of his disability
13 because Student had consciously taken the action.

14 25. Following several incidences of inappropriate behavior in the classroom,
15 upon his return from Band on February 26, 2009, Student was suspended for 3 days.⁴¹
16 At the manifestation determination meeting on February 27, 2009, the Team reached
17 consensus that that the conduct had various causes not the result of his disability.

18 26. Student's March 2009 Progress reports primarily indicate insufficient data,
19 as Student was not present in school for much of the quarter and the last part of the
20 prior quarter.⁴²

21 27. In March 2009, the IEP Team attempted to convene to review and revise
22 Student's IEP and to discuss transition to middle school.⁴³ On March 26, 2009, Parent
23 did not attend the meeting; however, the IEP Team rescheduled the meeting for April 7,
24

25 ³⁶ See Exhibit LLLL, bates page 370. At this point, Student was in his general education setting nearly
26 80% of the day.

27 ³⁷ See Exhibit B, bates page 26.

28 ³⁸ See Exhibit UUU.

29 ³⁹ See Exhibit B, bates page 21.

30 ⁴⁰ This suspension raised to ten (10) the number of days Student had been suspended in the school year.
See Prior Written Notice ("PWN"), Exhibit BBBB; see also Exhibit CCCC.

⁴¹ This suspension raised to thirteen (13) the number of days Student had been suspended in the school
year. See Prior Written Notice ("PWN"), Exhibit ZZZ; see also Exhibit AAAA.

⁴² See Exhibit YYY.

⁴³ See Exhibit TTTT.

1 2009.⁴⁴ The Team conducted an FBA, determining that Student's behaviors were
2 interfering with his and other students' learning and the traditional supports and
3 interventions had not worked.⁴⁵

4 28. At the April 4, 2009 meeting, the IEP Team determined to increase
5 Student's service minutes and to provide transportation to and from school in the Fall of
6 2009. The Team added a constructive problem solving goal to the current IEP.

7 29. The IEP Team determined to continue to provide 80 minutes per month of
8 special education services, through the VI Teacher, in the general education
9 classroom.⁴⁶ Additionally, for Fall of 2009 (and through the end of the IEP year on
10 November 3, 2009), the IEP Team determined to provide 84 minutes each day of math
11 special education, 84 minutes per day of reading special education and 84 minutes per
12 day of written expression special education in the special education classroom.⁴⁷ The
13 Vision equipment was to be available to Student "as needed." Again, as extra support
14 for his needs, VI Teacher and resource teacher(s) were to consult with 5-G Teacher as
15 needed and the vision aide would also provide additional behavior and academic
16 support as needed.⁴⁸ Beginning August 10, 2009, at Cactus Middle School, Student
17 was projected to be in general education setting less than 40% of the day; the IEP
18 Team determined that the resource room, with its small staff/student ratio, was the least
19 restrictive environment setting to enable Student to access educational instruction
20 because he was unable to manage in the regular classroom for more than 10 minutes
21 at a time.

22 30. The Fall semester began on August 10, 2009.⁴⁹ On August 27, 2009, the
23 IEP Team conducted an FBA regarding Student's disruptive and inappropriate
24 behaviors.⁵⁰ The Team developed a new BIP. The Team determined that it would be
25 best to involve Student with a continuum of monitoring and reinforcement through a
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27 ⁴⁴ See Exhibit XXX. Student's mother attended this IEP meeting.

28 ⁴⁵ See Exhibit XXX, bates page 294-295.

29 ⁴⁶ See Exhibit LLLL, bates page 372.

30 ⁴⁷ See Exhibit WWW and XXX.

⁴⁸ See Exhibit LLLL, bates page 372.

⁴⁹ See Exhibit CCC.

⁵⁰ See Exhibits SSS and TTT. Student's Father attended this meeting.

1 Daily Behavior Checklist regarding Student's self-control, respect for others and being
2 prepared for class.⁵¹

3 31. Student's October 2009 Progress reports indicate some progress on
4 some goals and the mastery of 3 goals. It was noted that Student obtained new
5 glasses in September but that the school had not been given a copy of a vision report.⁵²

6 32. In October 2009, the IEP Team scheduled the next IEP meeting for
7 November 2, 2009 to review and revise Student's IEP.⁵³ Copies of the meeting notice
8 were sent home with Student for Parent and Father.

9 33. At the November 2, 2009 meeting, the IEP Team determined to increase
10 Student's behavior support service minutes from 120 to 150 per week and to combine
11 the reading and written expression minutes into one 84 minute block per day, while
12 math minutes remained the same at 84 minutes per day.⁵⁴ Other related and support
13 services remained at the same level as in the prior IEP. Student's vision services
14 remained in place. Beginning November 2, 2009, at Cactus Middle School, Student
15 was projected to be in general education setting no more than 79% of the day and no
16 less than 40% of the day;

17 34. On January 28, 2010, Student yelled at the teacher, kicked a student desk
18 and was singing, yelling and farting, after which he was sent to the office which he
19 disrupted by continuing to yell and not follow directions. On February 1, 2010, at the
20 manifestation determination meeting, there was consensus that Student's conduct was
21 not a manifestation of his disability. Parent attended this meeting. The Team
22 considered that it had modified Student's BIP three times since August of 2009 and that
23 there was sufficient data to analyze and warrant a more restrictive setting. The Team
24 determined to suspend Student for nine (9) days, to place him in an interim alternative
25 educational placement ("IAEP") and to request a disciplinary hearing be conducted.⁵⁵

26 35. On February 1, 2010, the Team developed the requisite Addendum for
27 the IAEP and determined to place Student at Villago Middle School from February 2,

28 ⁵¹ See Exhibit TTT, bates page 270.

29 ⁵² See Exhibit RRR, bates page 264.

30 ⁵³ See Exhibit QQQ.

⁵⁴ See Exhibit OOO, bates page 255. Neither Parent nor Father signed in at this meeting. See *Id.*, bates page 244.

2010 through February 11, 2010.⁵⁶

36. On February 12, 2010, the IEP Team met to develop an Addendum to Student's IEP.⁵⁷ The purpose of the Addendum was to increase Student's special education minutes⁵⁸ and to provide for educational placement at the self-contained, small staff/student ratio, social skills program ("SSKI") at Villago Middle School. Behavioral support minutes in the self-contained program were increased from 150 minutes to 360 minutes per week. The SSKI program focuses on behavioral support and social skill instruction. Student's vision services remained in place. Additionally, the Team added nursing services for 45 minutes per day.

37. After the transition to Villago SSKI, Student's progress reports, in May 2010, demonstrated that he was making slow progress and improvements towards his goals.⁵⁹

38. In August 2010, Student began his Grade school year at Villago Middle School, in the SSKI program. Student's progress reports, in October 2010, demonstrated that he was continuing to make progress and improvements towards his goals; on one of the social and emotional goals he had made significant improvement while continuing to struggle with staying focused on tasks.⁶⁰

39. On October 27, 2010, the IEP Team met to review and revise Student's annual IEP.⁶¹ The IEP Team determined to adjust Student's special education minutes.⁶² Behavioral support minutes in the self-contained program were increased from 360 minutes to 420 minutes per week. Student's educational placement continued to be the SSKI program at Villago Middle School. Student's reading minutes were scheduled at 42 minutes per day and his written expression minutes were scheduled at 40 minutes per day, while his math minutes were scheduled at 82 minutes

⁵⁵ See Exhibits JJJ and KKK; see also PWN dated February 4, 2010, Exhibit III.

⁵⁶ See Exhibit LLL.

⁵⁷ See Exhibit HHH; see also Exhibit UUUU (meeting notice). Parent, Father and step-mother attended this meeting. See Exhibit HHH, bates page 226.

⁵⁸ See Exhibit HHH, bates page 230.

⁵⁹ See Exhibit DDD.

⁶⁰ See Exhibit BBB.

⁶¹ See Exhibits ZZ and AAA; Parent attended this meeting.

⁶² See Exhibit HHH, bates page 230.

1 per day.⁶³ Student's vision services and nursing services remained in place. Other
2 related and support services remained at the same level as in the prior IEP.

3 40. At the October 27, 2010 meeting, Parent requested that Student be
4 screened for occupational therapy needs.⁶⁴

5 41. On November 9, 2010, Parent met with SSKI personnel and inquired
6 about the school conducting a complete psychological evaluation for Student.⁶⁵ Parent
7 wanted to request occupational therapy and re-evaluation for several reasons. Parent
8 acknowledged that the SSKI program had been the best school placement for Student
9 and that she had seen improvement in his behavior. However, Parent indicated that
10 she had disagreed with ED label from the beginning and she believed that the ED label
11 was preventing Student from receiving "services" and that she was not seeing academic
12 growth.⁶⁶ Parent indicated that Student's "sensory" issues had never been addressed
13 and it was her belief that this was 90% of his problems.

14 42. Casa Grande's Occupational Therapist conducted her observations on
15 October 29, 2010 and November 15, 2010, determining that Student had typical
16 sensory processing skills during the school day and that the SSKI teachers were
17 providing appropriate accommodations to keep Student on task.⁶⁷

18 43. On November 15, 2010, Parent informed Casa Grande that she disagreed
19 and requested an independent evaluation ("IEE") regarding occupational therapy at
20 public expense.⁶⁸

21 44. Casa Grande informed Parent that Casa Grande had not performed an
22 evaluation but had performed a screen.⁶⁹ On December 2, 2010, Casa Grande issued
23 its PWN denying the requested IEE.⁷⁰

24 45. On December 9, 2010, Parent signed a written consent form, giving
25 permission for Casa Grande to re-evaluate Student. Parent indicated that she wanted

26 ⁶³ See Exhibit ZZ, bates page 203.

27 ⁶⁴ See Exhibit WW.

28 ⁶⁵ See Exhibit XX.

29 ⁶⁶ Based on the due process complaint and the entire hearing record, the Administrative Law Judge
presumes that Parent meant "instruction" rather than "services."

30 ⁶⁷ See Exhibit WW. The October observation raised multiple concerns for Parent.

⁶⁸ See Exhibit VV.

⁶⁹ See Exhibit TT, letter dated November 30, 2010.

⁷⁰ See Exhibit SS.

1 to be present at any and all evaluations.⁷¹

2 46. On December 9, 2010, the Team met to discuss the available data and
3 Parent's request for re-evaluation and to be present or in close proximity to Student
4 during evaluations. The Team determined to conduct a re-evaluation to address the
5 possible areas of disability and the parental concerns raised: academic, vision, fine
6 motor and sensory, and social and emotional. Parent indicated concerns that Student
7 was autistic and needed occupational therapy as well as other increased services.⁷²

8 47. In its December 9, 2010 PWN, Casa Grande informed Parent that she
9 could not be present in the assessment area due to the procedures for test/evaluation
10 administration because her presence could have an impact on the validity of the
11 evaluation process.⁷³

12 48. Effective December 13, 2010, Student was withdrawn from Casa Grande
13 due to nonattendance and unknown status.⁷⁴ Casa Grande subsequently requested
14 that Parent make Student available for the evaluations.⁷⁵

15 49. On December 14, 2010, Student's Optometrist, from Foundation for Blind
16 Children, wrote a letter to Student's eye doctor making a referral and recommendations
17 for visual evaluations.⁷⁶

18 50. On January 7, 2011, Tim Jordan, M.D., evaluated Student regarding
19 developmental concerns in social interactions and communication skills.⁷⁷ Dr. Jordan
20 expressed his initial sense that, based on Parent's responses on the autism syndrome
21 diagnostic scale, Student may have a diagnosis of Asperger's syndrome. Dr. Jordan
22 referred Parent to Southwest Autism Research Center and prescribed habilitation
23 therapy. Dr. Jordan recommended that a psychologist conduct the standardized
24 assessment for autism to determine a diagnosis, if any. Dr. Jordan also prescribed

25 ⁷¹ See Exhibit RR. At this point, Student was not in regular attendance at Village SSKI, but had
26 experienced a series of unexcused absences. The PWN dated December 9, 2010 indicated that
27 Student's last day of attendance had been November 29, 2010. See also Exhibit C, regarding absences
28 and attendance for academic year 2010-2011.

29 ⁷² See Exhibit OO, PWN dated December 9, 2010.

30 ⁷³ See Exhibit OO, PWN dated December 9, 2010.

⁷⁴ See Exhibit B, bates page 24.

⁷⁵ See Exhibit MM.

⁷⁶ See Exhibit NN.

⁷⁷ See Exhibit KK. Dr. Jordan's evaluation summary contains several statements which, if true, would be
additional stressor circumstances within this family's life.

1 physical therapy, occupational therapy and speech therapy.

2 51. On February 4, 2011, Parent, through legal counsel, filed a due process
3 complaint. After the parties' attorneys' efforts to resolve the matter were unsuccessful
4 or not completed to a satisfactory conclusion for Parent, Parent began self-
5 representing, legal counsel withdrew, and Parent indicated that the due process
6 complaint previously filed did not accurately address her concerns and issues.

7 52. On March 22, 2011, the IEP Team determined that Student continued to
8 have the three eligibility categories: Vision Impairment, ED, and Multiple Disabilities.⁷⁸
9 Parent marked her disagreement with the eligibility determination.

10 53. The PWN dated March 28, 2011, indicated that the Team denied eligibility
11 for related services of occupational, physical and speech therapy.⁷⁹ However, the IEP
12 Team had determined that Student's "current configuration of services ... is not
13 adequately meeting his needs" and the Team determined that to place Student in a
14 private day school for the purposes of increased academic and behavioral support.⁸⁰

15 54. From March 23, 2011 to March 29, 2011, Student had unexplained
16 absences from school, and Student was suspended from April 1, 2011 through April 7,
17 2011.⁸¹ As of April 18 or April 19, 2011, Student stopped attending school, and on
18 May 2, 2011, Casa Grande processed a withdrawal.⁸²

19 55. Following two telephonic pre-hearing conferences that the Tribunal
20 conducted with Parent and Casa Grande, Parent filed an amended complaint on June
21 24, 2011, from which the due process hearing proceeds.⁸³

22 56. By ORDER dated June 27, 2011, the Tribunal noticed the parties with
23 regard to the recommencement of the due process timeline. The parties' efforts to
24 resolve the matter informally were unsuccessful.

25
26 ⁷⁸ See Exhibit GG.

27 ⁷⁹ See Exhibit CC.

28 ⁸⁰ See Exhibit Z, IEP dated April 19, 2011, proposing Student's placement at ACES, a private day school
29 with transportation to and from. Additionally, the Team determined to provide summer programming for
30 Student at ACES and to provide transportation to and from. See also Exhibit X.

⁸¹ See Exhibit C.

⁸² See Exhibit B.

⁸³ During the May 18, 2011 pre-hearing conference, Parent indicated that she, herself, had an "educational
disability" which she did not further specify.

1 57. After consideration of multiple and various filings by the parties, by
2 ORDER dated December 21, 2011, the Tribunal denied Parent's Motion to Waive the
3 two year limitations period and dismissed several issues from the amended due
4 process complaint.

5 58. The Administrative Law Judge's December 21, 2011 ORDER is
6 incorporated by reference into this Administrative Law Decision.

7 59. Multiple evaluations for various purposes have taken place since the filing
8 of the due process complaint; however, they were not available to Casa Grande at the
9 time and could not have affected any actions or decisions taken by Casa Grande during
10 the two year period at issue in this matter, between February 4, 2009 and February 4,
11 2011. However, at hearing, Parent relied on the October 2011 Independent
12 Psychoeducational Evaluation performed by Joel Hanania, Ph.D. as being a "very good
13 assessment of what he honestly felt in his evaluation, having seen [Student] a couple of
14 times for that evaluation as well as other times within the office there."⁸⁴

15 60. In his October 2011 Independent Psychoeducational Evaluation, Dr.
16 Hanania indicated the following in pertinent part.⁸⁵

17 Emotionally and behaviorally, [Student] is presenting as a
18 child with ADHD-Hyperactive Impulsive Type along with
19 Oppositional Defiant Disorder. He is also displaying
20 significant problems with regards to anxiety which are
21 manifested by his very poor self-esteem, strong feelings of
22 inadequacy, a fear of failure all of which contributes to being
23 hypersensitive to any criticism or negative feedback from
24 anyone. His mother, his former teacher, [Student], and his
25 school records were all very consistent in that [Student]
26 responds very negatively when he perceives a comment
27 from a peer as offensive and this often resulted in [Student]
28 disrupting the educational environment. Another likely
29 scenario would involve [Student's] fear of failure and his
30 strong worry about making mistakes. During the present
evaluation [Student] often expressed concern about being
wrong and asking whether his responses were correct. In
the classroom setting, being confronted with work that was
difficult for him would cause a shutdown. Typically, teachers

⁸⁴ Transcript, page 720; see also Exhibits N and 20, containing Dr. Hanania's report. Despite Petitioners' subpoena, Dr. Hanania was unable to attend the hearing.

⁸⁵ See Exhibit N, bates pages 62-63.

1 seeing a student not working would elicit a reprimand or
2 redirection which [Student] would interpret as a negative
3 statement directed toward him. Disruptive behavior that
4 would follow would not only result in not doing the task at
5 hand but it also diverted attention from his inadequacy.
6 *While this evaluator cannot determine if any of [Student's]
7 inappropriate behaviors at school were due to not having his
8 visual needs met, the evaluation findings along with the
9 reports from this parent, teacher and his school records
10 indicate that [Student] has significant difficulties interacting
11 with same-aged peers appropriately to the point where it
12 (sic) poor ability to relate to his peers creates a significant
13 impairment for him both in school and community settings.
14 This, in addition to displaying inappropriate behaviors under
15 normal circumstances [Student] has developed fears and
16 worries associated with personal and/or school problems.
17 Therefore, he continues to be eligible for special education
18 services as a student with an emotional disability.*

19 [Student] requires an educational program that can provide
20 curriculum at his level of development as he is functioning
21 well below grade level. For [Student] this is critical due to
22 his anxiety about failure and his negative reaction when he
23 encounters difficult tasks. Also, because of his difficulty
24 dealing with same-aged peers, he needs to be in an
25 environment where he can receive therapeutic intervention
26 to learn how to deal with his anxiety as well as learn
27 appropriate social behaviors and appropriate ways to
28 respond to the comments of others. As part of this
29 therapeutic intervention, [Student] needs to be able to see
30 the relationship between his behaviors and their
consequences plus he has difficulty accepting responsibility
for the consequences of his behaviors. At the present time
[Student] does not see his getting angry at others as his
choice or responsibility. He also requires a program that can
manage his inappropriate behaviors without having to resort
to out-of-school suspensions. Therefore, he would require a
program with a small student/staff ratio that could provide
therapeutic crisis intervention to maximize his engagement
in the educational process.

It is imperative that [Student] be in a therapeutic school
program as opposed to being home schooled. While a
home school setting can develop his academic skills,
[Student's] emotional disabilities prevent him from engaging
in age-appropriate social activities. If these issues are not

1 dealt with effectively now, it is very likely [Student] will not be
2 able to be independent and self-sufficient as an adult as he
3 will find it very difficult to function in more workplaces.

4 Emphasis added here.

5 ARGUMENTS

6 61. Parent argued that, as to all applicable time periods, Student was not
7 provided FAPE by Casa Grande.⁸⁶ The gravamen of Parent's multiple arguments is
8 that Casa Grande failed to provide FAPE because Casa Grande failed to appropriately
9 address Student's vision impairments and that Student's behaviors were the result of
10 his inability to, literally, see the work and to read and keep up with the work tasks during
11 school. Parent argued that Student's vision impairments are the real issue, affecting
12 and frustrating him over the years. Parent disagrees that Student falls within the
13 eligibility category of emotional disturbance disability, and argued that by having so
14 labeled Student, the focus of Casa Grande's services was taken away from his vision
15 issues, which she maintained are the real reasons that Student made little academic
16 process. Parent essentially argued that Casa Grande did not determine the reasons for
17 his academic problems but merely labeled Student as ED. Parent acknowledged that
18 Student had been taking various medications for his ADHD, but argues that it was the
19 visual impairment problems that caused his disruptive behaviors. Parent argued that
20 Student had needed counseling and therapies for his sensory issues, referencing a
21 need for occupational and physical therapy.

22 62. Vision issue arguments. Parent raised multiple allegations related to
23 vision issues. Parent argued that Casa Grande failed to provide appropriate assistive
24 equipment. Parent alleged that the vision equipment listed on the IEPs was either not
25 provided or was not available to Student when he needed it at school, and that he had
26 needed it at home to do his homework but was not permitted to take the magnifier
27 home. Parent alleged that Student was not provided with materials, both instructional
28 and tests, with large enough print (referencing 30 font) and that the font size that he
29 needed for materials should have been written in the IEPs. Parent alleged that Student

30 ⁸⁶ The Administrative Law Judge attempted herein to solidify and consolidate Parent's arguments based
on her presentation to the hearing record.

1 should have been provided with more recent technology, such as audio and unspecified
2 smaller assistive devices; Parent indicated that Student was embarrassed to use the
3 CCTV at school. Parent alleged that Casa Grande did not teach Student unspecified
4 "vision skills" despite his vision impairments and the severe eye issues Student
5 experienced when he was younger. Parent argued that she asked for Braille instruction
6 because she believed that it would have helped Student with his reading, writing and
7 spelling but that when she asked, Casa Grande simply told her, without discussion, that
8 Student did not qualify.

9 63. IEP inadequacies. Parent argued that Student's goals were inappropriate
10 on his IEPs and that, over the years, the goals themselves should have been changed
11 rather than the simply the measurements for achievement or progress. Parent argued
12 that Casa Grande failed to recognize, in ■ grade, that Student had regressed on his
13 goals. Parent believed that some, unspecified, goals were not achievable even if
14 Student had been given extra services. Parent believes that, had Student's IEP goals
15 been more appropriate and had he been given appropriate services that he would have
16 been able to progress and make improvements and be closer to grade level and to his
17 peers; Parent argues that Student is embarrassed by his academic level and that this is
18 a cause of his behavior. Regarding a lack of individualization on the IEPs, Parent
19 argued that there should have been more social skills goals and more, unspecified,
20 related services. Regarding services that Student was not given by Casa Grande,
21 Parent argued that Student had needed a one-on-one aide, and therapies for OT, PT
22 and sensory issues. Parent argued that Student also should have been given vision
23 training so that he could have been able to more effectively use his vision and eyesight,
24 which would have helped Student to act in more socially appropriate ways, to access
25 more of his environment and to stay focused on tasks. Parent further argued that
26 Student should also have been given more social skills training so that he would have
27 learned skills to compensate for his vision impairments.

28 64. ESY. Parent argued that Casa Grande had improperly denied ESY to
29 Student in ■ grade. Parent argued that Student was behind in, or had regressed on,
30 his vision goals from ■ grade and needed more help in reading.

65 Discipline issues. Parent argued that Student was unnecessarily and

1 repeatedly disciplined for behaviors all arising from his vision impairments, further
2 arguing that this caused him to miss instruction and services. Parent testified that there
3 were 104 days from 2-33-09 to 2-12-10 when Student was either suspended, in
4 alternative placements, or had after-school detentions. Parent indicated that she
5 determined that figure using the copies of the disclosed records.⁸⁷

6 66. Placement issues. Parent argued that Student's "placements" were
7 inappropriate. Parent argued that Student should have been in the general education
8 classroom with intensive reading and vision services. Parent argued that Student's
9 grade resource room placement was inappropriate.⁸⁸ Parent believed that, in grade,
10 Student was placed in a kindergarten class. While Parent indicated that this had been
11 good for him "emotionally", she argued that is was not a proper placement. Parent
12 argued that Student's placement at Cactus Middle School had not been appropriate
13 when it was evident that a smaller environment had not worked for him. Parent argued
14 that Student was not properly prepared for the Cactus environment because he did not
15 have the skills to go to and be successful in that environment, which had less structured
16 and required him to make the multiple transitions. Parent argued that Student needed
17 a more structured environment.

18 67. Evaluation issues. Parent argued, globally, that Student's evaluations
19 were inappropriately done; however, Parent did not reference any evaluations or
20 observations other than the November 2008, grade, observation.⁸⁹ In regard to
21 Student's vision impairments, Parent alleged that Casa Grande should have conducted
22 functional vision assessments every year to make sure his eyes were "attaining." In
23 regard to evaluations and assessments, Parent argued that Student should have been
24 evaluated for all aspects of his educational needs. Parent also argued that she had not
25 been permitted to participate (*i.e.*, to be present) in the evaluations or observations.⁹⁰

26 ⁸⁷ Parent mentioned the attendance records. Parent provided copies of "discipline records" in Exhibit 12,
27 indicating that these demonstrate that Student's behavior problems all began in grade.

28 ⁸⁸ Parent opined that Casa Grande labeled Student and placed him in a resource room either as simply a
29 place to put him or as a punishment (apparently for his behaviors).

30 ⁸⁹ However, this observation falls outside the limitations period. Several times, Parent referenced this
November 2008 observation, during or after which Student demanded to be go see the vision teacher but
was told he could not go to her and that she had to come to him in the classroom and that, as a result, he
laid his head on his arms and "pouted" and may have cried. See Exhibit GGGG, bates page 348.

⁹⁰ Parent argued that her participation argument applied to the grade year, which would have been the

1 The record does not demonstrate Parent's request to be present at evaluations until her
2 December 9, 2010 notation on the written consent, and Casa Grande's PWN dated
3 December 9, 2010 promptly notified Parent that this was not possible due to standard
4 test protocols.

5 68. Parental participation issues. With regard to alleged procedural violations
6 involving parental participation, Parent argued globally that the PWNs often refer to
7 documents that she was not given copies of during meetings and that she, therefore,
8 had not been able to participate in the meetings. Parent argued that when she had
9 asked for summer school, she had not known what ESY was, and that Casa Grande
10 had not made her aware of either what ESY was or that there was an option for
11 something called ESY; therefore, preventing her from participating. Additionally,
12 regarding the ESY information, Parent argued that Casa Grande misled her when it
13 said Student did not need ESY because he had made some progress, because Student
14 was not at grade level. Finally, Parent argued that she was prevented from effectively
15 participating in meetings because the IEP participants from meeting to meeting
16 constantly changed. Parent testified that, due to illness, she had been unable to be at
17 an April 2009 meeting, and apparently despite her efforts communicating with Casa
18 Grande to reschedule the meeting, they conducted the meeting at which Student had
19 been suspended.⁹¹

20 CONCLUSIONS OF LAW

21 1. Through the IDEA, Congress has sought to ensure that all children with
22 disabilities are offered a FAPE that meets their individual needs.⁹² These needs
23 include academic, social, health, emotional, communicative, physical, and vocational
24 needs.⁹³ To do this, school districts are required to identify and evaluate all children
25 within their geographical boundaries who may be in need of special education and
26 services. The IDEA sets forth requirements for the identification, assessment and

27 academic year 2008-2009. However, the hearing record contains no indication of evaluations taking place
28 after November 2008, which date is prior to the periods considered herein.

29 ⁹¹ The hearing record contains no indication of a meeting in April of 2009 at which Student was
30 suspended. See Exhibit E. However, it appears that Student was suspended in April of 2011. See
Exhibit C.

⁹² See 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

⁹³ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983

1 placement of students who need special education, and seeks to ensure that they
2 receive a free appropriate public education. A FAPE consists of "personalized
3 instruction with sufficient support services to permit the child to benefit educationally
4 from that instruction."⁹⁴

5 2. Pursuant to IDEA, the District is required to annually review a student's
6 IEP to determine whether the annual goals are being achieved and to revise the IEP as
7 appropriate to address the lack of expected progress, the results of any reevaluations,
8 information about the student provided by parents, the student's anticipated needs and
9 any other unique matters.⁹⁵ These IEP determinations and the placement decisions are
10 made by a group of people, the IEP Team which includes the parents, knowledgeable
11 about the student, about the available evaluations and about the placement options.⁹⁶
12 One other mandate is that a school district ensure that a child's placement is
13 determined annually, is based on the IEP and is as close as possible to the child's
14 home.⁹⁷

15 3. A petitioner who files for a due process hearing alleging non-compliance
16 with the IDEA must bear the burden of proving that claim.⁹⁸ The standard of proof is
17 "preponderance of the evidence," meaning evidence showing that a particular fact is
18 "more probable than not."⁹⁹ Therefore, Petitioners bear the burden of proving by a
19 preponderance of evidence the allegations, claims and arguments raised.

20 4. In this case, Parent has not met her burden to demonstrate that Casa
21 Grande failed to provide FAPE through its various IEPs in effect between February 23,
22 2009 and February 4, 2011. On review of each IEP in effect, the Administrative Law
23 Judge concludes that each contained special education minutes and appropriate goals
24 geared to address Student's specific needs discussed at the IEP meetings, multiple

25 U.S.C.C.A.N. 2088, 2106).

26 ⁹⁴ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

27 ⁹⁵ See 34 C.F.R. § 300.324(b).

28 ⁹⁶ See 34 C.F.R. §§ 300.116(a) and 300.501(c). The Administrative Law Judge is now bound to make
29 determinations within the confines of the IDEA and its purposes and mandates.

30 ⁹⁷ See 34 C.F.R. § 300.116(b).

⁹⁸ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

⁹⁹ *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 accommodations to address Student's classroom performance and behaviors as well as
2 specific visual services through equipment and special education minutes. Additionally,
3 every IEP since the December 2009 Addendum, which determined Student's ED eligibility
4 category, contained behavior support minutes that increased over time. Thus, the IEPs
5 were individualized for Student's needs. The IDEA requires that an IEP contain
6 individualized services and goals that meet the child's special needs and enable the child
7 to be involved in and make progress in the general education curriculum.¹⁰⁰ Parent
8 cannot demonstrate that Casa Grande failed to provide FAPE based on an argument
9 that Student did not meet all the IEP goals. The standard to be met for consideration in
10 this regard is whether the IEPs, at the time they were created, consisted of specialized
11 instruction and services reasonably calculated to enable Student to receive educational
12 benefit.¹⁰¹ The IDEA contains no particular substantive educational standard and no
13 mandate to maximize the potential of a child. An IEP Team is the final decision maker,
14 typically by consensus, with regard to any necessary changes that will continue to provide
15 the unique and specialized services that a child requires. The hearing evidence
16 demonstrated that the special education minutes, the related services and the
17 accommodations were, in fact, provided to Student in accordance with the IEPs. The
18 hearing evidence further demonstrated that the visual equipment was present and
19 available to Student in his classroom, with the exception of the CCTV not being moved
20 from class to class if Student had to go to another classroom temporarily. Finally, the
21 Casa Grande professional staff gave sworn testimony that Student would choose not to
22 use some of the equipment most of the time.

23 5. In this case, Parent has not met her burden to demonstrate that Casa
24 Grande inappropriately denied ESY in the summer after ■ grade. Parent presented no
25 criteria with which a determination might be made regarding ESY eligibility at that time.

26 6. In this case, Parent had not met her burden to demonstrate her allegation
27 that all of Student's behaviors were caused by his vision impairment and by Casa
28 Grande's failure to address them. Parent presented no expert testimony with regard to
29 the Student's behaviors that were well-documented to have resulted in discipline,

30 ¹⁰⁰ See 34 C.F.R. §§ 300.320 (a)(2).

¹⁰¹ See *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

1 including detentions and suspensions. Parent's independent evaluator, Dr. Hanania,
2 specifically indicated that he "cannot determine if any of [Student's] inappropriate
3 behaviors at school were due to not having his visual needs met..." Additionally, Dr.
4 Hanania outlined his opinion agreeing that Student was eligible for special education
5 services as a child with an emotional disturbance disability.

6 7. In this case, Parent has not demonstrated that Student was not educated in
7 the least restrictive environment for any of the IEP periods. Each successive increase in
8 special education minutes was the result of the Team's agreement regarding Student's
9 academic and behaviors needs, all geared to enable Student to access the educational
10 curriculum. As Student continued to be unable to access education while in the general
11 classroom, the Team successively determined that he needed smaller and more intensive
12 settings for instructional purposes. Finally, prior to the due process complaint, the Team
13 determined that the SSKI program offered the best placement within the District for
14 Student to obtain both intensive behavioral support and academic instruction. As late as
15 October of 2010, Parent agreed that the SSKI program had been the best school
16 placement for Student and that Student's behaviors had improved.¹⁰²

17 8. In this case, Parent has failed to demonstrate that any school evaluation
18 took place between February 23, 2009 when Student re-enrolled in Casa Grande and
19 February 4, 2011 when Petitioners filed the due process complaint notice. The
20 November 2008 observation that took place is outside the limitations period for
21 consideration in this matter, and the OT screening that took place in the Fall of 2010
22 was not an evaluation. Thus, Parent has not demonstrated that any evaluation
23 performed by Casa Grande was either incomplete or improper. The IDEA requires a
24 reevaluation at least once every three years, but also indicates that it need not take place
25 more frequently than annually, unless the parents and school agree to more frequent
26 evaluations.¹⁰³ It appears that the parties were on that track beginning in the Fall of 2010,
27 but simply had not completed such re-evaluation process by the time Petitioners filed the

28 ¹⁰² The Administrative Law Judge must note that Parent agreed at the pre-hearing conferences in May
29 2011 in this matter that a private day placement was an appropriate educational setting and placement for
30 Student, and the parties simply indicated that their disagreement with regard to placement at that point
was which private day school Parent preferred.

¹⁰³ See 34 C.F.R. § 300.303(b).

1 due process complaint notice. Additionally, Parent has failed to demonstrate that the
2 identification of Student as a child with an emotional disturbance disability was either
3 inappropriate or improper. The hearing record demonstrates that Student is
4 appropriately categorized with visual impairments and emotional disturbance disability
5 and, thus, as a child with multiple disabilities.

6 9. In this case, Parent has failed to demonstrate that Casa Grande
7 prevented her participation in IEP meetings. The hearing record demonstrated that not
8 only Parent but also Student's Father and step-mother all had presence at various
9 times at multiple meetings. Parent failed to cite to any IDEA provisions setting forth
10 requirements which Casa Grande is alleged to have violated. Parental participation
11 arguments typically relate to alleged procedural violations for which a hearing officer
12 might consider enlarging the look-back (*i.e.*, limitations) period pursuant to 34 C.F.R. §
13 300.511(f). However, the Administrative Law Judge has already addressed such
14 concerns in the December 21, 2011 ORDER denying Parent's motion to waive the
15 limitations period.

16 10. For the reasons stated herein, the Administrative Law Judge concludes
17 that Petitioners have not met their burden to demonstrate any of the allegations and are
18 not entitled to any of the relief sought. The Administrative Law Judge concludes,
19 therefore, that Petitioners' claims in the Complaint must be denied and the Complaint
20 must be dismissed.

21 **ORDER**

22 Based on the findings and conclusions above,

23 IT IS ORDERED that Petitioners' Complaint is dismissed.

24 ORDERED this 13th day of March, 2012.

25 OFFICE OF ADMINISTRATIVE HEARINGS

26 

27 Kay A. Abramsohn
28 Administrative Law Judge
29
30

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and/or 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. While the federal law sets forth a time frame for an action for judicial review of a Decision, the federal law also allows that a State may have a different time frame.

*Pursuant to Arizona rule A.A.C. R7-2-405(H)(8), any appeal of a Hearing Officer's decision must be filed within 35 calendar days after receipt of the Hearing Officer's decision.*¹⁰⁴

Copies distributed and mailed this 13 day of March, 2012, to:

[REDACTED]

Parent

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By

Cruz Serrano

¹⁰⁴ A.A.C. R7-2-405, Due Process Standards Relating to Special Education, was amended and, as amended, was adopted by the State Board of Education on January 26, 2006 for purposes of comporting 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.