

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 [REDACTED] Student, by and through Parents [REDACTED]

No. 20C-DP-044-ADE

4 Petitioners,

5 v.

**AMENDED ADMINISTRATIVE LAW
JUDGE DECISION**

6 Catalina Foothills School District,
7 Respondent.

8
9 **HEARING:** Convened on May 18-21, 2020,¹ followed by review of the official
10 record received on June 05, 2020, and review of closing arguments received on July 01,
11 2020, July 31, 2020, and August 16, 2020.²

12 **APPEARANCES:** Hope Kirsch, Esq. and Lori Kirsch-Goodwin, Esq. appeared on
13 behalf of Petitioner Parent [REDACTED] ("Parent"), Petitioner Parent [REDACTED] (collectively "Parents")
14 and Petitioner Student [REDACTED] ("Student") (collectively "Petitioners").

15 Denise Bainton, Esq. and Lisa Ann Smith, Esq. appeared on behalf of Catalina
16 Foothills School District ("Respondent" and "CFSD"), accompanied by Dr. Denise Bartlett,
17 Executive Director of Special Education.

18 **WITNESSES:**³

- 19 • **Parent;**
- 20 • [REDACTED] **Clinical Psychologist;**
- 21 • [REDACTED] **Academic Director – [REDACTED]**
- 22 • [REDACTED] **);**
- 23 • [REDACTED] **Counselor – [REDACTED];**
- 24 • [REDACTED] **Principal – [REDACTED]**
- 25 • [REDACTED] **English Teacher – Catalina Foothills High School;**
- 26 • [REDACTED] **Spanish Teacher – Catalina Foothills High School;**
- 27 • [REDACTED] **Health & Wellness Teacher – Catalina Foothills High School;**
- 28 • [REDACTED] **Principal – Catalina Foothills High School;**
- 29 • [REDACTED] **CFSD School Psychologist; and**
- 30 • [REDACTED] **Neuropsychologist**

1 ¹ At the time the underlying Complaint was filed, Student was in the midst of 10th grade during the 2019-20
2 school year. However, by the time the hearing record was closed Student had completed his 10th grade
3 year.

4 ² The parties requested that the timeline be extended to allow for the receipt of the transcript and written
5 closing arguments. As a result, the 45th day, the day by which a decision is due, was October 10, 2020.

6 ³ Throughout this Decision, proper names of Parents and Student's teachers are not used in order to protect
7 confidentiality of Student and to promote ease of redaction. Pseudonyms (appearing above in bold type)
8 will be used instead. Proper names of administrative personnel, service providers, and expert witnesses
9 are used.

HEARING RECORD: Certified Court Reporter Raynbo Silva (CR No. 50014), RAYNBO COURT REPORTING, LTD., recorded the proceedings as the official record of the hearing.⁴

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

PROCEDURAL HISTORY

On October 02, 2020, the undersigned issued an ADMINISTRATIVE LAW JUDGE DECISION in the above-captioned matter.

On October 05, 2020, Petitioners submitted a MOTION FOR RECONSIDERATION, which asserted, in pertinent part, that the parties had not stipulated to withdraw Allegation #3 from the Complaint, rather that the parties had stipulated to amend Allegation #3 as follows:

Whether the Districts refusal of Parents' request for an evaluation deprived Parents of their right to meaningfully participate in the decision-making process regarding the provision of FAPE to [Student]. [sic]

The Tribunal's failure to address Complaint Allegation #3, as amended by the parties, was in error. Having reviewed the evidence and testimony of record in this matter, the undersigned hereby issues this AMENDED ADMINISTRATIVE LAW JUDGE DECISION and makes the following Findings of Fact and Conclusions of Law, as to Complaint Allegation #3 only, and issues the following RULING to the Chief of Dispute Resolution for the Arizona Department of Education.⁵

EXHIBITS

The parties presented testimony, exhibits, and argument at the formal evidentiary hearing session. Petitioners Exhibits A through M were admitted into the record.⁶ Respondent Exhibits 1 through 25 were admitted into the record. The NOTICE OF HEARING, RESPONDENT'S PREHEARING MEMORANDUM, RESPONDENT'S REPLY TO COMPLAINT,

⁴ The parties stipulated that the court reporter's transcript would be the official record of the proceedings, which were timely received on June 09, 2020.

⁵ Notably, the delay in issuance of this AMENDED DECISION is due solely to the current global COVID-19 pandemic.

⁶ Exhibits M is a demonstrative exhibit only.

PETITIONERS' CLOSING ARGUMENT, RESPONDENT'S CLOSING ARGUMENT, and PETITIONERS' REPLY ARGUMENT were all admitted into the record as their own exhibits.

AMENDED COMPLAINT ISSUES #3

The following issue was erroneously omitted for determination at the due process hearing:

- Whether the District's refusal of Parents' request for an evaluation deprived Parents of their right to meaningfully participate in the decision-making process regarding the provision of FAPE to Student.

REQUESTED REMEDIES

Petitioners requested the following remedies:

(1) Respondent should reimburse Parents for tuition, transportation and other related expenses they incurred for Student's placement at [REDACTED].

(2) Student should remain at [REDACTED] at Respondent's expense, including transportation and other related services, through the end of the 2019-2020 school year at least and thereafter until Respondent and Parents agree on an LRE where Student can receive a FAPE;

(3) Respondent should reimburse Parents for expenses incurred for the private evaluation they obtained for Student, and pay for the private evaluator to attend a meeting to discuss the provision of a FAPE to Student and placement;

(4) Respondent should reimburse Parents' attorneys' fees and expenses, including costs and experts' fees, incurred by Parents during the proceedings, hearing and any appeals, or deferring to the jurisdiction of the District Court for deciding such fees, costs and expenses; and

(5) Any additional relief deemed just and proper by the Tribunal.

In due process matters, remedies are only considered regarding proven IDEA violations and all remedies must be related to a resolution of a proven IDEA violation.

The Tribunal has considered the entire hearing record including the testimony and the admitted Exhibits, and now makes the following Findings of Fact, Conclusions of Law,

and Ruling finding that Petitioners have failed to demonstrate that CFSD violated the IDEA through the aforementioned allegation set forth in the Complaint.

FINDINGS OF FACT⁷

1. The crux of the claims in the instant matter are based on alleged actions and inactions by both parties that occurred between Student's 9th grade and 10th grade years, from 2018-2020. The substantive facts of record are as follows:

Early Childhood

- a. On August 12, 2004, Student was born. Parents legally adopted Student at age 11 months.

7th Grade

- b. At the onset of his 7th grade year in 2016-17, Student enrolled in CFSD's middle school.
- c. Student's academic performance during his 7th grade year in 2016-17⁸ was reported as follows:
 - i. Student earned an average of [REDACTED] in Science 7.
 1. Science Teacher noted that Student needed to "take advantage of opportunities for help."
 - ii. Student earned an average of [REDACTED] in Spanish 1a.
 - iii. Student earned an average of [REDACTED] in English Language Arts 7.
 - iv. Student earned an average of [REDACTED] in Social Studies 7.
 - v. Student earned an average of [REDACTED] in Math 7.
 - vi. Student earned an average of [REDACTED] in Physical Education ("PE")/Health 7.
 - vii. Student earned an average of [REDACTED] in Art 7.
 - viii. Student earned an average of [REDACTED] in General Music 7.
 1. Music Teacher noted that Student was a "pleasure to have in class."

⁷ These Findings of Fact remain unchanged from the original Administrative Law Judge Decision issued on October 02, 2020, and are reiterated herein for context with the subsequent Conclusions of Law and Ruling.

⁸ See Petitioners Exhibit A, pages 23-27.

- ix. Student was tardy to class on 8 occasions and absent from school on 4 days during the 2016-17 school year.⁹
- x. Student's Spring 2017 Grade 7 English Language Arts ("ELA") Assessment by AzMERIT score was Level 2 (Partially Proficient).¹⁰
- d. Student was disciplined on 1 occasion during his 7th grade year in 2016-17 for "aggression."¹¹

8th Grade

- e. During Student's 8th grade year in 2017-18 he was evaluated and granted academic accommodations pursuant to Section 504 of the Rehabilitation Act of 1973 ("504 Plan"), in part, due to an Attention-Deficit/Hyperactivity Disorder ("ADHD") diagnosis.¹² Specifically, Student's 504 Plan afforded him additional time to complete tasks and offered preferential classroom seating to eliminate distractions.¹³
- i. On May 15, 2018, Respondent issued a Prior Written Notice ("PWN") to Parents.¹⁴ The purpose of the PWN was to update Student's 504 Plan for continued use and remove "alternative forms of testing" as an accommodation because Student did not utilize the safeguard during his 8th grade year.
- f. Student's academic performance during his 8th grade year in 2017-18¹⁵ was reported as follows:
- i. Student earned an average of [REDACTED] in Science 8.
- ii. Student earned an average of [REDACTED] in Spanish 1b.
- iii. Student earned an average of [REDACTED] in English Language Arts 8.

⁹ See Petitioners Exhibit A, page 27. Student also missed 8 other days of PE and 1 day of Math and Music class.

¹⁰ See Petitioners Exhibit A, pages 28-32.

¹¹ See Petitioners Exhibit A, page 16.

¹² Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394, codified at 29 U.S.C. § 701 et seq., is legislation that guarantees specific rights to students with disabilities. See Petitioners Exhibit A, page 13 and Petitioners Exhibit B, page 19.

¹³ See Petitioners Exhibit A, pages 14-15, 17-18, 37-38, 40-41, and 63-64.

¹⁴ See Petitioners Exhibit A, pages 40-41.

¹⁵ See Petitioners Exhibit A, pages 43-46.

iv. Student earned an average of [REDACTED] in Social Studies 8.

v. Student earned an average of [REDACTED] in Math 8.

1. Math Teacher noted Student was a “pleasure to have in class.”

vi. Student earned an average of [REDACTED] in PE/Health 8.

vii. Student earned an average of [REDACTED] in Art 8.

viii. Student’s Spring 2018 Grade 8 ELA Assessment by AzMERIT score was Level [REDACTED].¹⁶

ix. Student passed the Spring 2018 Arizona’s Instrument to Measure Standards (“AIMS”) Assessment with a score of “meets the standard.”¹⁷

x. Student was tardy to class on 6 occasions and absent from school on 2.5 occasions during the 2017-18 school year.¹⁸

g. Student was disciplined on 1 occasion during his 8th grade year in 2017-18 for a tobacco policy violation.¹⁹

9th Grade

h. At the onset of his 9th grade year in Fall of 2018, Student matriculated to CFSD’s high school.

i. Student’s academic performance during his 9th grade year in 2018-19 ²⁰ was reported as follows:

i. First semester, Student earned a [REDACTED] in Global Issues. Second semester, Student earned a [REDACTED] in Global Issues.

ii. First semester, Student earned a [REDACTED] in Spanish 1. Second semester, Student earned a [REDACTED] in Spanish 1.

¹⁶ See Petitioners Exhibit A, pages 47-50.

¹⁷ See Petitioners Exhibit A, pages 51-52.

¹⁸ See Petitioners Exhibit A, page 46. Student was absent for half of a day during the 4th quarter of the school year.

¹⁹ See Petitioners Exhibit A, page 42.

²⁰ See Petitioners Exhibit A, pages 68-69.

1 iii. First semester, Student earned a [REDACTED] in Algebra 1. Second semester,
2 Student earned a [REDACTED] in Algebra 1.

3 1. Algebra Teacher noted Student was a “pleasure to have in
4 class.”

5 iv. First semester, Student earned a [REDACTED] in Honors Biology. Second
6 semester, Student earned a [REDACTED] in Honors Biology.

7 1. Honors Biology Teacher noted that Student’s grade was due,
8 in part, because “[m]ajor assessment(s) not turned in.”

9 v. First semester, Student earned an [REDACTED] in Beginning Guitar. Second
10 semester, Student earned an [REDACTED] in Beginning Guitar.

11 vi. First semester, Student earned a [REDACTED] in Honors English 9. Second
12 semester, Student earned a [REDACTED] in Honors English 9.

13 1. Honors English Teacher noted Student was a “pleasure to
14 have in class.”

15 vii. First semester, Student earned a [REDACTED] in PE.

16 viii. Second semester, Student earned a [REDACTED] in Health & Wellness.

17 ix. Student’s Spring 2019 Grade 9 ELA Assessment by AzMERIT score
18 was Level [REDACTED]).²¹

19 x. Student passed the Spring 2019 AIMS Assessment with a score of
20 “meets the standard.”²²

21 j. Student was disciplined on 2 occasions during his 9th grade year in 2018-
22 19 for name-calling²³ and for in-class possession and use of an electronic
23 cigarette.²⁴

24 k. On April 25, 2019, Respondent issued a PWN to Parents.²⁵ The purpose of
25 the PWN was to continue Student’s 504 Plan and afford him a better chance
26 of achieving academic success, as it was noted that Student was not using

27 ²¹ See Petitioners Exhibit A, pages 72-73.

28 ²² See Petitioners Exhibit A, pages 74-75.

29 ²³ See Petitioners Exhibit A, page 53.

30 ²⁴ See Petitioners Exhibit A, pages 54-56.

²⁵ See Petitioners Exhibit A, pages 65-66.

his plan accommodations regularly. It was also remarked that “[Student] is not achieving to his ability, and he needs accommodations in place to be successful academically.”

I. On May 22, 2019, the 2018-19 school year ended.

2019 Summer Break – 1st Semester of 10th Grade

- m. On May 31, 2019, Student was voluntarily admitted to a behavioral health hospital (“BHH”) after he [REDACTED].²⁶ Student was diagnosed with Unspecified Bipolar Disorder. On June 11, 2019, Student was discharged.²⁷
- n. On July 01, 2019, Student was voluntarily readmitted to [REDACTED] after he self-reported feeling “super suicidal and super homicidal.”²⁸ Student was discharged on July 08, 2019.²⁹
- o. On July 09, 2019, Parents enrolled Student in a short-term Residential Treatment Center (“RTC”) [REDACTED] in Petaluma, California.³⁰ Student transferred to another RTC on or about August 13, 2019, after he “completed treatment” to “become capable of handling angry feelings in constructive ways that enhance daily functioning.”³¹
- i. On June 21, 2019, Parents first made contact with [REDACTED]
- ii. At his intake, Student indicated that he viewed “family conflict” and “drugs” as his current problems.³² Student also reported daily marijuana use and prior use of alcohol and benzodiazepines.³³ Student further reported that he used drugs as a support system and

²⁶ See Petitioners Exhibit C.

²⁷ *Id.*

²⁸ See Petitioners Exhibit D.

²⁹ *Id.*

³⁰ See Respondent Exhibit 20, pages 239-279; see also Petitioners Exhibits A, pages 76-85 and E.

³¹ See Respondent Exhibit 20, page 277.

³² *Id.* at 243.

³³ *Id.*

means of social functioning.³⁴ Student's 9th grade GPA was listed as [REDACTED] and his education needs were listed as "none."³⁵

iii. During his stay at [REDACTED] Student was evaluated by staff and a private Clinical Neuropsychologist whereby he was diagnosed with Cannabis Use Disorder, Major Depressive Disorder ("MDD"/Bipolar Disorder, Substance Abuse Disorder ("SUD"), Oppositional Defiance Disorder ("ODD"), Social Phobia, Generalized Anxiety Disorder ("GAD"), and had his previous ADHD diagnosis confirmed.³⁶

iv. It is unclear what tuition, if any, Parents paid [REDACTED] for Student's short-term RTC placement.

p. On July 17, 2019, Student submitted to 7 psychological tests administered by a licensed Clinical Neuropsychologist, whereby Student was diagnosed with [REDACTED] diagnosis confirmed.

q. On August 05, 2019, Parents submitted a written request to Respondent for "an IEP meeting."³⁷

r. On August 06, 2019, Parents notified Respondent in writing that they "are going to withdraw him."³⁸

s. On August 07, 2019, Parent advised Respondent that Student had been enrolled at [REDACTED] to seek treatment for his substance abuse disorder.

t. August 08, 2019, was the first day of the 2019-20 school year. Parent called Student "out sick" of school. Later, Parents submitted a second written request to Respondent for "an IEP meeting" that specifically noted should take place "no more than 10 business days from our original request, as required by law."³⁹

³⁴ *Id.* at 246.

³⁵ *Id.*

³⁶ See Respondent Exhibit 20

³⁷ See Petitioners Exhibit B, page 48.

³⁸ *Id.*

³⁹ See Petitioners Exhibit B, page 49.

- 1 u. Parents offered that Student had been “diagnosed with a new disorder
2 which will impact his learning and requires intensive psychological therapy
3 services as well as tailored education for his disability.”⁴⁰
- 4 v. On August 09, 2019, Respondent informed Parents that for Student to be
5 considered for a special education evaluation, Student would need to be a
6 registered homeschool student, enrolled in online school, or remain enrolled
7 in high school and attend regularly.⁴¹ Respondent further advised that it had
8 15 school days post receipt of Parent’s evaluation request to review existing
9 data or issue a PWN.⁴² Respondent further advised that it would have an
10 additional 60 calendar days to complete an evaluation if it determined that
11 a review of existing data was not sufficient.⁴³ Respondent informed Parents
12 that it would conduct an evaluation of existing data or issue a PWN by
13 August 28, 2019.⁴⁴
- 14 w. On August 09, 2019, Parents informed Respondent that Student was “out
15 of school sick right now due to his disability.”⁴⁵ Respondent warned Parents
16 that Student could be withdrawn after 10 consecutive days of non-
17 attendance and informed Parents that they may report absence(s) for
18 Student by calling the attendance hotline, emailing the school’s attendance
19 representative, or submitting an online form on the school’s website, and
20 attached an Exclusion and Exemptions from School
21 Attendance/Certification of Students with Chronic Health Conditions
22 (“Health Waiver”) form.⁴⁶ Respondent noted that the Health Waiver could
23 be implemented if Student did not qualify for special education services.⁴⁷

25 ⁴⁰ *Id.*

26 ⁴¹ See Petitioners Exhibit B, page 50.

27 ⁴² *Id.*

28 ⁴³ *Id.* Notably, a typographical error appears in the referenced email.

29 ⁴⁴ *Id.*

30 ⁴⁵ See Petitioners Exhibit B, page 51.

⁴⁶ See Petitioners Exhibit B, page 52.

⁴⁷ *Id.*

- x. On August 11, 2019, Parents enrolled Student at [REDACTED] in [REDACTED] [REDACTED].⁴⁸ Respondent was not advised.
- i. Parent continued to call and/or email Student “out sick” through September 2019, citing “depression.”⁴⁹
- y. On August 21, 2019, Respondent informed Parents that the Student Study Team determined that a special education referral for Student was not warranted, and instead offered to meet with Parents to discuss alternative options for Student.⁵⁰ Parents responded by informing Respondent of Student’s RTC placement and noted “[w]e feel that the school has a responsibility to help us pay for this placement and we will be seeking reimbursement from the school district.”⁵¹
- i. Parents paid [REDACTED] \$154,880.13 for Student’s RTC placement from August 12, 2019, through May 31, 2020.⁵²
- ii. Parents spent \$3,496.76 in travel expenses to visit Student between October 10, 2019, and February 23, 2020.⁵³
- z. On August 22, 2019, Respondent issued a PWN to Parents.⁵⁴ The purpose of the PWN was to document and inform Parents of Respondent’s determination not to evaluate Student for special education and related services, per their August 05, 2019, request. Respondent noted that it based its decision on a review of Student’s academic information, including his 504 Plan and disciplinary record, and while it acknowledged Student’s recent psychological diagnoses, Respondent concluded that Student’s education history did not illustrate an adverse impact on his educational performance. Respondent also noted that because Student had not yet attended school that academic term, Respondent was unable to obtain input

⁴⁸ See Petitioners Exhibits B, page 55 and F.

⁴⁹ See Respondent Exhibit 14, page 86.

⁵⁰ See Petitioners Exhibit B, page 54.

⁵¹ See Petitioners Exhibit B, pages 55 and 69.

⁵² See Petitioners Exhibit I.

⁵³ *Id.*

⁵⁴ See Petitioners Exhibits A, pages 86-89 and B, pages 64-68.

1 from Student's 10th grade teachers, and that it could not make a
2 determination as to whether Student's psychological diagnoses currently
3 had an adverse impact on his educational performance.

4 aa. On or about August 26, 2019, Respondent received a Health Waiver form
5 on behalf of Student.⁵⁵ The form stated "[Student] had been admitted to a
6 residential program out of town for 3 months. He will return to school after
7 completion of the program."⁵⁶

8 bb. On September 12, 2019, Respondent declined responsibility for any costs
9 Parents incurred in their unilateral placement of Student at [REDACTED].⁵⁷

10 cc. On September 16, 2019, Parents reached out to Respondent to determine
11 whether they "have a right to an [IEE] since we disagree with your
12 conclusion that [Student] does not need an evaluation?" Parents noted that
13 the PWN "doesn't say what happens if the school refuses to perform an
14 evaluation," and asked "Can you explain our rights?"

15 dd. On September 19, 2019, Respondent provided written notice to Parents that
16 "[Respondent] will be required to withdraw [Student] from school because
17 he's in attendance at another school ([REDACTED]). Unfortunately, [Respondent
18 is] not allowed to dual enroll students. When [Student] returns to Tucson,
19 we are ready to educate him on our campus."⁵⁸ Respondent also advised
20 that it would get back to Parents "as soon as possible" regarding Parents
21 question related to an IEE.⁵⁹

22 ee. On September 20, 2019, Respondent withdrew student, and backdated the
23 withdrawal to August 07, 2019.⁶⁰

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27 ⁵⁵ See Petitioners Exhibits A, pages 90-91 and B, pages 59-60.

28 ⁵⁶ *Id.*

29 ⁵⁷ See Petitioners Exhibit B, page 70.

30 ⁵⁸ See Respondent Exhibit 14, page 88.

⁵⁹ *Id.*

⁶⁰ See Petitioners Exhibit A, pages 93-96.

ff. On November 20, 2019, Student submitted to a psychological assessment Parents arranged for him to have while at [REDACTED].⁶¹ Clinical Psychologist made the following determinations:

- i. Student requires continued residential schooling with individualized academic intervention(s);
- ii. Student requires continued residential academic-therapeutic intervention(s);
- iii. Student suffers from attachment problems including trust issues, interpersonal manipulation and self-injury that require continued therapy;
- iv. Student requires an academic setting that includes reduced class size, one-on-one attention, visual and auditory directions, a workspace near his instructor, extended time on exams and projects, and predictable rewards and consequences
- v. Student requires integrated social skills training; and
- vi. Student requires a structured and predictable lifestyle to better regulate neuro-chemical levels, which impacts Student's ability to regulate his mood and re-focus when distracted.

1. Parents paid \$4,100.00 to Clinical Psychologist for the assessment and travel fees related thereto.⁶²

gg. On December 04, 2019, Parents provided Respondent with written notice that Student would remain at [REDACTED] for "some more months."⁶³

2. In closing, Petitioners argued that Respondent was the local education agency ("LEA") responsible for Child Find and evaluation of Student, pursuant to ARIZ. ADMIN. CODE R7-2-401(D)(4)(b) and 20 U.C.S. § 400 *et seq.* and that based on Student's grades and behaviors Respondent should have suspected that Student had a disability notwithstanding any specific request(s) from Parents and had Student evaluated for

⁶¹ See Petitioners Exhibit H.

⁶² *Id.*

⁶³ See Respondent Exhibit 14, page 94.

1 special education and related services no later than August of 2019. Petitioners conceded
2 that not every student with ADHD requires specialized instruction and may achieve
3 academic success with 504 Plan accommodations, but argued that Student's 504 Plan
4 was not effective because he continuously struggled academically despite his grade
5 advancement. Petitioners also argued that Respondent's issuance of the August 22,
6 2019, PWN without Respondent's consultation with Parents, deprived Parents of their
7 right to meaningfully participate in the decision-making process and amounted to an IDEA
8 violation. Petitioners also argued that Respondent's failure to agree to fund Student's IEE
9 or file for due process to defend its denial position, should result in a \$4,100.00
10 reimbursement award to Petitioners. Petitioners further argued that Student's placement
11 at [REDACTED] evinced his need for therapeutic supports in a tailored academic environment,
12 and that Respondent's 504 Plan was inadequate to address the entanglement of
13 Student's social-emotional needs from his learning processes.⁶⁴ To that end, Petitioners
14 opined that Student's placement at [REDACTED] was the most appropriate choice Parents could
15 make under their family's given circumstances and further argued that an award of
16 compensatory education would be the most equitable relief Petitioners could receive from
17 the Tribunal. Specifically, Petitioners seek an award of no less than \$233,809.76 with an
18 accompanying order requiring Respondent to pay for Student's tuition at [REDACTED], including
19 transportation and related expenses, up to and until Student transitions home or to
20 another appropriate placement.⁶⁵

21 3. In closing, Respondent argued that Student is not a "child with a disability"
22 with rights under the IDEA and that Petitioners have effectively placed "the cart before
23 the horse" in their Complaint. Respondent argued that it had no reason to suspect that
24 Student had one or more disabilities that would warrant an evaluation for special
25 education and related services and that Respondent's knowledge of Student's ADHD
26 diagnosis was insufficient to establish such grounds. Respondent noted that to the extent
27 Student was academically impacted by his ADHD, his 504 Plan was set up to provide
28 sufficient supports to assist and compensate. Respondent argued that Student's 9th

29 ⁶⁴ See Respondent Exhibit 21.

30 ⁶⁵ See Petitioner Exhibit I.

grade year was rather unremarkable as he passed all of his classes and had no major disciplinary issues, and it was not until after the academic year ended that Student experienced mental health episodes which resulted in hospitalizations and Parents' placement of Student at [REDACTED] unbeknownst to Respondent. Respondent further argued that the events of Summer 2019 did not create a basis for Respondent to have a reasonable suspicion that Student was in need of specially designed instruction. Parent's testimony and Student's medical records indicate that the root cause of his behavioral issues stemmed from his relationship with Parent and drug use. Additionally, Respondent argued that Parents never requested an IEE, instead, Parents had merely inquired as to whether they had a right to an IEE as they disagreed with the school's decision not to evaluate Student. Respondent noted that 34 C.F.R. § 300.502(b)(2) only applies when a district has already conducted its own evaluation and a student's parent(s) disagrees with said evaluation. Because Student was not evaluated, Respondent argued that Parents were never entitled to an IEE as a matter of right. To that end, Respondent argued that Parents were not entitled to reimbursement for Student's evaluation because only a disputed public evaluation may trigger a right to a publically funded IEE. Respondent further argued that Parents' unilateral placement of Student at [REDACTED] was inappropriate because (1) it was not necessary to provide special education and related services, (2) Student did not require such services, (3) [REDACTED] never provided Student with any such services, and (4) [REDACTED] "sole focus is helping teens with a history of developmental trauma complicated by adoption," and does not accept health insurance. Respondent argued, per Student's [REDACTED] records, that Student was not admitted for educational reasons or "academic concerns." Respondent noted that [REDACTED] primary academic goal is "helping students learn to regulate their emotions and their behavior in a classroom," and argued that Student made no progress in this area from December 2019 to April 2020 according to his Treatment Plan. Lastly, Respondent argued that Petitioners are not entitled to tuition reimbursement because Student was unilaterally placed by Parents in a for-profit institution, and not a "private secondary school" or "nonprofit institutional day or residential school" as required by 34 C.F.R. §§ 300.145(c) and 300.36.

CONCLUSIONS OF LAW

APPLICABLE LAW

1. A parent who requests a due process hearing alleging non-compliance with the IDEA must bear the burden of proving that claim.⁶⁶ The standard of proof is “preponderance of the evidence,” meaning evidence showing that a particular fact is “more probable than not.”⁶⁷ Therefore, Petitioners bear the burden of proving their claims and complaints by a preponderance of evidence.

2. The IDEA’s statute of limitations requires courts to bar claims made more than two years after the parents “knew or should have known” about the actions forming the basis of the complaints.⁶⁸

3. This Tribunal’s determination of whether Student received a free appropriate public education (“FAPE”) must be based on substantive grounds.⁶⁹ 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.⁷⁰ If one of the three impediments listed has occurred, the child has been denied a FAPE due to the procedural violation.

4. Through the IDEA, Congress has sought to ensure that all students with disabilities are offered a FAPE that meets their individual needs.⁷¹ These needs include academic, social, health, emotional, communicative, physical, and vocational needs.⁷² To

⁶⁶ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

⁶⁷ *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).

⁶⁸ 20 U.S.C. §1415(f)(3)(C); see also *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936, 937 (9th Cir. 2017); *J.K. and J.C. on behalf of themselves and K.K-R v. Missoula County Publ. Schools*, 713 F. App’x 666 (9th Cir. 2018).

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

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

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

⁷² *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).

do this, 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 free appropriate public education. The IDEA mandates that school districts provide a “basic floor of opportunity.”⁷³ A FAPE consists of “personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”⁷⁴ The FAPE standard is satisfied if the child’s individualized education plan (“IEP”) sets forth his or her individualized educational program that is “reasonably calculated to enable the child to receive educational benefit.”⁷⁵ Therefore, a school offers a FAPE by offering and implementing an IEP “reasonably calculated to enable [a student] to make progress appropriate in light of [the student’s] circumstances.”⁷⁶ The IDEA does not require that each student’s potential be maximized.⁷⁷ A student 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.”⁷⁸

5. Once a student is determined to be eligible for special education services, a team composed of the student’s parents, teachers, and others formulate an IEP that, generally, sets forth the student’s current levels of educational performance and sets annual goals that the IEP team believes will enable the child to make progress in the general education curriculum.⁷⁹ The IEP tells how the child will be educated, especially with regard to the child’s needs that result from the student’s disability, and what services

⁷³ *Rowley*, 458 U.S. at 200.

⁷⁴ *Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982).

⁷⁵ *Id.*, 485 U.S. at 207. In 2017, in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ___, 137 S. Ct. 988, 2017 West Law 1234151 (March 22, 2017), the Supreme Court reiterated the *Rowley* standard, adding that a school “must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” but the Court declined to elaborate on what “appropriate progress” would look like case to case (i.e., in light of a child’s circumstances).

⁷⁶ *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ___ (2017).

⁷⁷ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

⁷⁸ *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)).

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

will be provided to aid the student. The student's parents have a right to participate in the formulation of an IEP.⁸⁰ The IEP team must consider the strengths of the student, concerns of the parents, evaluation results, and the academic, developmental, and functional needs of the student.⁸¹ To foster full parent participation, in addition to being a required member of the team making educational decisions about the student, school districts are required to give parents written notice when proposing any changes to the IEP,⁸² and are required to give parents, at least once a year, a copy of the parents' "procedural safeguards," informing them of their rights as parents of a student with a disability.⁸³

6. The IEP team must consider the concerns of a student's parents when developing an IEP.⁸⁴ In fact, the IDEA requires that parents be members of any group that makes decisions about the educational placement of a student.⁸⁵

DECISION

7. On January 14, 2020, Parents filed the underlying Complaint in this matter; two years prior, Student was in the second semester of his 8th grade year. Therefore, any actions or inactions that occurred before that time are beyond the limitations period.

8. To prevail in the case at bar, Petitioners must establish by a preponderance of the evidence that Student is a child with a disability who needs specialized instruction to access his education, thereby making him entitled to an evaluation, and IEP, and reimbursement for his IEE and the unilateral decision to place Student at an out-of-state RTC.

9. The substantive evidence of record established the following:

Allegation #3 – Respondent's Alleged Refusal to Evaluate Student Allegedly Deprives Parents of Right to Meaningfully Participate in Decision-Making Process

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

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

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

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

⁸⁴ 20 U.S.C. § 1414(d)(3)(A)(ii); 34 C.F.R. §§ 300.324(a)(1)(ii).

⁸⁵ 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c)(1).

- 1 a. 34 C.F.R. § 300.304(c)(4) provides, in pertinent part, that an LEA must
2 ensure that students are “assessed in all areas related to the suspected
3 disability including, if appropriate, health, vision, hearing, social and
4 emotional status, general intelligence, academic performance,
5 communicative status, and motor abilities.”
- 6 b. 34 C.F.R. § 300.322(a) provides, in pertinent part, that an LEA must “take
7 steps to ensure that one or both of the parents of a child with a disability are
8 present at each IEP Team meeting or are afforded the opportunity to
9 participate.”
- 10 c. The IDEA’s procedural safeguards are aimed, in part, at ensuring “that
11 families of [children who qualify for special education and related services]
12 have meaningful opportunities to participate in the education of their
13 children at school and at home.”⁸⁶
- 14 d. As set forth, *supra*, in August of 2019 Respondent did not have a reason to
15 suspect that Student was a child with a disability. Petitioners’ argument that
16 Parents were denied the right to “meaningfully participate in the decision-
17 making process” is incorrect. LEAs have no obligation to accept every
18 parental request, and may not adopt an inappropriate program only to quell
19 insistent parents. The FAPE provisions of the IDEA are only extended after
20 a student is determined to be eligible to receive special education and
21 related services. Here, Student was not determined to be eligible for special
22 education services so no such “meaningful participation” rights or privileges
23 were extended to Petitioners. Therefore, insufficient evidence exists in the
24 record to find that Respondent committed a failure to evaluate Student for
25 special education and related services and/or deprived Parents of a right to
26 meaningfully participate in an IEP related decision-making process.

- 27 i. Petitioners failed to sustain their burden of proof as to this allegation.
28

29 ⁸⁶ 20 U.S.C. 1400(c)(5)(B).
30

10. From August 05, 2019, when Parents submitted their special education evaluation request to Respondent, through and up until Student was withdrawn as a student on September 20, 2019, Student was not eligible for special education and related service because his disability did not adversely affect his academic performance or ability to access the general education curriculum.

11. Because the evidentiary record does not demonstrate any violation of the IDEA by Respondent, the undersigned concludes that Petitioners' Complaint shall be dismissed. Notwithstanding his ADHD diagnosis, Respondent did not have a basis to reasonably suspect Student of being a "child with a disability" who was unable to access the general education curriculum because of a disability.

RULING

Based on the foregoing,

IT IS ORDERED that Allegation #3 in Petitioners' due process complaint, and related relief requested, is **denied**.

ORDERED this day, December 14, 2020.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Jenna Clark
Administrative Law Judge

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and ARIZ. REV. STAT. § 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 ARIZ. REV. 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.

Copy mailed/e-mailed December 14, 2020 to:

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By