STATE OF ARIZONA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

[redacted], a Student, by and through Parent(s) [redacted] and [redacted], Petitioners, v. DEER VALLEY Unified School District, Respondent.	No. 15C-DP-023-ADE **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: May 13, 2015

APPEARANCES: Students' Parents appeared, representing Student and themselves ("Petitioners"). Jennifer MacClennan, Esq., represented Respondent Deer Valley Unified School District ("DVUSD"), and was accompanied by Cheryl Parker, DVUSD Manager of Student Support Services.

WITNESSES:[1] [redacted] **Mother**; [redacted] **Father** (collectively "**Parents**"); Kendra Buringrud, Speech Language Pathologist; Richard Gray, Ph.D., former DVUSD Manager of Office of Student Support Services; Cheryl Parker, DVUSD Manager of Student Support Services.

HEARING RECORD: Certified Court Reporter Teresa A. VanMeter recorded the proceedings as the official record of the hearing.[2]

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

Parents bring this due process action on behalf of Student, claiming that Respondent School District violated the Individuals with Disabilities Education Act ("IDEA"), alleging procedural errors. The law governing these proceedings is the IDEA found at 20 United States Code ("U.S.C.") §§ 1400-1482 (as re-authorized and amended in 2004),[3] and its implementing regulations, 34 Code of Federal Regulations ("C.F.R.") Part 300, as well as the Arizona Special Education statutes, Arizona Revised

[1] Throughout the body of this Decision, proper names of Student, Parents, and Student's teachers are not used in order to protect the confidentiality of Student and to promote ease of redaction. Where necessary, pseudonyms (designated in bold typeface) will be used instead. Pseudonyms are not used for administrators, service providers, evaluators, and other professionals.

[2] The parties stipulated that the court reporter's transcript would be the official record of the proceedings; the court reporter's transcript was received at the Tribunal on June 1, 2015. By statute, the Tribunal is required to make an audio recording.

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.

Procedural History

On November 26, 2014, Petitioners filed a due process complaint ("Complaint").

On December 8, 2014, DVUSD filed a motion to dismiss the Complaint, arguing res judicata as to some claims and statute of limitations as to some claims based on the prior due process hearing and Administrative Law Judge Decision in Case No. 14C-DP-022-ADE.

On December 31, 2014, Petitioners filed a response, opposing a dismissal, arguing that that were no overlapping issues and that Petitioners' current claims had not been addressed in the prior Administrative Hearing Officer's Decision.

On consideration of the parties' pre-hearing motions and the prior Administrative Law Judge's Decision in Case #14C-DP-022-ADE, by ORDER dated January 8, 2015, the Tribunal ordered that Petitioners' Issues 1, 2(a), 2(b), 2(c), 2(d), and 2(e) were dismissed and that Petitioners' Issues 3, 4, and 5 would proceed to due process hearing.[4]

On January 14, 2015, Petitioners filed their motion for reconsideration of the dismissal of Counts 1 and 2.

On reconsideration of the motion, the prior Administrative Law Judge's Decision in Case #14C-DP-022-ADE, and the Order dismissing Counts 1 and 2, by ORDER

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

[4] ORDER REGARDING MOTION TO DISMISS, GRANTING MOTION IN PART, DISMISSING COUNTS 1 AND 2, RESETTING DUE PROCESS TIMELINE, dated January 8, 2015. The issues dismissed were: #1, allegation of failure of DVUSD to provide a free and appropriate public education ("FAPE") alleging Parents had been prevented from participating in developing the November 29, 2012 IEP by preventing access to educational records prior to that meeting; and, #2, allegation of failure of DVUSD to provide FAPE alleging that in creating the February 28, 2013 IEP, (a) there was not appropriate discussion of factors relating to least restrictive environment ("LRE"), (b) there was an alleged failure to offer that LRE without sufficiently defined access to non-disabled peers, (c) there was an alleged failure to hold sufficient discussion regarding extended school year ("ESY") for 2013, (d) there was an alleged failure to base ESY 2013 on Student's needs and the LRE for ESY, and (e) these was an alleged failure to complete the ESY program.

dated January 21, 2015, the Tribunal denied reconsideration of the dismissal of Counts 1 and 2.[5]

In their Complaint, as proposed remedies, Parents requested funding or reimbursement for the costs of home-based provision of services from the date of the determined violations, a finding that the home-based services were appropriate for reimbursement and stay put, compensatory educational services, damages, a finding that Petitioners are the prevailing party, actual attorney fees and costs, and other appropriate or equitable relief.

Evidence and Issues at Hearing

The parties presented testimony and exhibits at a formal evidentiary hearing held on May 13, 2015. The parties presented testimony from the witnesses listed above and provided pre-marked Exhibits: Petitioners marked Exhibits 1 through 65 and DVUSD marked Exhibits 1 through 35. Due to a disclosure issue, DVUSD's exhibits 1 through 17 were withdrawn.[6] Some, but not all, of Petitioners' Exhibits were admitted.[7]

Based on Petitioners' request for extended post-hearing written legal memorandum submission, the Tribunal ordered and the parties subsequently submitted written arguments to the tribunal.[8] Based on the requested and filed post-hearing submissions and the granted review period, the 45th day is October 7, 2015.

Retaining here the Complaint's claims' numerical designations, the issues[9] proceeding to due process hearing were:

Issue 3. Petitioners alleged that Respondent violated the IDEA, by allowing the February 28, 2013 IEP to expire without developing another IEP offer by the

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[5] ORDER DENYING RECONSIDERATION, dated January 21, 2015.

[6] During the hearing, exhibits 1-4 and 6-17 were discussed and admitted prior to the withdrawal; DVUSD exhibits 5 and 18-35 were not admitted.

[7] Petitioner's Exhibits admitted were: Exhibits 7-9, 14, 17-20, 22-24, 26, 30-32, 42, 49, 51-56, 58 [partial excerpts, only bates 621, 622-624, 643, 644-645, 646, 647, 649, 663-665, 666, and 667], and 59 [partial excerpts, only bates 706-708]. The remainder of Petitioners' marked exhibits were not admitted to the hearing record.

[8] Scheduled to be due on July 31, 2015, the parties discovered that neither of their filings had been electronically received by the Tribunal and both parties resubmitted their filings to the Tribunal on August 14, 2015.

[9] Petitioners' claims have been re-worded by the Administrative Law Judge. *See, Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1090 (9th Cir., 2002) (due process hearing officer may reorganize and restate issues in their own words as long as he/she addresses the merits of all issues).

annual review date, by the beginning of the 2014-2015 academic year, or by some other necessary date.

Issue 4. Petitioners alleged that Respondent violated the IDEA by refusing to hold a parent-requested IEP meeting in May 2013 or thereafter.

Issue 5. Petitioners alleged that Respondent violated the IDEA by imposing unnecessary delays and requirements on parents' request for a May 2013 IEP meeting.

Discussion

The Administrative Law Judge has considered the entire hearing record, including the testimony and Exhibits,[10] and now makes the following Findings of Fact, Conclusions of Law, and Decision finding that Petitioners have failed to demonstrate that Respondent School District violated the IDEA through the allegations set forth in the Complaint.

FINDINGS OF FACT

1. The claims remaining for determination in the instant matter are based on actions that occurred after February 28, 2013, and through the filing of the Complaint. Therefore, the factual findings herein are focused primarily on that period.

2. By way of background, at an IEP meeting in November of 2012 (for the period of November 29, 2012 through May 23, 2013) and using an evaluation conducted in November 2012, Student was determined eligible for special education under the primary category of Speech Language Impairment.[11] Under that IEP, Student was receiving speech and language services; however, approximately one month after DVUSD advised Mother that she could no longer attend the speech therapy sessions with Student that were being conducted at the elementary school, Parents gave DVUSD 10-day written notice that they intended "to secure private speech and language services ...and seek reimbursement from the District for all costs associated with obtaining these services."[12]

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

[11] Petitioners' Exhibit 7. Mother attended this IEP meeting. At that time, Student was [redacted] years and [redacted] months old.

[12] Petitioner's Exhibit 9.

3. On February 7, 2013, at a multidisciplinary evaluation team ("MET") meeting, Student's primary eligibility category was changed to developmental delay.[13]

4. At an IEP meeting on February 28, 2013, Student's IEP team, which included Father, met and created an IEP for Student.[14] As stated thereon, the "anticipated duration" of the IEP was February 28, 2013 through February 27, 2014. DVUSD gave Parents prior written notice ("PWN") regarding the February 28, 2013 IEP.[15] Pursuant to the February 28, 2013 IEP, the determined pre-school services were scheduled to begin for Student on March 11, 2013 at DVUSD's [redacted] Elementary school in the pre-school special education classroom (a developmental pre-school).[16] Additionally, the IEP team determined that Student was eligible for ESY.

5. Parents did not agree with the February 28, 2013 IEP and proposed, instead, that DVUSD consider a home-based program of special education services.[17] Student did not attend the DVUSD developmental pre-school on March 11, 2013, or on any day thereafter.[18]

6. An IEP meeting was scheduled for March 18, 2013 to discuss Parents' proposed home-based program; however, Parents cancelled that meeting on March 17, 2013.[19] The IEP meeting was rescheduled for April 23, 2013.

7. Father attended the April 23, 2015 IEP meeting.[20]

8. Following the April 23, 2013 meeting, DVUSD issued a PWN on April 23, 2013 to Parents rejecting the parentally-proposed special education services option of

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[13] At hearing, Mother testified that Student's eligibility category was severe pre-school delay; however, *see* Exhibit 42 (bates 000416), wherein on February 7, 2013, Student's primary eligibility category was designated to be developmental delay.

[14] Petitioners' Exhibit 14.

[15] *Id.* (bates 221). The PWN stated: "[Father] indicated he wanted to wait to enroll [Student] until the team can meet again and consider the home program level of service." The PWN indicated that Student was eligible for ESY.

[16] *Id.* (bates 219).

[17] *Id.* (bates 205) where it is noted that "Parent refused to sign any documents." Mother provided a description of the home-based program "a few days after" the February 28, 2013 meeting. *See* Petitioners' Exhibit 17.

[18] Petitioners' Exhibit 58 (bates 622); the last day of attendance/speech therapy services noted for Student was January 7, 2013.

[19] Petitioners' Exhibit 24.

[20] Petitioners' Exhibit 18.

a home-based program.[21] DVUSD rejected the home-based program because it offered speech therapy services but did not provide for any occupational therapy services, noting that Student was qualified for both such services. In the PWN, DVUSD again offered to Student the February 28, 2013 IEP services that would be provided at [redacted] Elementary School "as soon as parents register [Student]… ."

9. On May 2, 2013, DVUSD contacted Mother and asked whether "you and your husband had made a decision as to [Student] attending pre-school this year at Arrowhead" and indicating that there were twelve (12) school days remaining.[22]

10. On May 6, 20123, DVUSD was reviewing the status of the situation and began drafting a letter regarding disenrollment of Student due to his continued absences, which were, at that point in time, more than the statutory 10 consecutive days.[23]

11. On May 7, 2013, Mother contacted DVUSD, reiterating Parents' belief that the February 28, 2013 IEP did not "offer[] Student sufficient services to meet his needs" and stating "[m]ore importantly, it doesn't address our bigger concerns about what will be offered in the Fall."[24] Mother updated DVUSD on "additions" made to their home-based program proposal. Mother further stated: "[p]lease consider this letter as our 10 day Notice of Intent to you. We repeat, however, our willingness to meet with you before the school year ends so that we can develop, for the upcoming year, a plan for our son."

12. On Monday, May 13, 2013, at 7:04 p.m., DVUSD's designated representative contacted Mother regarding having a meeting on May 17, 2013 "to discuss your new proposal."[25]

13. On Tuesday, May 14, 2013, at 5:57 p.m., Mother responded indicating that May 17, 2013 "does not work for me" and further indicating that "we can make it for next week with advanced notice."[26] Mother asked DVUSD to provide a formal notice

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[21] Petitioners' Exhibit 17.
[22] Petitioners' Exhibit 22.
[23] Petitioners' Exhibit 59 (bates 707-708).
[24] Petitioners' Exhibit 22.
[25] Petitioners' Exhibit 23 (bates 254).
[26] *Id.* (bates 255).

that such meeting would be an IEP meeting "[where] a placement decision can be made because we are not interested in an informal meeting to chat about your concerns or ours for that matter. It is our understanding that only the IEP team can do these thing so, again, by sending us a formal notice for next week and we will make it our business to be there."[27]

14. By e-mail on May 15, 2013 and attaching its letter dated May 15, 2013, DVUSD notified Parents that it had withdrawn Student from enrollment pursuant to state laws, retroactively effective March 11, 2013, due to Student's continued and consecutive unexcused absences, which had totaled 42 school days since the implementation of the February 28, 2013 IEP.[28] DVUSD notified Parents that Parents would need to re-enroll Student if Parents wanted Student to attend the developmental pre-school for the remainder of the school year or if they wanted Student to attend Kindergarten in the Fall of 2013 [for the school year 2013-2014]. Finally, DVUSD advised Parents that they could request an IEP meeting "at the time of enrollment and the team will be convened within 15 school days of our receipt of your written request."

15. By e-mail dated May 20, 2013, Mother responded on behalf of Parents.[29] While Parents expressed multiple concerns and disagreements regarding the chain of events and facts of the existing situation, Parents' final two statements/comments are as follows:

> Mr. Gray, within your letter to us you also mention that under state law for Arizona the District is required to withdrawal [Student] based upon being absent from school for 42 school days since the IEP was officially implemented retroactively to March 11 according to you but that is not factually correct. As we understand it, we never agreed to implement the March 11, 2013, deadline, per your staff's proposed program. Contrary to your records, our records indicate that in his current private placement in our homebased program he has been attending and making meaningful progress since December 10, 2012.

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[27] *Id.*

[28] Petitioners' Exhibit 24; *see also* Petitioners' Exhibit 26 (bates 263-264), a PWN regarding the withdrawal. Regarding state law on withdrawals, *see* A.R.S. § 15-901(A)(1).

[29] Petitioners' Exhibit 25.

> We are perplexed by the District's continued actions toward [Student] and us his parents; and as always, we are ready, able, and willing to meet this week as an IEP team to discuss [Student's] educational needs and the service minutes that are needed to provide him with a [FAPE]. Therefore, if there are papers we need to fill out to keep him enrolled we are ready, able, and willing.

16. At hearing, Mother credibly testified that she has [redacted] boys and that none of them were enrolled in Kindergarten by Parents until they had reached the age of 6 years.[30] DVUSD provided credible testimony that, as early as late October or early November of 2012, Parents and/or their advocate had indicated to DVUSD that they did not intend to register Student in Kindergarten until he was 6 years of age and that they did not intend to enroll Student in the developmental pre-school program.[31] Student would become 6 years old during the summer of 2014.

17. At hearing, Mother testified that she did not re-enroll Student and that she did not feel it was necessary to re-enroll Student, stating "[h]e was already enrolled in the [D]istrict, and for me to take him out of his current placement and enroll – disenroll him there, then enroll him in the [D]istrict and then go back and re-enroll in his current program didn't logically make sense to me."[32] In continuing to disagree that Student needed to be re-enrolled, Mother further opined that DVUSD "knew" that Student was in a "private placement."[33] Finally, Mother argued that she was (a) denied participation in a May 2013 IEP meeting that she had asked on May 7, 2013 to be held or (b) denied participation in an IEP meeting for a February 2014 IEP meeting on expiration of the February 28, 2013 IEP or (c) denied participation in an IEP meeting after providing August 2014 present levels when DVUSD did not convene an IEP meeting.[34]

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[30] Transcript at 69-72

[31] Transcript at 160-161.

[32] May 13, 2015 Hearing Record Transcript ("Transcript"), page 33. Parents' "issue" regarding disenrollment, as determined in Case #14C-DP-022-ADE, is the subject of the pending appeal in U.S. District Court, as well as is Parents' issue regarding appropriateness of the February 28, 2013 IEP versus Student's home-based program. The Administrative Law Judge determined, in Case #14C-DP-022-ADE, that the DVUSD February 29, 2013 IEP offered Student a FAPE.

[33] Transcript, pages 38-39.

[34] Transcript, pages 44-45; *see also* Petitioners' Exhibit 31 and Exhibit 32.

18. Regarding holding a meeting in May 2013, DVUSD's position is that even if it had construed Mother's May 7, 2013 e-mail as a specific request for an IEP meeting, such IEP meeting would not have to have been held in May of 2013 and could have been held as late as August 2013, given the state's rule requiring that a review of an IEP take place within 15 school days of a parental request.[35] In its post-hearing memorandum, DVUSD noted that, on May 7, 2013, only 10 developmental pre-school days, and only 12 district-wide school days, remained in the 2012-2013 school year. The hearing record demonstrated, however, that DVUSD continued to work with Parents. DVUSD tried to schedule a May 17, 2013 "to discuss your new proposal" and Parents indicated unavailability. Given that, at that time, Parents' efforts at and after the IEP meetings of February 28, 2013 and April 23, 2013 were concentrated on having DVUSD reconsider the Parents' homebased program, the hearing record demonstrates that this would have been another IEP meeting.

19. The withdrawal of students from Arizona schools is governed by state law and is not reviewable under the IDEA. The hearing record demonstrates that, as of May 15, 2013 and effective retroactively to March 11, 2013, based on state law, Student was withdrawn from DVUSD and, therefore, was no longer enrolled in DVUSD. The hearing record demonstrates that, after May 15, 2013, Parents did not re-enroll Student at DVUSD for the remainder of the 2012-2013 school year or for the 2013-2014 school year. Therefore, although the hearing record has stated herein the factual background regarding the DVUSD withdrawal of Student, the Administrative Law Judge Decision makes no other determinations regarding the withdrawal.

CONCLUSIONS OF LAW

APPLICABLE LAW

FAPE

1. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a FAPE (free appropriate public education) that meets their individual needs.[36] These needs include academic, social, health, emotional,

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[35] Arizona Administrative Code ("A.A.C.") R7-2-401(G)(7).
[36] 20 U.S.C. §1400(d); 34 C.F.R. § 300.1.

communicative, physical, and vocational needs.[37] To provide a FAPE, school districts must identify and evaluate all children within their geographical boundaries who may be in need of special education and services. The IDEA sets forth requirements for the identification, assessment, and placement of students who need special education, and seeks to ensure that they receive a FAPE. A FAPE consists of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."[38] The IDEA mandates that school districts provide a "basic floor of opportunity," nothing more.[39] The IDEA does not require that each child's potential be maximized.[40] A child receives a FAPE if a program of instruction "(1) addresses his unique needs, (2) provides adequate support services so he can take advantage of the educational opportunities and (3) is in accord with an individualized educational program."[41]

The IEP

2. Once a student is determined eligible for special education services, a team composed of the student's parents, teachers, and others familiar with the student formulate an IEP (individualized education program) that generally sets forth the student's current levels of educational and functional performance and sets annual goals that the IEP team believes will enable the student to make progress in the general education curriculum.[42] The IEP tells how the student will be educated, especially with regard to the student's needs that result from the student's disability, and what services will be provided to aid the student. The student's parents have a right to participate in the formulation of an IEP.[43] The IEP team must consider the

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[37] *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).
[38] *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).
[39] *Id.*, 458 U.S. at 200.
[40] *Id.* at 198.
[41] *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006) (citing *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995).
[42] 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.
[43] 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

strengths of the student, concerns of the parents, evaluation results, and the academic, developmental, and functional needs of the student.[44]

Substantive versus Procedural

3. A determination of whether or not a student received a FAPE must be based on substantive grounds.[45] For substantive analysis of an IEP, the review of the IEP is limited to the contents of the document.[46] Therefore, the question of whether an IEP is reasonably calculated to provide educational benefit to a student must be decided on the basis of the content of the IEP itself.

4. Procedural violations in and of themselves do not necessarily deny a student a FAPE. If a procedural violation is alleged and found, it must be determined whether the procedural violation either (1) impeded the student's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefit.[47] If one of those three impediments has occurred, the student has been denied a FAPE due to the procedural violation.

Reimbursement for Parental Private School Placement

5. Parents who dispute whether an IEP provides a FAPE to a student, and who as a result enroll that student in a private program, may receive reimbursement for the costs of that private enrollment under certain circumstances.[48] The program offered by the school district must fail to provide a FAPE to the student and the private school must be an "appropriate" placement.[49] A private school placement may be appropriate even if it does not operate under public school standards.[50] Under these circumstances, parents may "enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the [school district]. . ." and

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[44] 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).
[45] 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. §§ 300.513(a)(1).
[46] *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001) ("only those services identified or described in the . . . IEP should have been considered in evaluating the appropriateness of the program offered) (relying on *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) (IDEA requirement of a formal, written offer should be enforced rigorously)).
[47] 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).
[48] 34 C.F.R. § 300.148(c) and (d).
[49] *Id.*

seek reimbursement from the school district for the expense of that enrollment from a court or hearing officer.[51] Indeed, parents have "'an equitable right to reimbursement for the cost of providing an appropriate [private] education when a school district has failed to offer a child a [free appropriate public education].'"[52] Furthermore, the placement does not have to meet IDEA requirements.[53] However, an award for reimbursement can be reduced or denied in various circumstances.[54] An award may be reduced or denied if the parents have not given adequate notice as set forth in the IDEA.[55]

DECISION

Burden of Proof and Basis of Decision

6. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.[56] The standard of proof is "preponderance of the evidence," meaning evidence showing that a particular fact is "more probable than not."[57] Therefore, in this case Petitioners bear the burden of proving by a preponderance of evidence that DVUSD violated the IDEA by not convening an IEP meeting in May 2013 or thereafter, by unnecessarily delaying or imposing requirements for an IEP meeting, and by not developing another IEP prior to the expiration of the February 28, 2013 IEP. If a procedural violation is demonstrated, Petitioners must then show that the procedural violation either (1) impeded Student's right to a FAPE, (2) significantly impeded Parents' opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit to

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[50] *Id.*

[51] 34 C.F.R. § 300.148(b) and (c).

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

[53] *Florence County. Sch. Dist. Four v. Carter*, 510 U.S. 7, 13 (1993).

[54] 34 C.F.R. § 300.148(d).

[55] 34 C.F.R. § 300.148(d)(1). *Anchorage School District v. M.P.*, 689 F.3d 1047, 1059 (9th Cir. 2012) lists other equitable factors that might reduce reimbursement, none of which have been raised here.

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

[57] *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).

Student.[58] In order to be reimbursed in any amount for a private parental placement, Parents must also show that the program offered by DVUSD failed to provide a FAPE to Student and that the private parental placement was appropriate.

Petitioners' Claims

7. Petitioners' raised five claims of violation of the IDEA and several claims for relief. Count 1 and Count 2 (and each part of Count 2) have already been addressed and dismissed. The three remaining claims are interrelated, in that they each deal with the February 28, 2013 IEP and IEP meetings thereafter.

8. The Administrative Law Judge concludes that the hearing record does not support Petitioners' claims that DVUSD violated the IDEA and, therefore, Petitioners' claims fail. The hearing record demonstrates that the February 28, 2013 IEP expired not as a function of any IDEA procedure or procedural error on the part of DVUSD but as a function of the combined circumstances of Student's withdrawal by DVUSD pursuant to state law and the failure of Parents to re-enroll Student. Student's withdrawal by DVUSD is not under review or consideration in this matter; however the fact remains that DVUSD withdrew Student for absences from district classrooms. The hearing record clearly demonstrated that Parents had no intention for Student to attend the developmental pre-school and partake of the February 28, 2013 IEP-offered services for developmental pre-school. Parents and/or their advocate so informed DVUSD. The hearing record also demonstrated that Parents' efforts at and after the IEP meetings of February 28, 2013 and April 23, 2013 were concentrated on having DVUSD reconsider the Parents' homebased program. Despite these circumstances, from February 28, 2013 and until Mother's May 7, 2013 e-mail, DVUSD anticipated and awaited Parents' registration of Student at the developmental pre-school.[59] During the time period from February 28, 2013 through May 15, 2013, as required in the IDEA for an identified student enrolled in the district, DVUSD continued to empanel Student's

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[58] 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

[59] It must be noted that, on May 7, 2013, Mother informed DVUSD of Parents' belief the February 28, 2013 IEP did not offer sufficient services..." Additionally, Mother specified the following: "[m]ore importantly, it doesn't address our bigger concerns about what will be offered in the Fall."[59] However, in the Fall of 2013, Student would not yet have been 6 years old and the hearing record clearly demonstrated that Parents did not intend for Student to attend Kindergarten until he became 6 years old.

IEP team, for a March meeting and again for an April meeting, and continued to offer Student the individualized special education services set forth in the February 28, 2013 IEP.[60] Therefore, the Administrative Law Judge concludes that the hearing record demonstrated that DVUSD made its offer of individualized special education services to Petitioners and awaited Student's presence at the developmental pre-school. Student's IEP team scheduled implementation of Student's February 28, 2013 IEP at the developmental pre-school to begin on March 11, 2013. Parents did not register Student for the developmental pre-school and Student did not attend the developmental pre-school on March 11, 2013 or on any day thereafter. Despite Mother's final statement in Parents' May 20, 2013 response to the DVUSD withdrawal notice, Parents made no effort to re-enroll Student.[61] The Administrative Law Judge concludes that, after Student's withdrawal by DVUSD, Parent's made no effort to re-enroll Student and made no request, upon any re-enrollment, for an IEP meeting to determine specialized services at that time for Student. Based on the foregoing, the Administrative Law Judge concludes that, after May 15, 2013, DVUSD had no IDEA obligation to offer or provide individualized special education services to Student, a child with a disability no longer enrolled with the district, until Parents re-enrolled Student.[62]

9. Having found no IDEA procedural violation, this Administrative Law Judge Decision makes no determination regarding whether Parents' homebased program is a private placement. Additionally, this Administrative Law Judge Decision makes no determination regarding whether Parents' homebased program was more appropriate for Student's individualized needs than the DVUSD February 28, 2013 IEP. That issue was determined in Case No. 14C-DP-022.

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[60] The hearing record demonstrated that DVUSD scheduled an IEP meeting for March 18, 2013 which was cancelled on March 17, 2013, apparently due to Parents' notification of unavailability.

[61] RE: Finding of Fact #15.

[62] Having already identified Student as a child with a disability, DVUSD had no continuing obligation to "find" Student as a child residing within its boundaries.

10. Because the evidentiary record does not show any violation of the IDEA by DVUSD and, therefore, no remedies would be fashioned, the Administrative Law Judge does not address Petitioners' requested remedies.

DECISION

Based on the findings and conclusions above,

IT IS HEREBY ORDERED that Petitioners' Complaint is denied.

ORDERED this day, October 6, 2015.

/s/ Kay A. Abramsohn
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. Pursuant to Arizona Administrative Code § R7-2-405(H)(8), any party may appeal the decision to a court of competent jurisdiction within thirty-five (35) days of receipt of the decision.

Copies distributed/mailed/e-mailed this day, October 6, 2015, to:

[redacted]
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By F. Del Sol